

**105th Annual Educational Conference
of the
Township Officials of Illinois
November 11-13, 2012
Prairie Capital Convention Center
Springfield, Illinois**

*Your Local Government
Attorneys*

TUESDAY, NOVEMBER 13, 2012

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***FOIA — UPDATE AND WHAT
YOU NEED TO DO***

**PORT PCCC — LOWER DECK
ROOM B11D**

9:45 A.M.—11:15 A.M.

PRESENTERS:

**TIFFANY NELSON—JAWORSKI
HEATHER V. KIMMONS**

**Ancel
Glink** | DIAMOND BUSH
DiCIANNI
& KRAFTHEFER

TIFFANY NELSON-JAWORSKI

TIFFANY NELSON-JAWORSKI joined the firm of Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C., as an associate in January 2008. She received her Bachelors of Arts from the Illinois Institute of Technology where she graduated in 1999 with honors. Mrs. Nelson-Jaworski is a 2002 graduate of Illinois Institute of Technology/Chicago-Kent College of Law with a certificate in Labor and Employment Law.

Mrs. Nelson-Jaworski performs general township work and labor and employment work for a number of townships throughout the State of Illinois. She has drafted and revised numerous personnel policy manuals for various townships, assessors' offices, and road districts, including those where the employees are unionized. During her career, Mrs. Nelson-Jaworski has negotiated collective bargaining agreements with a variety of unions representing public employees such as assessor's office staff, clerical staff, public works employees, code enforcement officers, police officers, firefighters, maintenance employees, telecommunicators, college professors, and teacher's aides. In regards to her litigation experience, Mrs. Nelson-Jaworski has represented her clients in workers' compensation cases, election matters, grievance arbitration matters, interest arbitrations, employment litigation, unemployment matters, representation proceedings, and unfair labor practice hearings. Mrs. Nelson-Jaworski also routinely advises her clients regarding due process compliance in employee discipline and discharge cases and compliance with federal and state labor and employment laws, such as the Family Medical Leave Act, the Fair Labor Standards Act, Americans with Disabilities Act, the Illinois Public Labor Relations Act, and wage garnishment laws.

HEATHER V. KIMMONS

HEATHER V. KIMMONS joined the firm of Ancel, Glink, Diamond, Busg, DiCianni & Krafthefer, P.C., as an associate in August 2012. She received her undergraduate degree in Journalism from the University of Illinois in 1990, cum laude, and her law degree from the Indiana University School of Law in 1993, cum laude.

A native of central Illinois, Heather practiced law in Indianapolis, Indiana and its surrounding counties before moving back to central Illinois in 2000. Upon return to the area, Heather obtained her Illinois license and engaged in private practice in the City of Decatur for several years before moving to a position with the Office of the Illinois Attorney General in Springfield, where she served initially as an Assistant Public Access Counselor while also serving as the Freedom of Information Act Officer for the office. Heather was later named one of two Deputy Public Access Counselors for the Attorney General. After leaving the Attorney General's office, Heather served for two years as Village Administrator for the Village of Forsyth, where she gained experience in zoning and land use planning, collective bargaining, code enforcement, and the day-to-day realities of serving in local government.

Heather currently works from the Bloomington office, serving as corporation counsel for several downstate municipalities and townships and advising clients on a wide variety of issues encountered by local government entities. She lives in Forsyth with her husband Jim and their two children.

FOIA - Update and What You Need To Do

Township Officials of Illinois
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Presented By:

Tiffany Nelson-Jaworski
Heather V. Kinmons

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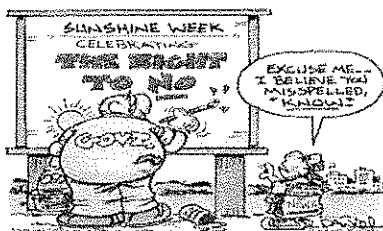
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Public Record

- o "Public records" means all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials **pertaining to the transaction of public business**, 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.**

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Public Access Counselor Update



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PAC Opinion 10-03

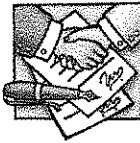
Certain autopsy documents subject to review, but post-mortem photographs were exempt.



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PAC Opinion 10-04

Settlement agreements are subject to FOIA even if procured by an insurance company and in the insurance company's possession and control.



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PAC Opinion 11-001

- o Chicago Police Department
- o Arrest Records – not exempt



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PAC Opinion 11-002

- oChicago Police Department
- oNumber of police officers assigned – not exempt



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PAC Opinion 11-003

- oUniversity of Illinois
- oUnduly Burdensome Requests
- oA request cannot be considered unduly burdensome unless the records were previously produced or unless the request is properly denied

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PAC Opinion 11-004

- oCity of Des Plaines
- oSettlement agreements – not exempt under self-insurance claim info exemption



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PAC Opinion 11-005

- o Department of Central Management Services
- o Workers compensation records
- o Individual reports containing nerve conduction velocity results were not "proprietary insurance or risk management documents" so not exempt.

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PAC Opinion 11-006

- o City of Champaign
- o Text messages on personal devices – NOT exempt.
- o Public business?



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PAC Opinion 11-007

- o Illinois Department of Natural Resources
- o Offer to view documents on microfiche insufficient; copies must be provided.



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PAC Opinion 12-001



- oVillage of Smithfield
- oImproper classification of recurrent requesters
- oCannot add requests of husband and wife together when totaling requests

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PAC Opinion 12-002

- oChicago Board of Education
- oPublic bodies must respond to FOIA requests within 5 business days



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PAC Opinion 12-003

- oChicago State University
- oNames of students and graduation information are not exempt from disclosure



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PAC Opinion 12-004

- oVillage of Smithfield
- oFOIA request should have been personally accepted at a Village Board meeting



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PAC Opinion 12-005



- oO'Fallon Central School District No. 104
- oDisclosure of Invoices for Legal Services
- oSome info may be redacted, but school should have provided time worked on projects and hourly rates



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PAC Opinion 12-006

- oHillside Police Department
- oArrest records of a local public official should have been produced.



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PAC Opinion 12-007

- o Ignore the PAC at your own peril
- o Not responding will result in a binding opinion against you and your township



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PAC Opinion 12-009

*Surprise
Bonus!*

- o Cannot redact information unless exempt
- o Ancillary information in document must be disclosed
- o Bonus information for requester

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PAC Opinion 12-012

- o Police investigation records may not always be exempt



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Non-PAC Opinions – Take it to Court

- o Delayed compliance can still result in a fine
- o Late disclosure pre-judgment = no attorneys fees



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E-mail: Friend or Foe?

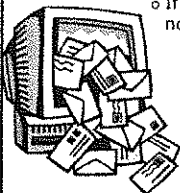


- o If the e-mail exchanges are contemporaneous, they may constitute an improper meeting
- o Avoid repeated use of "reply to all"
- o Consider non-voting person as message intermediary

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Special Considerations

- o What if the e-mail is on a township computer or account?
 - o If it is about township business, it is a public record
 - o If it is not about township business, it is not a public record



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Special Considerations:

- o What if the e-mail is on my home computer?
 - o If it is about township business, it is a public record
 - o If it is not about township business, it is not a public record



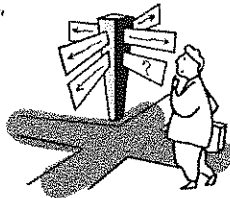
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Questions?

**Ancel, Glink, Diamond, Bush,
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