

County Administration Directive



Number: 23-D002
Title: County Freedom of Information Act Program
Date: April 28, 2023



1. Purpose and Intent

- 1.1. The purpose of this Directive is to provide overarching guidance and direction to individuals performing duties on behalf of Lake County government as they pertain to the Freedom of Information Act ("FOIA").
- 1.2. The County Administrator's intent is to maintain consistent FOIA procedures for those who create, maintain, and otherwise possess public records in Lake County to minimize risk to employees and Lake County government.

2. Background

- 2.1. Records created, maintained, processed, and/or otherwise possessed by Lake County government are public records and are subject to FOIA, except for those exempt within the FOIA statute or other state/federal law.
- 2.2. Previously, each department developed their own FOIA process with minimal continuity between department and personnel changes which highlighted the need to develop countywide standard practices for FOIA requests.
- 2.3. As FOIA requests increase nationally in volume and complexity, defined roles are required to streamline the Lake County FOIA program and coordination between departments.
- 2.4. The County Administrator established a FOIA Coordinator in the Communications Division to help manage the complexity and volume of FOIA requests received by Lake County.
- 2.5. Departments in Lake County have a legal obligation to comply with FOIA and the direction provided herein is a high priority for all departments subject to FOIA.
- 2.6. The direction provided herein is aligned with the Illinois FOIA and the Illinois Attorney General's Public Access Counselor's ("PAC") direction and guidance for public bodies.

3. Scope

- 3.1. This directive applies to all departments under the authority of the County Administrator and is strongly recommended for all agencies, commissions, and elected offices that are subject to FOIA within Lake County government.
- 3.2. Agencies, commissions, and elected official's offices not under the authority of the County Administrator shall refer to the FOIA Program Declaration Memorandum (template in enclosure 2). If an agency, commission, or elected official's office decline to follow the FOIA Program Directive, it should provide the department's FOIA policies and procedures to the County Administrator's Office per the steps outlined in the Declaration Memorandum.
- 3.3. Be advised this directive does not encompass all procedures, exemptions, situations, or processes related to FOIA requests. Designated FOIA officers are required to be familiar with the Freedom of Information Act, the annual training required by the state, the records their department maintains, and Lake County FOIA Standard Procedures.

4. Authority

- 4.1. The County Administrator is exercising the authority to manage and coordinate County operations according to Section 30.38 of the Lake County Code of Ordinances.

5. Direction

5.1. Department Heads

- 5.1.1. Department heads are required to have a clear understanding of FOIA, its statutory requirements, and the importance of FOIA for transparency in government.
- 5.1.2. It is the responsibility of the department head to ensure compliance and carry out the direction provided herein and the enclosed standard procedures.
- 5.1.3. It is the responsibility of the department head to ensure communications of all FOIA policies, procedures, and guidance is distributed or disseminated to all tenured and new employees.
- 5.1.4. Department heads are required to designate primary and backup FOIA officers to handle FOIA requests and ensure all designated FOIA officers for their department complete the Attorney General's FOIA training on an annual basis. Designate at minimum the following:
 - One (1) primary FOIA officer; and
 - One (1) backup FOIA officer.
 - Additional FOIA officers shall be designated by the department head as needed.
- 5.1.5. If a department is experiencing long periods of high volume and complexity of FOIA requests that impacts the department's FOIA officer's ability to perform their public duties, department heads shall designate or delegate designation of additional FOIA officers to assist with responding to requests.
- 5.1.6. All department heads under the authority of the County Administrator shall ensure their department uses GovQA, FOIA software. The software shall be used to track, process, and respond to FOIA requests whenever possible.
- 5.1.7. Department heads will participate in the annual FOIA program meeting for their department. See 5.3.3. for additional information.
- 5.1.8. Department heads shall strongly encourage their media liaisons to complete the Illinois Attorney General Public Access Counselor's ("PAC") FOIA training in an advisory capacity.

5.2. FOIA Officers

- 5.2.1. Designated FOIA officers are required to:
 - 5.2.1.1. Follow the procedures set forth herein and in the enclosed Lake County Standard FOIA Procedures.
 - 5.2.1.2. Complete the Illinois Attorney General's Public Access Counselor's ("PAC") FOIA training and receive a certificate within 30 days of initial designation as prescribed by FOIA, 5 ILCS 140/3.5(b).
 - 5.2.1.3. Annually complete the Illinois Attorney General's Public Access Counselor's ("PAC") FOIA training and receive a certification upon completion.

- 5.2.1.4. Provide a copy of their current FOIA officer certificate to their department head upon completion of the training each year.
- 5.2.1.5. Notify the Communications Division (Communications@lakecountyil.gov) in the event there is a change to the department's primary or backup FOIA officer or if the FOIA Officer Directory contains any inaccurate contact information for their department.
- 5.2.1.6. Notify the Communications Division (Communications@lakecountyil.gov) in the event there is an update to the categories of records listed for their department on the FOIA records list available to the public on the Lake County FOIA website.
- 5.2.1.7. Have access or a license to redaction software within Adobe Acrobat Pro or similar software to apply the appropriate redactions and exemptions to records.
- 5.2.1.8. Participate in the annual FOIA program meeting for their department. See 5.3.3. for additional information.
- 5.2.1.9. Use GovQA, FOIA software, whenever possible. The software shall be used to track, process, and respond to FOIA requests.
- 5.2.2. In the event a FOIA officer's Illinois Attorney General's Public Access Counselor ("PAC") FOIA certificate is expired or not completed annually, training must be completed prior to receiving or responding to FOIA requests. Refer to 5.1.4 for further guidance.
- 5.2.3. If the quantity or complexity of FOIA requests exceeds or impacts the FOIA officer's regular duties, the FOIA officer shall communicate a need for assistance to their department head or their designated supervisor.
- 5.2.4. FOIA officers will only reply to FOIA requests on behalf of their designated department(s). FOIA officers will not forward misdirected requests to other departments with the exception of requests that qualify under the Lake County Standard FOIA Procedures.
- 5.2.5. Only designated FOIA officers are authorized to review or determine records as exempt under FOIA. FOIA officers may consult attorneys in the State's Attorney's Office regarding applicable exemptions. In the event the Illinois Attorney General's Public Access Counselor ("PAC") requests review or in the case of active litigation, FOIA officers may be asked to provide a written affidavit stating the FOIA officer personally reviewed the exemptions applied to the records.
- 5.2.6. FOIA officers may have access to exempt information. Therefore, all FOIA officers must take reasonable measures to protect private or personal information, as defined under 5 ILCS 140/7(1)(b) and 5 ILCS 140/7(1)(c), from internal or public dissemination.
- 5.2.7. Each primary FOIA officer is required to keep and maintain a copy and index of all FOIA denials pursuant to 5 ILCS 140/9(b).
- 5.3. Lake County FOIA Program Manager and FOIA Coordinator
 - 5.3.1. The Lake County FOIA Coordinator:
 - 5.3.1.1. Assigned to the Communications Division and works under the supervision

- of the FOIA Program Manager.
 - 5.3.1.2. Functions as a resource for Lake County's FOIA program and will be available for matters regarding FOIA.
 - 5.3.1.3. Shall adhere to all guidelines set forth for FOIA officers.
 - 5.3.2. Lake County FOIA Coordinator duties include but are not limited to the following:
 - 5.3.2.1. Assist FOIA officers with questions regarding FOIA requests or responses.
 - 5.3.2.2. Provide assistance with factual or procedural questions regarding exemptions under FOIA.
 - 5.3.2.3. When requested by departments, evaluate FOIA requests or responses prior to legal review.
 - 5.3.2.4. Individualized guidance on complex FOIA requests or responses.
 - 5.3.2.5. Facilitate legal review of FOIA responses and Illinois Attorney's General Public Access Counselor ("PAC") Requests.
 - 5.3.2.6. Direct training for current and new FOIA officers.
 - 5.3.2.7. Organize scheduled training sessions for all FOIA officers.
 - 5.3.2.8. Administrative duties for FOIA software.
 - 5.3.3. The FOIA Coordinator and FOIA Program Manager will conduct an annual FOIA Program meeting with each department regarding their department's FOIA program. The annual meeting will be a discussion with the Department Head and FOIA officers. Each discussion will cover the following areas:
 - 5.3.3.1. Current Attorney General Public Access Counselor's ("PAC") FOIA Certificates for all designated primary and backup FOIA officers
 - 5.3.3.2. Review of department's FOIA request log
 - 5.3.3.3. Department's use of FOIA standard operating procedures and software
 - 5.3.4. The FOIA Coordinator will maintain a central library of FOIA response templates and make the templates available to all FOIA officers.
 - 5.3.5. In the event a FOIA request requires a response from multiple departments, the FOIA Coordinator and FOIA Program Manager shall assist departments as needed.
 - 5.3.6. As FOIA law and guidance evolve, the FOIA Coordinator and FOIA Program Manager will assist with countywide administrative FOIA policies and procedures to maintain transparency and compliance with the law.
- 5.4. All Lake County employees and those performing duties for Lake County
- 5.4.1. All employees and those performing duties for Lake County government are to be aware that all records prepared, used, received, possessed, or controlled by Lake County are subject to FOIA, except those records excluded by law, and all requests from FOIA officers must be handled with urgency in recognition of the short response time required by law.
 - 5.4.2. All employees are required to comply with any FOIA training or requirements set by their department head, the County Administrator, or required by law.
 - 5.4.3. Employees and those performing duties for Lake County government shall maintain

integrity and not interfere with the steps of the FOIA program.

- 5.4.4. Under this directive, FOIA officers, department heads, and/or other representatives of Lake County shall not ask FOIA requestors for the purpose of their request for any reason other than those permitted in the FOIA statute.
- 5.4.5. All county email users are encouraged to:
 - 5.4.5.1. Accurately label their private contact information if it is included in emails or email signatures. It is preferable to avoid including private contact information or personal information in County emails altogether.
 - 5.4.5.2. Appropriately label their records as “Drafts” or “Final” within their attachments and emails.
- 5.4.6. When employees receive a search request from their FOIA officer, they are required to promptly provide the FOIA officer with all responsive records found through a reasonable search. Outside of FOIA officers, employees are not authorized to determine a document as exempt under FOIA. FOIA officers may require consultation with the authors of documents to understand the context of the document and whether certain exemptions apply.
- 5.4.7. Communication with FOIA requestors regarding active or ongoing FOIA requests is prohibited by employees who are not FOIA officers or otherwise authorized by the department head. Employees who are not designated FOIA officers may not respond with records to FOIA requests.
- 5.4.8. Only FOIA officers and those otherwise authorized within the Lake County Standard FOIA Procedures or Lake County Employee Policies and Procedures *9.4 Acceptable Use Policy* have permission to initiate a search for County digital communications on the County server to the Information Technology Department.

6. Severability

- 6.1. If any section or provision of this directive should be held invalid by any applicable law, ordinance, or County Board approved policy, none of the remainder shall be affected.

7. Definitions

- 7.1. Freedom of Information Act (“FOIA”): An Illinois state law (Illinois General Assembly – 5 ILCS 140/1 et seq.) which states that all public bodies must produce public records upon request from a member of the public, except as noted in statute.
- 7.2. Illinois Attorney General’s Public Access Counselor (“PAC”): An appointed attorney in the Attorney General’s Office created by Illinois law that is available to provide advice and education with respect to the interpretation and implementation of the Freedom of Information Act and the Open Meetings Act. The Illinois Attorney General’s Public Access Counselor (“PAC”) issues binding opinions that advise if public bodies violated the Freedom of Information Act or the Open Meetings Act.
- 7.3. Designated FOIA Officers: An individual designated by their department head as the primary or backup FOIA officer(s) who has successfully completed the Illinois Attorney General Public Access Counselor’s Freedom of Information Act training within the past twelve (12) months and has received a Freedom of Information Act officer certificate from the Attorney General.
- 7.4. County Digital Communications: Records of communication that are created, exist, or stored on county issued electronic devices or county servers. Includes but is not limited to emails,

Teams messages, meetings, outlook information, voicemails, text messages, and county social media messages.

- 7.5. Affidavit: A legal document describing an event or circumstance that is signed under oath and subject to penalty of perjury. The information in the affidavit must be accurate to the best of the affiant's knowledge.
- 7.6. Public Records: Public records include, but are not limited to, the following: emails, Team's messages, voice mails, audio and video files, photographs, documents, files, written correspondence, forms, reports, databases, contracts, reports, and studies, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.
 - 7.6.1. Each public body shall furnish upon request a description of the manner in which public records stored by means of electronic data processing may be obtained in a form comprehensible to persons lacking knowledge of computer language or printout format.
- 7.7. FOIA Records List: Each public body shall maintain and make available for inspection and copying a reasonably current list of all types or categories of records under its control as well as a list of records that shall be furnished immediately upon request.
 - 7.7.1. The list shall be reasonably detailed in order to aid persons in obtaining access to public records pursuant to FOIA.
 - 7.7.2. The FOIA records list can be found at lakecountyil.gov/FOIA.
- 7.8. FOIA Officer Directory: A brief description of the methods whereby the public may request information and public records, a directory designating the Freedom of Information Act officer or officers, the address where requests for public records should be directed, and any fees allowable under 5 ILCS 140/6 of FOIA.
 - 7.8.1. The FOIA Officer Directory can be found at lakecountyil.gov/FOIA and on ESP under Freedom of Information Act Information.

8. References

- 8.1. Illinois Freedom of Information Act (5 ILCS 140/1 et seq.)
- 8.2. Public Access Counselor (15 ILCS 205/7)
- 8.3. Lake County Employees Policies and Procedures 9.4 Acceptable Use Policy
- 8.4. Lake County FOIA Standard Procedures

9. History of Directive

Original: April 28, 2023

Enclosures

- (1) Lake County FOIA Standard Procedures
- (2) Template for Declaration Memorandum



Lake County FOIA Standard Procedures

1. Receiving a Freedom of Information Act (FOIA) Request

1.1. Required Format for Requests.

- A. FOIA requests must be submitted in writing, permitted by FOIA 5 ILCS 140/3(c).
- B. Neither Lake County, nor any of its departments or those within, may require or represent a requirement that a specific written form or format must be submitted for a FOIA request.
- C. If a department receives a question or a request for records that is not a FOIA request, they should respond in coordination with their department head or media liaison.

1.2. Deadlines.

- A. FOIA requests are to be promptly responded to within five (5) business days, a deadline established by FOIA 5 ILCS 140/3(d).
- B. Requests must either be fulfilled, denied, or properly extended under FOIA 5 ILCS 140/3(e) within the initial five (5) day deadline.
- C. The five (5) business days are calculated beginning on the day after the request is received and excludes weekends or holidays. When a request is received outside of Lake County business hours, over the weekend, or on a holiday, the request is considered received on the following business day.

1.3. Narrowing a Request with a Requestor.

- A. In the event a request for records is unclear or overly broad, FOIA officers shall confer or attempt to confer with the requestor and attempt to narrow or clarify the request.
- B. The narrowed request is required to be confirmed in writing. See *GovQA Template: All Dept – Clarifying or Narrowing a Request* for reference.

1.4. Asking a Requestor for the Purpose of Request.

- A. FOIA requesters are not required to provide the purpose of their request. Per FOIA Program Directive 5.4.4, FOIA officers, department heads, and/or other representatives of Lake County should not ask FOIA requestors for the purpose of their request.
 - I. One exception to this guideline is FOIA officers are permitted to ask a requestor if the request is for a commercial purpose, if there is reason to believe based upon the nature of the request or requester that a commercial purpose is possible.
 - II. If a requestor confirms that a request is for commercial purposes, the deadline will be 21 days from the day the request is received.
 - III. Requests from reporters, journalists, and news outlets are not considered commercial requests.

1.5. Digital Communications Requests Sent Directly to Information Technology (IT).

- A. Records of digital communications are the responsibility of the departments involved. Therefore, FOIA requests sent directly to IT for digital communications on the county server should be processed by the department(s) listed in the FOIA request.
- B. If vague requests are sent to IT, such as a request for electronic correspondence from all staff within all of Lake County government, the FOIA Coordinator or the FOIA Program Manager will coordinate the response to the request.
- C. When IT receives a direct request for digital communications on the county server, IT will:
 - I. Contact the listed department's FOIA officer immediately and formally hand-off the request to the department in writing via email and within GovQA.
 - II. IT remains responsible for its own emails between employees and documents generated internally within the department.

2. Documenting a FOIA Request

2.1. Tracking and Logging Requests and Progress.

- A. It is the responsibility of FOIA officers to log their department's FOIA requests, properly track the process, and ensure timely responses.
- B. All FOIA requests must be logged, processed, and documented by FOIA officers on GovQA, including denied requests.
- C. FOIA officers are required by law to perform the following duties when tracking and logging a FOIA request:
 - I. Log the date the department received the request.
 - II. Log the response due date or date extended.
 - III. Log the date the response was sent.
 - IV. Maintain an electronic or paper copy of requests, including all documents submitted with the request.
 - V. Create an electronic file for the retention of the original request, a copy of the response, a record of written communications with the requestor, and a copy of other communications with the requestors.

3. Searching for Records

3.1. Reasonable Search.

- A. All departments are required to conduct a reasonable search for all requested records in each FOIA request.

3.2. Digital Communications Searches.

- A. For all requests that require a search for digital communications, FOIA officers must initiate a search of the county servers with the Information Technology Department using the following procedure:
 - I. Using GovQA, assign a subtask to the IT Help Desk and the IT FOIA Officer.

- II. Urgent requests: If the FOIA search is urgent, FOIA officers shall note the urgency in their subtask and contact the Help Desk via telephone immediately after the subtask is sent. FOIA officers must verbally notify the IT Department of the urgency of the request.
- III. Information Technology will confirm the employee initiating the search is a FOIA officer within GovQA or otherwise authorized by a department head to request a search of county servers according to Information Technology's internal procedures.

3.3. Personal Digital Communications.

- A. It is only necessary to search county operated servers unless (a) the request specifically asks for personal communications such as personal email, social media, text messages, etc. (b) the FOIA officer learns directly from the subject employees that relevant public documents exist on non-County electronic accounts.
- B. If the records supplied to the requestor include a search of the county server, the following sentence must be included in the response to the requestor:
 - "We searched the county operated servers and found (#) records responsive to this request." See *GovQA Template: All Dept – Search for Records on County Server*.
- C. In FOIA requests for personal digital communications, FOIA officers should send a request to the appropriate employees to search their personal devices or accounts.
- D. In order for records on personal devices to be considered public record, they must be related to county business.

4. **Unduly Burdensome Requests**

4.1. Determining a Request to be Burdensome.

- A. FOIA requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying department and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information, pursuant to 5 ILCS 140/3(g).

4.2. Lapsed Deadline.

- A. If the initial five (5) business day deadline has lapsed and the request has not been properly extended, the FOIA request cannot be treated as unduly burdensome as set forth in FOIA, 5 ILCS 140/3(d).

4.3. Required Search of Records Prior to Burdensome Response.

- A. Prior to deeming a request as unduly burdensome, a reasonable search should be conducted when possible to determine an estimated number of records and approximately how much time would be required to review the records.

4.4. Unintelligible Request and Response.

- A. In situations where the FOIA officer is unable to legitimately understand the request and unable to reach the requestor to clarify or narrow the request with the requestor, the FOIA officer should use *GovQA Template: All Dept – Burdensome – Unintelligible* to

provide a response to an unintelligible or unduly burdensome request within FOIA's initial five (5) business day deadline.

4.5. Unduly Burdensome Response.

- A. FOIA officers shall use *GovQA Template: Burdensome Request* to provide a response to an unduly burdensome request to the requestor in cases where the burden on the public body outweighs public interest. The unduly burdensome response must include the following:
 - I. Number of records returned in the reasonable search.
 - II. Number of weeks or months it would take for a department to review or search for the records.
 - III. A reason as to why the request is a burden to the department.
 - IV. An invitation for the requestor to narrow their search and any appropriate suggestions on how to narrow their search that the department may have for the requestor.
 - V. Denial language, including the Illinois Attorney General's Public Access Counselor's ("PAC's") contact information. See *GovQA Template: All Dept – Denial PAC Language* for reference.

5. **Exemptions**

5.1. Required Review by FOIA Officers.

- A. Every record shall be reviewed by a FOIA officer for exempt information outlined in FOIA 5 ILCS 140/7.
- B. FOIA officers are required to be familiar with the exemptions provided in FOIA 5 ILCS 140/7 and are responsible for redacting their department's responsive records.
- C. FOIA officers will redact information in records or withhold documents if the information or record is exempt under FOIA, state or federal law, or otherwise directed by the Lake County State's Attorney's Office.
- D. All redactions or withheld documents must qualify under a FOIA exemption or state or federal law. The applied exemption(s) must be cited and explained in the response to the requestor.

5.2. Private Information.

- A. Private information should be redacted unless there is specific law applicable to the information within the record or if advised by the State's Attorney's Office.
- B. Private information is defined in 5 ILCS 140/2(c-5) in FOIA and is defined as: unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

6. Responding to FOIA Requests

6.1. Required Information in Response.

- A. All FOIA responses are required to include the following information:
 - I. Department(s) name.
 - II. FOIA officer's name and contact information.
 - III. Date or documentation of the date.
 - IV. If redactions are applied or records withheld, the exemption must be included and explained in the response. See *GovQA Template: All Dept – Partial Denial*.

6.2. Templates.

- A. Templates will be made available to all FOIA officers in GovQA.
- B. Upon request, the FOIA Coordinator or the FOIA Program Manager will provide assistance with complex responses that require unique language.
- C. Upon request, the Lake County State's Attorney Office will provide legal assistance if a question of law arises.

6.3. No Responsive Records.

- A. In situations where a department does not have records responsive to a FOIA request, it is required for the statutorily required denial language to be included in the response to the request, which includes the Illinois Attorney General's Public Access Counselor's ("PAC") information.
- B. FOIA officers are required to use *GovQA Template: All Dept – No Responsive Records* in the above circumstances. FOIA officers or other employees, shall not forward misdirected requests to other departments with the exception of situations otherwise mentioned in this directive.
- C. It is the responsibility of the department that received the request to respond directly to the requestor.
 - I. Optional: While departments may know or have a good idea of the department in Lake County where the requestor can find the records, it is required that FOIA officers confirm with the other department that they have the records being sought before referring the requestor to that department.
 - II. After confirming, send the denial language and refer the requestor to that department. It will then be the responsibility of the FOIA requestor to send a separate FOIA request to the other office/department.

7. References

- 7.1. Lake County FOIA Program Directive
- 7.2. Illinois Freedom of Information Act ("FOIA") (5 ILCS 140/1 et seq.)
- 7.3. Illinois Attorney General's Public Access Counselor ("PAC") (15 ILCS 205/7)



Template for Declaration Memorandum



County Administrator's Office

18 N. County St. – 9th Floor
Waukegan, Illinois 60085
Phone: 847.377.2250
www.lakecountyil.gov

MEMORANDUM

Date: MM/DD/YY
To: Agencies, Commissions, and Elected Official Offices
From: County Administrator
Subject: FOIA Program Declaration

All office/departments in Lake County are legally obligated to adhere to FOIA, aside from those specifically exempt by law, such as the Courts. The County Administrator has established a County-wide FOIA Program through an Administrator's Directive. The FOIA Program is a mandatory directive for all departments under the authority of the County Administrator and strongly recommended for all elected official offices, commissions, and agencies that are subject to FOIA within Lake County government.

Action Requested:

1. Elected official offices, commissions, and agencies should complete the enclosed declaration.
2. If your office/department declares it will not adopt and follow the FOIA Program Directive, attach your department's FOIA policies and procedures to the declaration.
3. Elected officials, agency heads, or their authorized representative sign the declaration.
4. Return the declaration and any relevant documents to the County Administrator's Office by **MM/DD/YY**.
5. Departments under the authority of the County Administrator are not required to complete a declaration.

FOIA Program Declaration

Purpose: For use only by offices/departments not under the authority of the County Administrator.

☐ _____ will adopt and follow the direction contained in the
Office/ Department

FOIA Program Directive.

OR

☐ _____ will **not** adopt or follow the direction contained in the
Office/ Department

FOIA Program Directive. The department's FOIA policies and procedures are attached hereto.

Authorized Representative Signature

Office/Department

Date