



Illinois Attorney General Opinion Provides Guidance on "Recurrent Requester" Status Under FOIA

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By **Maria Mazza**

The Public Access Counselor (PAC) of the Illinois Attorney General's Office recently issued a binding opinion concerning the new "recurrent requester" provision in the Freedom of Information Act (FOIA). As we provided in a recent [FR Alert](#), the FOIA was amended to include a new classification of requesters known as "recurrent requesters." The PAC opinion answers the question as to whether separate requests from a husband and wife can be combined to establish recurrent requester status for one of the members of the couple and provides other guidance on this new FOIA provision.

In the opinion, a husband and wife had separately and, on one occasion, jointly sent numerous FOIA requests to the Village of Smithfield over the course of a year. The wife had submitted ten requests during the year, the husband had submitted three requests, and the couple had submitted one joint request. The Village combined the requests when calculating whether the wife was a recurrent requester because the requests were mailed in the same envelope and from the same address. As further justification for finding the wife to be a recurrent requester, the Village maintained that the couple had submitted an excess of Requests for Review to the PAC regarding FOIA requests to the Village.

The PAC concluded that the Village inappropriately combined the couples' requests to classify the wife as a recurrent requester. While it was appropriate for the Village to include the single joint request in calculating the wife's total number of requests, the PAC noted that nothing in the statute permitted the Village to aggregate the separate requests of two individuals simply because the individuals are married or live at the same address. Further, although the Village asserted that the wife had submitted numerous Requests for Review to the PAC, nothing in the statute allows the Village to consider Requests for Review filed with the PAC when calculating the number of requests under Section 2(g) of the FOIA.

Further, the PAC noted that even if all of the requests could have been considered, the total would not justify deeming the wife a recurrent requester. Under the amended FOIA, a "recurrent requester" is defined as a person who in the 12 months preceding the request has submitted to the same public body: (1) a minimum of 50 requests for records; (2) a minimum of 15 requests for records within a 30 day period; or (3) a minimum of seven requests for records within a seven day period. The total number of requests sent by the husband and wife, jointly and separately, in one year (14) did not fall within the statutory definition of "recurrent requester." Finally, the PAC found that the Village failed to comply with the law because its initial response to the requester within five days of receipt of the FOIA request did not include the information required to be included in such an initial response. The amended FOIA provides that if a public body intends to treat an individual as a recurrent requester, the public body must within five days after receiving the request notify the requester: (1)



that the requester is being treated as a recurrent requester; (2) the reasons for treating the requester as a recurrent requester; (3) that the public body will respond to the request within 21 days; and (4) the potential responses the public body may provide. The Village's response did not include a reason why the wife was being treated as a recurrent requester, nor did the Village explain the possible responses that it would provide within 21 days.

This binding PAC opinion displays that while the new recurrent requester provisions may be helpful in certain circumstances to public bodies, a public body's overly broad interpretation of the provisions may result in a violation of the FOIA.

More Information

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