

STUDY SESSION
WINNETKA VILLAGE COUNCIL
510 Green Bay Road
Winnetka, Illinois 60093
Tuesday, November 10, 2009
7:30 p.m.

AGENDA

- 1) Call to Order
- 2) 2009 Property Tax Levy Analysis2
- 3) Fidelity Bonds.....14
- 4) Amended FOIA and Open Meetings Act.....15
- 5) Identity Theft Prevention Policy.....36
- 6) Reports
- 7) Executive Session
- 8) Adjournment

NOTICE

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To: Village Council
From: Ed McKee, Jr., Finance Director *EM*
Date: November 5, 2009
Re: 2009 Property Tax Levy Analysis

Executive Summary:

The Village of Winnetka is primarily a residential community that pays for many traditional municipal services with property tax revenues. Additionally, the Village operates several utility funds where users pay for those costs with rates that reflect the Village's costs.

The Village's share of a typical Winnetkan's total property tax bill has declined 22.2% from 17.1% in 1993 to 13.3% today. This reduction was achieved through careful management of expenses and diversification of General Fund revenues, i.e., implementation of a telecommunications tax, a natural gas tax, and increased building permit fees. Over time, the Village has reduced the number of full time employees from 178 in 1989 to 162 today to keep costs down.

In calendar 2008, the national economy and that of the State suffered a significant financial stress which significantly reduced pension asset values for municipalities. In Winnetka the unfunded pension liability grew 69% from \$18.7 million last year to \$31.6 million by early calendar 2009. These reduced asset values require the Village to contribute more to the pension plans.

From a budget standpoint, revenues from the state have declined to a level seen several years ago. A quick rebound in those revenues is not expected in the near term. The Village has also kept many of the fees unchanged for many years to help keep the cost to the homeowners down. Utility revenues have also been weak this year relative to the budget, largely because of the wet and cool summer which has kept sales modest.

Because of the Village's conservative financial policies (adopting a reasonable budget, reducing staff when possible, and carrying significant cash reserves) we have weathered the financial stresses well compared to other municipalities. In absolute terms, however, the outlook is guarded.

In terms of property tax growth, the Village has increased property taxes less than the amount allowed for non-home rule municipalities (i.e. the tax cap) since the tax cap law was passed. Because the tax cap law is based on the CPI from the prior calendar year, the 2009 increase is limited to 0.1% or a little over \$12,000, plus an increment for new development.

In a typical year the Village would expect a property tax increase in the 3.6% to 4.7% range (when inflation is about 2.5%, see History of Tax Levy Changes, attached), with existing residents paying 2% to 3% more in Village property taxes. New development would add an additional 1.6% or so to the tax base, providing the Village with a general fund budget where revenues and expenses grew at about the same rate.

For 2009, it is estimated that the Village can increase property taxes 1.7% (0.1% increase in the CPI and a 1.6% increase from new development) and remain within the tax caps. The 1.7% property tax levy increase for 2009 will cost a typical residential property tax payer with a \$20,000 total property tax bill approximately \$3 more per year (see note 1).

The budget outlook one year from today is probably no better than today in terms of property tax revenue. The calendar year 2009 change in the CPI will determine the amount of increase allowed in the 2010 property tax levy. Through September 2009, the CPI is negative 1.3% which means financing the 4/1/2011 to 3/31/2012 budget will also be a challenge.

Current Year Analysis:

The Council and staff developed a framework in November 2005 to evaluate property tax revenue requests for the Village. The primary objective is to keep property taxes low over the long term without compromising the ability to complete capital projects on a pay as you go method. The main factors considered in setting the property tax levy are 1) budget strength, 2) cash balances, 3) projected capital, and 4) pension funding. A higher rating would allow a lower property tax levy amount without compromising the Village's financial health.

A score of 1 to 10 is assigned each category. A score of 1 indicates the financial position is very weak and expenses/capital projects should be eliminated and / or revenues increased. A ranking of 10 indicates strong operating revenues, solid reserves, and properly funded pension liabilities which would allow operations to continue without any significant tax or fee increases.

The preliminary 2011 budget projection indicates flat revenues and increased pension liabilities which has lowered the score of the Village's overall financial condition which is used as an input in setting the property tax levy. While staff understands the direction from the Council to not propose significant revenue adjustments, the financial model would support such changes.

	2009	2008	2007	2006	2005
Factor					
Budget Projections	5	8	8	8	9
Cash Reserves	10	10	9	9	10
Projected Capital #	8	8	8	8	8
Pension Funding	4	6	6	6	6
Total	27	32	31	31	33

2009 projected capital assumes additions to stormwater projects are offset by reductions in other capital expenses, including a reduced streetscape program.

The following scale is used in evaluating the property tax levy. I have changed the table slightly from last year by creating two categories for the 20 – 29 range. This allows for more differentiation in policy recommendations.

A rating of 27 for 2009 suggests the Village should capture all of the inflationary increase and all of the new development increase as explained below:

Score/ Finances are ...	Tax Levy Recommendation	Because the tax levy should...
35 – 40 Very Strong	Maintain same dollar amount, consider new development \$'s	Be gradually reduced in real dollars consistent with the Village's needs.
30 -34 Strong	Capture new development \$'s and some or all of the inflation increase.	Be increased somewhat to offset the impact of inflation on costs.
26 – 29 Moderate	<i>Capture new development \$'s, all of the inflation increase, and consider modest service reductions and / or other revenue increases.</i>	<i>Be increased to offset inflation and stabilize revenues for operational and capital needs.</i>
21 – 25 Weak	Capture new development \$'s, all of the inflation increase, and consider noticeable service reductions and / revenue increases.	Be increased to offset inflation and stabilize revenues for operations and capital needs. Additional increases possible to rebuild revenues.
20 and Below Very Weak	Capture new development \$'s, all of the inflation increase, and consider significant service reductions and / revenue increases.	In addition to the reasons under "Weak", consider additional increases to rebuild cash balances.

It is noteworthy that when the scoring system for the Village's overall financial health was formulated inflation was in the 2.5% to 4.0% range. With inflation near zero, property tax revenue will grow only by new development. Expenses, on the other hand, tend to increase modestly based on employee related costs, probably in the 3% range.

The methodology used by the Council in the past would suggest a property tax levy as shown below:

	%	Non Home-Rule Maximum
Existing 2008 Property Taxes		\$ 12,535,303
Inflationary Increase	0.1%	\$ 12,535
New Development Increase	1.6%	\$ 200,565
Prop. 2009 P.T. Levy	1.7%	\$ 12,748,403
<u>Less:</u> New Development Pays	1.6%	\$ 200,565
<u>Equals:</u> Incr. - Existing Taxpayers	0.1%	\$ 12,535

It is important to remember that the Village's property taxes are the largest and most stable revenue source for the general fund and are used to pay for most of the traditional municipal services (police, fire, public works, etc.)

Attached as supporting information are the following items:

- Property Tax Calculations
- History of Tax Levy Changes
- General Fund Budget Projections
- General Fund Cash Projections
- Pension Funding – Select Pension Information
- Village Percentage of the Tax Bill

Staff will be available at the Council Meeting to present this material, answer questions, and make whatever changes are deemed appropriate to set the 2009 property tax levy amount.

Recommendation:

Consider setting the 2009 property tax levy at \$12,748,403, a projected 0.1% increase for existing tax payers. The overall tax increase with new development would be 1.7%.

Footnote 1: The increase for a typical homeowner was calculated as follows:

	Suggested Amount
Current Property Taxes	\$ 20,000
Village Portion (13.3%)	\$ 2,660
% Increase	0.1%
Dollar Increase	\$ 3

Village of Winnetka

Property Tax Levy Calculations

10.9.09

Tax Levy Category	Column A 2008 Tax Levy Extended *	Column B 2009 Proposed Tax Levy	Column C (Column B - A) Dollar Change	C/A*100 Percent Change
<u>Regular Levy</u>				
Corporate	\$9,070,770	\$9,056,301	(\$14,469)	-0.2%
FICA/Social Security	\$165,000	\$170,000	\$5,000	3.0%
IMRF	\$270,000	\$340,000	\$70,000	25.9%
Sub Total General	<u>\$9,505,770</u>	<u>\$9,566,301</u>	<u>\$60,531</u>	0.6%
Police Pension *	\$731,000	\$1,006,480	\$275,480	37.7%
Fire Pension *	\$835,000	\$936,668	\$101,668	12.2%
Refuse	\$1,325,000	\$1,100,000	(\$225,000)	-17.0%
Sub Total (Regular Levy)	<u>\$12,396,770</u>	<u>\$12,609,449</u>	<u>\$212,679</u>	1.7%
<u>Debt Service:</u>				
G.O. Resurfacing 1999	\$138,534	\$138,954	\$420	0.3%
Sub Total (Debt Service)	<u>\$138,534</u>	<u>\$138,954</u>	<u>\$420</u>	0.3%
Total Village-wide Tax Levy	\$12,535,304	\$12,748,403	\$213,099	1.7%
Less: Projected New Development				
@ 1.6%, (0.1% less than 5 yr. av.)		(\$200,565)	(\$200,565)	-1.6%
Existing Tax Payers Increase	\$12,535,304	\$12,547,838	\$12,534	0.1%

* Estimated.

Village of Winnetka History of Tax Levy Changes

11.3.09

	Non-Home Rule Calculations				Actual Levy		\$'s Less Than NHR Limit	
	CPI Increase	New Develop.	Total	Max. Levy Possible (Excludes SSA's)	Actual Levy	% From PY	\$'s Under Max. This Year	\$'s Under Max. Cumulative
				\$8,980,481				
2001 Actual	3.4%	1.5%	4.9%	\$9,419,625	\$9,419,625	4.9%		
2002 Actual	1.6%	1.3%	2.9%	\$9,694,132	\$9,694,132	2.9%		
2003 Actual *	2.4%	1.2%	3.6%	\$10,047,643	\$10,047,643	3.6%		
2004 Actual	2.5%	2.0%	4.5%	\$10,496,453	\$10,496,453	4.5%		
2005 Actual **	3.3%	1.8%	5.1%	\$11,031,772	\$10,969,000	4.5%	\$62,772	\$62,772
2006 Actual	3.4%	1.9%	5.3%	\$11,616,456	\$11,435,181	4.2%	\$181,275	\$244,047
2007 Actual	2.5%	1.8%	4.3%	\$12,115,964	\$11,972,591	4.7%	\$143,373	\$387,420
2008 Estimated	4.1%	1.6%	5.7%	\$12,806,574	\$12,535,303	4.7%	\$271,271	\$658,691
2009 Proposed Tax Levy ***	0.1%	1.6%	1.7%	\$13,024,286	\$12,748,403	1.7%	\$275,883	\$934,574
Average '01-'09	2.6%	1.6%	4.2%		9 Year Average	4.2%		
					New Develop.	-1.6%		
					Net Increase	2.6%		

* The 2003 CPI amount of 1.9% plus a 0.6% increase for a fire pension change outside of the tax cap totals the 2.5% shown.

** In 2005, the Village became home rule which removed tax caps. The Max. Levy Possible column reflects the maximum property tax levy the Village could receive if we were still operating under tax caps.

*** The 2009 CPI increase, based on the cal. 2008 CPI change is 0.1% (<ftp://ftp.bls.gov/pub/special.requests/cpi/cpi.txt>).

Village of Winnetka
General Fund Budget Projections
In Millions of Dollars

11.4.09

	A		B	C					
	2011 Projected Budget	% Change (A vs. B)	2010 Current Estimate	2010 Budget	2009 Audit	2008 Audit	2007 Audit	2006 Audit	
Revenues:									
Property Tax *	\$ 11.20	1.8%	\$ 11.00	\$ 11.07	\$ 10.70	\$ 10.01	\$ 9.84	\$ 9.56	
Permits	\$ 1.00	0.0%	\$ 1.00	\$ 1.21	\$ 1.54	\$ 1.53	\$ 1.43	\$ 1.44	
Payment in Lieu of Taxes	\$ 1.40	1.4%	\$ 1.38	\$ 1.38	\$ 1.32	\$ 1.42	\$ 1.27	\$ 1.24	
Transfers	\$ 1.87	2.7%	\$ 1.82	\$ 1.82	\$ 1.78	\$ 1.72	\$ 1.66	\$ 1.60	
Sales Tax	\$ 1.10	0.0%	\$ 1.10	\$ 1.40	\$ 1.30	\$ 1.50	\$ 1.54	\$ 1.45	
Income Tax	\$ 1.00	1.0%	\$ 0.99	\$ 1.09	\$ 1.18	\$ 1.14	\$ 1.03	\$ 0.94	
Telecom. Tax	\$ 0.73	2.8%	\$ 0.71	\$ 0.71	\$ 0.73	\$ 0.73	\$ 0.66	\$ 0.75	
Services	\$ 1.00	3.1%	\$ 0.97	\$ 0.97	\$ 0.92	\$ 0.82	\$ 0.78	\$ 1.43	
Natural Gas Tax	\$ 0.65	0.0%	\$ 0.65	\$ 0.55	\$ 0.70	\$ 0.62	\$ 0.64	\$ 0.71	
Interest ***	\$ 0.30	7.1%	\$ 0.28	\$ 0.28	\$ 0.55	\$ 0.65	\$ 0.82	\$ 0.52	
All Others	\$ 1.55	0.6%	\$ 1.54	\$ 1.54	\$ 1.18	\$ 2.04	\$ 1.32	\$ 0.72	
Total Revenues	\$ 21.80	1.7%	\$ 21.44	\$ 22.02	\$ 21.28	\$ 22.18	\$ 20.99	\$ 20.36	
Expenses:									
Operations #	\$ 19.43	5.6%	\$ 18.40	\$ 18.40	\$ 17.84	\$ 17.06	\$ 15.65	\$ 14.83	
Transfers ****	\$ 0.55	-65.2%	\$ 1.58	\$ 1.58	\$ 0.90	\$ 4.80	\$ 1.10	\$ 1.20	
Operations total	\$ 19.98	0.0%	\$ 19.98	\$ 19.98	\$ 18.74	\$ 21.86	\$ 16.75	\$ 16.03	
Margin from Operations	\$ 1.82	24.7%	\$ 1.46	\$ 2.04	\$ 2.54	\$ 0.32	\$ 4.24	\$ 4.33	
Capital **	\$ 2.40	-2.8%	\$ 2.47	\$ 3.29	\$ 2.34	\$ 2.40	\$ 2.44	\$ 2.29	
Net Margin, After Capital	\$ (0.58)		\$ (1.01)	\$ (1.25)	\$ 0.20	\$ (2.08)	\$ 1.80	\$ 2.04	

* Because of police and fire pensions increased \$377k, there will be \$177k fewer property tax \$'s to fund operations.

** The Village anticipates \$2.4 million annually for routine capital.

*** Assumes \$16.0 m balance @ 1.75% earnings rate.

**** 2008 amount includes \$800k for refuse (Downtown Red.\$2.5m & Facilities \$1.5m excluded).

2010 includes \$750k for refuse and \$825k for streetscape. 2011 includes \$550k for refuse.

Based on the following pension increases, police +\$275k, fire +\$102k, IMRF +\$190 (total \$567k), + 2.5% increase in remaining items. Pension costs are in operations expense amount.

Points Earned for Revenues and Operating Expenses
(maximum 5 points each)

Prior Year Schedule:

Revenues (Estimated as a % of Budget)	< 90%	90 - 93%	94-97%	98-100%	100-102%	>102%
Points Assigned ***	0	1	2	3	4	5

Proposed Schedule:

Revenues (Estimated as a % of Budget)	< 92%	92-94	94-96	96-97%	98-102%	>102%
Points Assigned ***	0	1	2	3	4	5

Operating Expenses (Estimated as a % of Budget)	< 98%	98-102%	102-104%	> 105%
Points Assigned ***	5	4	2	0

*** Points assigned for overall ranking of 6 consists of 2 points for revenues ($\$21.44 / \$22.02 = 97.3\%$) and 4 points for operating expenses ($\$19.98 / \$19.98 = 100\%$).

Village of Winnetka
General Fund Cash Projections
In Millions of Dollars

11.3.09

	Budget FYE 2010	Proj. FYE 2011
Cash Balance 4/1/2009	\$ 18.07	
Adjustments:		
Deposits	\$ (1.48)	
A/P and Reserved Amounts	\$ (0.24)	
Undesignated Cash	<u>\$ 16.35</u>	<u>\$ 15.34</u>
Estimated Revenues	\$ 21.44	\$ 21.80
Estimated Operating Expenses	<u>\$ 19.98</u>	<u>\$ 19.98</u>
Est. Contribution From Operations	\$ 1.46	\$ 1.82
Estimated Capital **	<u>\$ (2.47)</u>	<u>\$ (2.40)</u>
Estimated Cash-Flow For Year	\$ (1.01)	\$ (0.58)
Undesignated Cash 3/31	<u>\$ 15.34</u>	<u>\$ 14.76</u>
Ending Cash as a % of Operating Expenses and Capital Expenses		

** As denoted in the capital plan. Actual expenditures will likely be substantially less.

Points Earned for Cash Balances

Projected 2010 Ranking: \$14.76m cash balance / \$19.98m op. expenses = 74%.

Cash as a % of Operating expenses	< 15%	16 - 25%	26%-45%	46%- 65%	> 66%
Points Assigned	0	3	6	9	10

Projected 3/31/2011 cash as a percent of policy maximum:

Policy Maximum	
6 months Operating Expenses	\$ 10.0
Cash needed to Fund Pensions at 90% (estm.)	<u>\$ 23.0</u>
Policy Maximum	<u>\$ 33.0</u>
Projected balance as a % of Maximum	45%

Village of Winnetka
Select Pension Information
In Millions of Dollars

11.3.09

Fiscal Year Ended Data	Total			Police Pension *		Fire Pension *		IMRF Pension	
	% Funded	Dollars Unfunded	\$ @ 100% Funded	% Funded	Dollars Unfunded	% Funded	Dollars Unfunded	% Funded	Dollars Unfunded
2009	63%	\$ 31.6	\$ 85.7	60%	\$ 10.8	58%	\$ 11.2	70%	\$ 9.6
2008	76%	\$ 18.7	\$ 78.9	76%	\$ 5.7	67%	\$ 8.1	84%	\$ 4.9
2007	76%	\$ 18.5	\$ 77.2	76%	\$ 5.4	66%	\$ 8.2	84%	\$ 4.9
2006	77%	\$ 17.0	\$ 72.4	79%	\$ 4.7	70%	\$ 6.9	80%	\$ 5.4
2005	78%	\$ 15.3	\$ 68.3	81%	\$ 3.8	69%	\$ 6.7	82%	\$ 4.8
2004	81%	\$ 12.2	\$ 64.4	84%	\$ 3.0	73%	\$ 5.3	85%	\$ 3.9
2003	81%	\$ 11.4	\$ 59.8	80%	\$ 3.7	72%	\$ 5.2	89%	\$ 2.5
2002	85%	\$ 8.7	\$ 57.7	93%	\$ 1.3	79%	\$ 3.9	83%	\$ 3.5
2001	84%	\$ 8.7	\$ 54.4	93%	\$ 1.2	82%	\$ 3.1	78%	\$ 4.4
2000	84%	\$ 8.1	\$ 50.6	97%	\$ 0.5	87%	\$ 2.1	69%	\$ 5.5

Points Earned for Pension Funding (10 point maximum)

Combined % Funded ***	< 60%	60 - 69%	70 - 79%	80 - 89%	90-100%	> 100%
Points Assigned	2	4	6	8	9	10

* In 2007 the assumed rate of return was reduced from 7.0% to 6.5%. This accounts for a roughly 5% decline in funding. To fund all pensions at the 90% level would require \$ 23.0 of additional money calculated as:
(\$85.7 @ 100% funded - \$31.6m unfunded = \$54.1m funded vs. 90% of \$85.7m = \$77.1m. The difference is \$23m).

** 5% points were deducted from the scale rankings in 2007 because of the 6.5% return assumption.

Village of Winnetka
 Percentage of Tax Bill

11.3.09

	1997	2008
Winnetka Public Schools	2.723 31%	2.085 39%
New Trier High School	1.967 23%	1.290 24%
Village of Winnetka	1.481 17%	0.710 13%
Cook County	1.100 13%	0.466 9%
Winnetka Park District	0.445 5%	0.239 4%
Water Reclamation District	0.451 5%	0.252 5%
All Others	0.502 6%	0.302 6%
Total	8.669 100%	5.344 100%

Agenda Report

Subject: **Fidelity Bonds**

Prepared by: Ed McKee, Finance Director

Ref: Investment Policy Revisions

Date: September 29, 2009

When the Village was adopting the revised investment policy this summer the Council asked the staff to evaluate the cost of buying additional fidelity bond coverage for those individuals that normally have responsibility for electronic transfers and Village investing (the Village Manager, Finance Director, Assistant Finance Director, and Finance Department Secretary).

Currently, the Village has \$500,000 per employee coverage for fidelity bond coverage. I increased the coverage on the Manager and Finance Director to \$1,000,000 a few years back at little cost.

Pricing on fidelity bonds is such that higher limits the cost is substantially more than at lower limits. For example, the coverage for 162 employees at \$500,000 and the Manager and Finance Director at \$1,000,000, costs about \$4,000 per year. This is an exposure of \$83,000,000 (162 employees x \$500,000 + 2 employees at \$1,000,000) at a price of about \$48 per million dollars of coverage.

Raising the fidelity bond to \$3,000,000 for all four positions would cost an additional \$12,000 or \$1,333 per million of coverage (\$9,000,000 of additional coverage).

As way of background, most of the communities in this area are in insurance pools that generally provide \$2,000,000 of fidelity bond coverage. This is done partly as a marketing tool as this coverage can be purchased cheaply or self-insured by the pool at very little cost (as claims against this type of coverage are extremely rare and often not expensive) when you have a large number of individuals covered.

My impression is that communities that purchase this coverage on their own buy either the statutorily required amounts (usually under \$50,000) or get \$100,000 to \$500,000 of coverage. When I started with the Village in 1996, the Village carried \$100,000 of coverage for this risk.

Recommendation: Provide staff direction.

AGENDA REPORT

SUBJECT: Public Act 96-542 – Amendments to the Freedom of Information and Open Meetings Acts

PREPARED BY: Katherine S. Janega, Village Attorney

DATE: November 5, 2009

Legislative Background

The State of Illinois has had some form of “Sunshine Law” in place since 1957, when the legislature first enacted a law pertaining to meetings. (Laws 1957, p. 2892) Through a series of amendments, that law evolved into the Open Meetings Act in 1982. (P.A. 82-378) The Freedom of Information Act, which governs access to public records, followed in 1984. (P.A. 83-1013)

The Village’s compliance with the Open Meetings Act (“OMA”) and Freedom of Information Act (“FOIA”) has long since become a routine and integral part of the Village’s operations. For example, the Village Code reiterates the statutory requirement that all meetings of the Village Council and all of the Village’s boards, commissions and committees comply with the OMA. In addition, to encourage easy access to key Village records, the Village Council adopted Resolution R-1264-94 in 1994, pursuant to which requests for small numbers of specific, readily available Village records are treated as “routine requests” that are made available to the public, often on the spot, without the need to file a written FOIA request. Under R-1264-94, a copy of which is attached to this Agenda Report, routine requests include, but are not limited to, requests for the Winnetka Village Code, ordinances, resolutions, minutes, meeting agendas, meeting notices, annual budget, comprehensive plan, zoning ordinance interpretations and the official zoning map. Technological advances such as the broadcasting of Council meetings and an expanding Village web site have further increased the ready availability of information about Village meetings and records.

Noncompliance by some public bodies in other parts of the State, coupled with disagreements over certain types of requests, led increasing numbers of requesting parties—usually members of the press, labor unions and commercial enterprises – to ask the Illinois Attorney General for assistance in obtaining responses to FOIA requests. In 2005, the Attorney General appointed a Public Access Counselor, who began advocating for persons who directed their complaints about FOIA denials to the Attorney General’s office, rather than invoking the review process established in the FOIA. In the wake of the ouster of Governor Blagojevich and some contentious litigation over the denial of some FOIA requests, the Attorney General, working with the Illinois Press Association, proposed sweeping amendments to FOIA and OMA.

The resulting legislation, Public Act 96-542, goes into effect on January 1, 2010. While prior amendments to the FOIA and OMA have been implemented by the Village as a matter of routine compliance, the sweeping changes made by P.A. 96-542 will affect all of the Village’s governing and advisory boards, commissions and committees, and will impose greater demands on Village staff. The remainder of this Agenda Report addresses the key changes to the two acts and identifies areas that may require Council action.

Expanded Policy Statement

Presently, Section 1 of the FOIA states that it is the State's policy "that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act." The policy statement goes on to say that such access is necessary "to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest." (5 ILCS 140/1)

P.A. 96-542 expands that policy, by adding the following language to Section 1 [emphasis added.]:

The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. *It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act.*

* * *

This Act shall be construed to require disclosure of requested information as expediently and efficiently as possible and adherence to the deadlines established in this Act.

The General Assembly recognizes that *this Act imposes fiscal obligations on public bodies to provide adequate staff and equipment to comply with its requirements.* The General Assembly declares that *providing records in compliance with the requirements of this Act is a primary duty of public bodies to the people of this State, and this Act should be construed to this end, fiscal obligations notwithstanding.*

This acknowledged financial mandate comes without providing a corresponding appropriation to fund the additional compliance costs, notwithstanding the provisions of Section 6 of the State Mandates Act. 30 ILCS 805/6.

Presumption

In addition to the broadened policy statement, the amended FOIA contains the following new provision:

All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.

(5 ILCS 140/1.2) Generally, public bodies are presumed to be acting properly and the party claiming otherwise has the heavier burden. This provision is a rare, if not unique, statement that invoking any exemption to disclosure is presumed to be improper.

Public Access Counselor

P.A. 96-542 creates the office of the Public Access Counselor (PAC) within the office of the Attorney General. The PAC must be a licensed attorney and will be appointed by the Attorney General. Through the PAC, the Attorney General is granted the power to provide training for public officials, to educate the public on their rights under the OMA and FOIA, to prepare and distribute educational materials and programs, to resolve disputes involving potential violations of the OMA and FOIA by mediation or some other informal method, to issue binding decisions on disputes, to issue advisory opinions when requested, to respond to informal inquiries, to research compliance issues, to develop training curriculum, to prepare and distribute model FOIA compliance policies, and to promulgate rules.

The PAC will have subpoena powers, and will have the same access to municipal records that courts now have. Although both the OMA and FOIA will provide alternate remedies for claimed violations – the PAC or the courts – once a complainant takes a matter to court, the procedures before the PAC must end. Whether proceeding before the PAC or the courts, a complainant must bring an action within 60 days of the claimed violation. If the PAC renders a binding decision, it may be reviewed only by administrative review, and only in the Circuit Courts of the counties in which the Attorney General has its principal offices (Cook County and Sangamon County).

Whether a matter is brought to the PAC under the OMA or FOIA, and whether it is brought by complaint, as a request for informal relief, or as a request for an advisory opinion, a public body that produces records in accordance with a PAC decision will be immune from liability arising from that disclosure. However, if the disclosure is pursuant to good faith reliance on an advisory opinion requested by a public body, the immunity attaches only if the public body has “fully and fairly disclosed” the facts on which the opinion is based.

OMA Training

P.A. 96-542 adds a new Section 1.05 to the OMA, which requires every public body to designate “employees, officers or members to receive training on compliance with” the OMA. The list of these designated persons is to be submitted to the PAC and, by June 30, 2010, the designated persons must “successfully complete an electronic training curriculum, developed and administered by the Public Access Counselor, and thereafter must successfully complete an annual training program.” After the initial 6-month grace period for training, any newly designated person must “successfully complete” the training within 30 days after being designated.

The breadth of the definition of “public body” under the OMA remains broad. It includes the Village Council, all other boards, commissions and committees of the Village, and all sub-

committees of any of those boards, commission and committees. As the corporate authority of the Village, the Village Council is considered to have employees and officers, as well as members. However, none of the other public bodies of the Village have their own “employees.” To the extent that they have “officers,” those officers are also “members.” Consequently, it appears that it will be necessary for every one of the Village’s boards, commissions, committees and subcommittees to designate one of its members to receive OMA training.

The purpose of the OMA training appears to be informational, as there are no provisions that link the training to eligibility to serve.

FOIA Officer

P.A. 96-542 also adds a new Section 3.5 to the FOIA, which requires every public body to designate one or more officials or employees to be Freedom of Information officer(s). The FOI officer receives FOIA requests, “ensures” that the public body responds in timely fashion and issues the responses. Section 3.5 also specifies the recordkeeping requirements for all FOIA requests, which includes creating a file “for the retention of the original request, a copy of the response, a record of written communications with the requester, and a copy of other communications.” Village staff has already begun implementing the centralized, coordinated receipt, response and recordkeeping regimen, although the details of the duplicate recordkeeping that will be required have not yet been worked out.

New Section 3.5 of the FOIA requires that the FOI officer successfully complete a training curriculum developed by the Public Access Counselor. As with the Open Meetings Act, the initial training must be completed by the end of June, 2010, and thereafter the FOI officer(s) must successfully complete training on an annual basis. Any new FOI officers must complete the training within 30 days of their appointment. Unlike the training requirement under the OMA, the FOIA training is required for a person to be able to serve as the FOI officer.

Changes to the FOIA Response Process

Form of Request. Although the amended Act requires requests to be submitted in writing, public bodies can no longer require parties seeking records use a particular format or request form.

Response Time. The time to respond has been reduced from 7 working days to 5 business days, after receiving the request. Although the time to respond can still be extended, the extension period has also been reduced from 7 working days to 5 business days. The public body and requesting party can agree to further extensions in writing. Under new section 5 ILCS 140/2/15(a), the response time for requests for arrest records will be even shorter: “as soon as practical, but in no event later than 72 hours after the arrest.”

Under the amended FOIA, the failure of a public body to respond within the required time periods not only constitutes a denial of the request, as is currently the case, it also constitutes the exhaustion of administrative remedies that is required for a party to seek relief in

court. In addition, a public body that fails to respond within the specified times forfeits the right to claim that the request is unduly burdensome.

Charging for Copies. There are new limits on copying charges. The first 50 pages of black and white, letter or legal size copies must be provided without charge, after which the charge may not exceed 15¢ per page. The charge for color copies, CDs, oversized documents, and the like is limited to the “actual cost,” meaning the cost of operating the equipment, the cost of purchasing the CD, or the cost of a copying service. The time spent in locating and gathering records, preparing them for copying, running them through the machine, and reassembling and refiling them cannot be included. The cost for a certified copy cannot exceed \$1.00.

Third Party Records. The scope of the search for responsive records has been expanded to include documents in the hands of third party consultants.

Requests for Commercial Purposes. Although commercial requests are most often phrased in broad, categorical terms, which causes them to be the most time-intensive requests, the amended FOIA unequivocally removes commercial purposes as a possible ground for denying a request. However, the public body may inquire if the request is for a commercial purpose, and the requesting party must respond truthfully, or be subject to a fine for a violation of the FOIA. The time for responding to commercial requests has been expanded to 21 working days.

Notices to PAC. Under the amended FOIA, a public body cannot claim that a request is exempt because it seeks personal information or is a preliminary draft unless the public body notifies the PAC. That notice must be given within the 5-day response period. Within 5 working days after receiving the notice, the PAC must determine whether further inquiry is required. If so, the PAC may require additional information from the public body, including production of the records in question. Either party can seek administrative review of the PAC’s decision. The public body has the option of producing the records in accordance with the PAC’s opinion, in which case the public body will be immune from all liability arising from the disclosure.

Format for Denial of Requests. The amended FOIA requires that any denial of a request must be in writing and must include: (i) a detailed factual basis for each exemption; (ii) citation to “supporting legal authority” for each exemption; (iii) the name and title or position of each person “responsible” for the denial; (iv) notice of right to review by the PAC or by court; and (v) contact information for the PAC. The Village’s practice has long been to provide a detailed response when all or part of a request is denied, but further clarification will be needed from the PAC as to what constitutes a “detailed factual basis” and who is considered “responsible” for the denial.

Procedures after Denial of a Request.

The changes to the procedures after a FOIA request is denied are among the most significant under P.A. 96-542.

Elimination of Internal Appeal. The amended FOIA eliminates the internal appeal from a denial. Since its inception, the FOIA has required a requesting party to take this appeal, which is directed to the head of the public body, before seeking relief in court. It thus has provided an opportunity for a public body to take a second look at a request and to correct internal errors or resolve misunderstandings, without incurring the expense of a court action. Under the amended FOIA, a denial will immediately become an adversarial process.

Alternate Avenues for Appeal. A party whose request is denied, in whole or in part, will now have the option of either filing an action with the PAC, or filing an action in the local circuit court.

Penalties

The amended FOIA mandates sanctions that previously had been left to the discretion of the courts. First, the amended FOIA requires the court to assess fees against the public body if a requesting party “substantially prevails” in court. Second, it mandates fines, ranging from \$2,500 to \$5,000 per occurrence, if the court finds there has been bad faith or an intentional failure to comply with the FOIA. One new provision is that a party that requests records for commercial purposes may also be subjected to fines, if the requesting party knowingly obtains records for commercial purposes and fails to disclose that the request is for commercial purposes, when such disclosure is requested by the public body.

Conclusion

To date, the Attorney General has not filled the PAC position and has not posted draft rules. There also are no definitive materials available to guide public bodies in preparing for compliance. However, the Attorney General has posted a list of frequently asked questions, a copy of which is attached to this Agenda Report.

Village staff has already begun to implement some of the new procedural requirements, so that they will be in place on January 1. In addition, key personnel will be attending informational seminars being provided by the Attorney General’s office. Because those seminars occur before the effective date of the amendments, they will not satisfy the new statutory training requirements.

Finally, the procedural changes and limits on copying charges will require the Council to amend the fee schedule and to revisit R-1264-94. Those items will be on the Council’s agenda in December, so that they can be go into effect on January 1.

Recommendation:

Provide policy direction.

RESOLUTION NO. R-1264-94

**A RESOLUTION AMENDING THE
POLICY FOR RESPONDING TO CERTAIN
FREEDOM OF INFORMATION REQUESTS**

WHEREAS, the Village Council of the Village of Winnetka have previously adopted Resolution No. R-1251-94 establishing a policy for responding to certain requests for records under the Freedom of Information Act so as to balance the right of the public to be informed about the policies and official acts of the Village, and the rights of individual citizens to make their opinions known to their elected representatives without having to waive their right to privacy and disclose their opinions in public; and

WHEREAS, the Village Council find that a citizens' petition containing a common statement of a complaint, comment, opinion or request is intended to be the public statement of the individuals signing it; and

WHEREAS, the Village Council have determined that it is necessary to clarify its policy insofar as it applies to personal identifying information disclosed in citizen petitions.

NOW, THEREFORE, be it resolved by the Council of the Village of Winnetka as follows:

SECTION 1: It is hereby declared to be the policy of the Village of Winnetka that certain requests for information are routine and need not be made in writing. For purposes of this policy, a routine request is a request for a small number of specific, readily available Village records, which records shall

R-1264-94

include, but not be limited to: the Winnetka Village Code, ordinances, resolutions, minutes, meeting agendas, meeting notices, annual budget, comprehensive plan, zoning ordinance interpretations and official zoning map. A request for any record containing information that may be exempt under the Freedom of Information Act shall not be considered routine and shall be submitted in writing. The need for a written request shall be determined by the Village manager.

SECTION 2: It is hereby declared to be the policy of the Village of Winnetka that the disclosure of the identity of an individual resident of the Village who has transmitted to the village a complaint, comment or opinion shall be considered an unwarranted invasion of personal privacy and that any public record which contains such complaint, comment or opinion and which is otherwise subject to disclosure under the Freedom of Information Act, shall be disclosed to the public only upon the deletion of the individual's personal identifying information, unless the individual subject of the information consents to such disclosure.

As used in this policy, the personal identifying information shall include the individual's name, street address, phone number and any other similar information that tends to identify the individual with a particular complaint, comment or opinion.

For purposes of this policy, the individual subject may consent to disclosure of the personal identifying information in writing or by taking an action or making a statement in public that clearly demonstrates the consent to disclose such information.

For purposes of this policy, the disclosure of personal identifying information contained in a citizens' petition shall not be considered an unwarranted invasion of privacy. As used herein, a citizens' petition is a common statement of a complaint, comment, opinion or request to the Village, which may consist of one or more pages and which is circulated to one or more individuals for their signature.

This policy shall not apply to written statements or correspondence that an individual sends to a board or commission of the Village for inclusion in its official record instead of appearing at a public hearing of such board or commission.

SECTION 3: The policy stated herein is intended to restate and clarify the policy stated in Resolution No. R-1251-94, and this resolution shall accordingly supersede Resolution No. R-1251-94.

SECTION 4: This policy shall be in effect immediately upon its passage by the Council and shall apply to all pending and future requests made under the Freedom of Information Act.

PASSED by the following roll call vote this 20th day of September, 1994.

AYES: Trustees Fuller, Downey, Levy, Holland and Agnew

NAYS: None

ABSENT: Trustee Cousins

ATTEST:

D. Williams
VILLAGE CLERK

Winnetka\R1264-94.Res

P. F. C. C. C.
VILLAGE PRESIDENT

Illinois Freedom of Information Act
Frequently Asked Questions
By Public Bodies

The [Illinois Freedom of Information Act \(FOIA\)](#) is designed to ensure that the public has access to information about their government and its decision-making process. As a public servant, you have a duty to ensure that Illinois residents can obtain information about their government.

In 2009, Attorney General Lisa Madigan worked with legislators and a diverse group of individuals and organizations to strengthen FOIA and hold government more accountable. Beginning on January 1, 2010, key changes to the Freedom of Information Act and the Open Meetings Act will take effect and in turn will provide Illinois residents with a more open and accountable government. These Frequently Asked Questions describe the FOIA provisions that will take effect on January 1, 2010.

WHO'S WHO UNDER FOIA

Public Access Counselor (PAC) – is an attorney in the Attorney General’s office whose responsibility is to ensure compliance with FOIA. The Public Access Counselor is part of the Public Access Bureau in the Attorney General’s office, which includes several Assistant Attorneys General and professional support staff members working to respond to FOIA and Open Meetings Act issues raised by the public and government officials. Working under the direction and supervision of the Attorney General, the PAC has the authority to review requests for documents under FOIA and determine whether those documents should have been produced under FOIA. The PAC also has the authority to determine whether a public body has violated the Open Meetings Act. As part of this Public Access work, the Attorney General, through the PAC, has subpoena power, may issue advisory opinions to guide public bodies, may issue binding opinions in FOIA disputes and may sue to enforce binding opinions.

Public Body – is defined in FOIA as “all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees thereof and a School Finance Authority created under Article 1E of the School Code.” FOIA provides that “[p]ublic body’ does not include a child death review team or the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act.”

FOIA Officer – is a person appointed by the “public body.” The FOIA officer’s responsibility is to receive FOIA requests from the public and to send responses in compliance with FOIA. FOIA requires that each public body appoint one or more FOIA officers who must complete an electronic training developed by the Attorney General’s

PAC. The initial training must be completed by July 1, 2010; trainings must be completed annually after that date. The Attorney General's office will make the electronic training available to all FOIA officers.

Public Records – are defined in FOIA as “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.” A few examples of public records available under FOIA are: orders; rules; reports or studies; contracts; names, titles and salaries of public employees; and the voting records of public bodies. Information can be available in electronic as well as paper format.

GENERAL INFORMATION

What is FOIA?

The Freedom of Information Act (FOIA) is a state statute that provides the public the right to access government documents and records. The premise behind FOIA is that the public has a right to know what the government is doing. The law provides that a person can ask a public body for a copy of its records on a specific subject and the public body must provide those records, unless there is an exemption in the statute that protects those records from disclosure (for example: records containing information concerning trade secrets or personal privacy).

Who is subject to FOIA?

Public bodies are subject to FOIA. The judiciary is not subject to FOIA, but court records and proceedings generally are open to the public.

Who can file a FOIA request?

Anyone. Any person, group, association, corporation, firm, partnership or organization has the right to file a FOIA request to any state or local public body, including any city, township or county office.

Is every public body required to have a designated FOIA officer?

Yes. Every public body must designate at least one person to act as the FOIA officer. Public bodies may have more than one FOIA officer. In addition, every public body must prominently display at its office and make available certain information, including the name(s) of its FOIA officer(s). The office also must display and make available:

- Information on how to submit a FOIA; and
- A brief description of the office, including its purpose, budget and number of employees.

Any public body that has a website must also post this information on its website.

RESPONDING TO FOIA REQUESTS

How many days does the public body have to respond to a FOIA request?

A public body must respond to a FOIA request within 5 business days *after* the public body receives the request. Day 1 of the 5-day timeline is the first business day *after* the request is received by the public body. The date the request was received does *not* count as “Day 1.” That time period may be extended for an additional 5 business days from the date of the original due date if:

- The requested information is stored at a different location;
- The request requires the collection of a substantial number of documents;
- The request requires an extensive search;
- The requested records have not been located and require additional effort to find;
- The requested records need to be reviewed by staff who can determine whether they are exempt from FOIA;
- The requested records cannot be produced without unduly burdening the public body or interfering with its operations; or
- The request requires the public body to consult with another public body that has substantial interest in the subject matter of the request.

If additional time is needed, the public body must notify the requestor in writing within 5 business days after the receipt of the request of the statutory reasons for the extension and when the requested information will be produced.

When does the 5 business day time period start?

On the first business day *after* the public body receives the request.

Does the 5 business day response period begin upon the FOIA officer’s receipt of the request, or upon the receipt of the request by any of the public body’s employees or officials?

The 5 working day response timeline begins the day after any employee or official of the public body receives the request for information. Employees and officials of a public body must immediately forward all requests for information to the FOIA officer(s) to maximize the response time.

What is a “business day” or “working day”?

A “business day” or “working day” is a regular day of the week (Monday through Friday) when public offices and most businesses are open. Saturdays, Sundays and state holidays are not business days and cannot be counted in the 5 business day time period.

What are the consequences if the public body does not respond to the FOIA request within 5 business days (or 10 business days if extended)?

Aside from the potential that a court ultimately could impose a civil penalty of between \$2,500 and \$5,000 per FOIA violation, public bodies have an additional incentive to respond within the time limits set forth. In the event a public body fails to respond within 5 business days (or 10 days if the extension was properly requested), it cannot charge for reproduction costs at a later time, or treat the request as unduly burdensome.

Can a requestor and a public body agree to extend the deadline to respond beyond 10 days?

Yes, but the agreement must be in writing. The agreement will also relieve the public body of having to comply with other legal deadlines in FOIA.

Can a public body require that a FOIA request be submitted on a certain form or in a certain format?

No. Public bodies can require that FOIA requests be submitted in writing, but public bodies must accept requests by mail, personal delivery, fax, e-mail, or other means available. Public bodies may create a FOIA form that requestors may use for convenience, but public bodies cannot require that requestors use a specific form for the request. Public bodies may choose to accept oral FOIA requests but are not required to do so by the law.

To whom should the requestor submit a FOIA request?

To a designated FOIA officer. Every public body must designate at least one FOIA officer and prominently display at its office certain information, including the name(s) of its FOIA officer(s).

Does the public body have to identify the FOIA officer?

Yes. Each public body must prominently display and make available upon request a directory designating the FOIA officer(s) for that body and the address where record requests should be sent. If the public body has a website, this information must also be posted on it.

Does a public body still have the option of treating a request as “unduly burdensome” under the new FOIA?

Yes. However, this treatment only applies in limited situations: (1) the request must be categorical in nature and incapable of being narrowed or reduced; and (2) the burden on the public body to produce the information must outweigh the public interest in the information. Before denying a request as unduly burdensome, the public body must give the requester an opportunity to reduce the request to manageable proportions.

I have received a request that does not fit the “unduly burdensome” standard, yet cannot reasonably be completed within the maximum 10 working days’ response period. Does FOIA offer any options?

Yes. The Act allows the public body and the requestor to reach a written agreement to extend the time in which to respond to a request.

I work for a public body that is being harassed by repeated FOIA requests from the same individual or entity. Does FOIA make any provisions for this?

FOIA provides that repeated requests from the same person for the same records that are unchanged or identical to records previously provided or properly denied shall be deemed unduly burdensome and may be denied on that basis.

What information must a public body withhold or redact under the Freedom of Information Act?

Although there may be legitimate reasons to redact or withhold certain types of information, the only information that the Freedom of Information Act requires a public body to redact are the home addresses, home/private telephone numbers and social security numbers of employees noted on certified payroll records that are required to be submitted to a public body under the Prevailing Wage Act.

I am the designated FOIA officer for a public body. Will I be held personally liable for any civil penalties that a court may impose in a FOIA lawsuit?

No. Only the public body may be liable for civil penalties under FOIA. If a court finds that a *public body* willfully and intentionally failed to comply with the Act or otherwise acted in bad faith, the court shall impose a civil penalty upon the *public body*.

Does a requestor need to specifically and accurately describe the document he or she is looking for?

No. The requestor does not need to describe the document specifically and accurately by the same name the public body uses. As long as the public body understands what is being requested, it must release that information, even if the requested information is not called by the same name the public body uses.

What information is a public body required to make available?

Each FOIA officer for a public body must develop and make available upon request a list of documents that the public body will immediately provide to a requestor. In addition, each public body must maintain a reasonably current list of all types or categories of records under its control and this list should be reasonably detailed so that it aids people in obtaining access to public records. The public body must make this list available for inspection and copying.

Can the public body ask why the requestor wants the information?

No, except to determine if the request is for commercial reasons or to determine if a fee waiver applies. *See below for more details on commercial requests.*

FEES

Can the public body charge for copies?

Yes, but the charges are limited. For black and white, letter or legal sized copies (8 ½ x 11 or 11 x 17), the first 50 pages are free, and any additional pages can cost no more than 15 cents a page. For color copies or abnormal size copies, the public body can charge the actual cost of copying.

Can a public body charge for electronic copies?

Yes, but only for the actual cost of the recording medium. For example, if information is produced on CDs, the public body may only charge the actual cost of purchasing the CDs.

Is it possible for a public body to waive the copying fees?

Yes. Public bodies may waive or reduce copying fees at any time if disclosure is in the public interest. For example, a waiver or reduction may be available if:

- The request is for information on the health, safety and welfare or the legal rights of the general public;
- There is an intent to disseminate the information; or
- No personal or commercial benefit will be received from document disclosure.

GETTING INFORMATION IN AN ELECTRONIC FORMAT

Can I request the documents in electronic form?

Yes, and the public body must provide the electronic documents in the requested format, if that is feasible for the public body. If that format is not available to the public body, it must provide the documents in the electronic format in which they are kept or in paper, at the option of the requestor.

If the public body has a database and the requested information requires that the public body do a search of that database, does the public body have to conduct that search?

Yes, and the public body cannot charge the requestor for that search.

Are e-mails subject to FOIA?

Yes. All electronic communications (as long as they do not fall within an exemption) are subject to FOIA.

CONSEQUENCES FOR NOT COMPLYING WITH FOIA

What are the penalties for a public body for not complying with FOIA?

In addition to the potential that a court ultimately could impose a civil penalty of between \$2,500 and \$5,000 per FOIA violation, if a public body does not respond within the time limits provided, it cannot subsequently charge for reproduction costs or treat the request as unduly burdensome.

REQUESTOR'S OPTIONS IF THE PUBLIC BODY FAILS TO RESPOND OR DENIES HIS/HER REQUEST

What happens if the public body doesn't respond to a FOIA request?

If the public body does not respond to a request within 5 business days after receiving it, that inaction is considered a denial of the request. If that occurs, a requestor can either file a Request for Review with the Attorney General's Public Access Counselor or file a case in court.

What must the public body include in a denial?

The denial must be in writing and reference a specific legal reason under FOIA to justify the non-disclosure. A public body has the burden of proving by clear and convincing evidence that the information is exempt from disclosure. The denial also must inform the

requestor of the right to seek review of the issue by the Public Access Counselor in the Attorney General's office, with the PAC's contact information, as well as the right to seek judicial review by filing a court case.

What can the requestor do if the public body denies the request for information?

The requestor can file a Request for Review with the Attorney General's Public Access Counselor within 60 calendar days from when the alleged violation occurred.

Alternatively, the requestor may file a civil action in the circuit court within two years after the alleged violation took place.

What is a Request for Review to the Public Access Counselor?

A Request for Review is a letter that a requestor may submit to the PAC if he or she believes that the public body has not followed FOIA. This letter is a formal way of asking the PAC to take a look at the request and the public body's response (or lack of a response) and determine if a FOIA violation has occurred. The request must be in writing, be signed by the requestor, and include a copy of the FOIA request and any responses from the public body. It must be submitted to the PAC within 60 calendar days of the public body's final response (or the date upon which the response was due).

Is there a deadline for submitting a Request for Review?

Yes. The requestor must submit a Request for Review to the PAC within 60 calendar days after the date of the final denial from the public body (or the date upon which the response was due).

How do I contact the Public Access Counselor's Office?

The Public Access Counselor is a part of the Public Access Bureau in the Attorney General's Office. Here is the contact information:

Public Access Bureau
500 S. 2nd Street
Springfield, Illinois 62706
217-558-0486
publicaccess@atg.state.il.us

What happens if someone submits a Request for Review with the PAC and what are the responsibilities of the public body?

The PAC will review all requests and will do one of three things:

1. Decide that no further action is necessary. If the PAC decides that the alleged violation is unfounded, the PAC will advise the requestor and the public body of that decision. At this point, the public body does need to take any further action.
2. Request more information from the public body. If more information is needed to review the issue, the PAC may, within 7 working days after receipt of the Request for Review, send a copy of the Request to the public body and

ask for any records the PAC needs to complete the review. At this point, the public body must submit the requested information to the PAC within 7 working days. Please note that the Attorney General's office has the authority to issue a subpoena for this information if the public body fails to respond fully to the PAC's request.

3. The PAC may also try to resolve the FOIA dispute through mediation or other informal means. The public body should work with the PAC and the requestor to resolve the dispute.

What kind of information can the PAC request from the public body as part of the analysis of the Request for Review?

The PAC can request any information that is necessary to decide whether a FOIA violation has occurred. This includes obtaining copies of the information that the public body claims is exempt from FOIA disclosure. If the PAC obtains information or documents that are claimed to be exempt from disclosure, the PAC is prohibited from disclosing the information or documents.

When will the PAC issue a final decision?

If the PAC decides to issue a binding opinion, the PAC will issue that opinion within 60 calendar days after receiving all the information needed to decide the matter. The PAC may extend the 60-day time period by 21 working days by sending a written notice to the requestor and the public body. This written notice must include the reasons for the extension.

What are the different possible outcomes of a Request for Review by the PAC?

There are multiple ways the PAC may respond to a Request for Review:

- Work to resolve the FOIA dispute with the public body and the requestor. (5 ILCS 140/9.5(f)) The PAC may choose to try to resolve the dispute through mediation or by means other than the issuance of a binding opinion. The PAC's decision to decline to issue a binding opinion is not reviewable.
- Review the issues in the FOIA dispute and determine that no further action is necessary. (5 ILCS 140/9.5(c)) If the PAC decides that the alleged violations of FOIA are unfounded, the PAC will advise the requestor and the public body of that decision. The PAC will not conduct any further review.
- Issue a binding opinion. (5 ILCS 140/9.5(f)) After obtaining and reviewing any information needed to analyze the FOIA dispute between the requestor and the public body and any additional information that the requestor or the public body chose to provide, the PAC may issue a binding opinion. If the opinion orders the public body to produce records, the public body may appeal the opinion to the circuit court. If the public body does not appeal the opinion and fails to disclose the records as ordered by the opinion, the Attorney General's office may sue the public body to enforce the opinion. If the opinion concludes that the records fall

within a FOIA exemption and need not be disclosed, the requestor may appeal the opinion to the circuit court.

Can a public body ask the Attorney General’s PAC for advice regarding compliance with FOIA?

Yes. A public body can ask the Attorney General’s PAC to issue an advisory opinion regarding compliance with FOIA. (5 ILCS 140/9.5(h))

For example, if a public body expects to receive FOIA requests for a certain record or category of records that it maintains and is not certain if those records must be disclosed under FOIA, the public body can ask the PAC for an advisory opinion regarding whether the record(s) must be disclosed under FOIA or fall under a FOIA exemption. The Attorney General’s PAC is not required by law to issue an advisory opinion in response to a request.

To ask for an advisory opinion from the Attorney General’s PAC, the head of the public body or its attorney must send a written request to the PAC. The request must contain sufficient accurate facts for the PAC to make a determination. The PAC may request additional information from the public body to assist in the review of the issue.

What happens if the public body relies on an advisory opinion from the PAC in responding to a FOIA request but still ends up being sued by a requestor?

A public body that relies in good faith on an advisory opinion of the Attorney General’s PAC in responding to a request is not liable for penalties under FOIA in a subsequent lawsuit, as long as the public body fully and fairly disclosed to the PAC the facts upon which the opinion is based.

What’s the difference between a requestor filing a Request for Review with the PAC and filing a suit in court?

If the PAC issues a binding opinion deciding a case, then that opinion carries significant weight. If the losing party decides to appeal it to court, the court must give deference to the PAC’s opinion and can only overturn it if it is clearly erroneous. If the requestor goes straight to court, the public body has the burden to show that its denial was correct through clear and convincing evidence. Also, if the requestor goes to court and substantially prevails against the public body, the requestor can recover attorney’s fees.

EXEMPTIONS – RECORDS THAT ARE NOT PUBLIC

What is considered a “public record”?

“Public records” are defined in FOIA as “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.” (5 ILCS 140/2(c)) Given this broad definition, FOIA is intended to cover any document, regardless of form, that pertains to government business.

Does “public record” include electronic information?

Yes. FOIA defines public records to include electronic documents and communications. When a person requests a record that is maintained in an electronic format, the public body must provide it in the electronic format specified by the request, if that is feasible for the public body. If it is not feasible, the public body must present the information in the format in which it is maintained by the public body or in a paper format at the option of the requestor. The public body may charge a fee for the actual cost of purchasing the recording medium, such as the CD, but may not charge a fee for its search for or review of the information.

What kind of information can I not get access to?

The FOIA law has a presumption that all information is public, unless the public body proves otherwise. There are several exceptions to public disclosure that include but are not limited to:

- Private information – “Private information” is exempt from disclosure under FOIA. FOIA defines “private information” 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 e-mail addresses.” Under FOIA, “private information also includes home addresses and personal license plate numbers, except as otherwise provided by law or when compiled without possibility of attribution to any person.”
- Personal information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the person who is the subject of the information. Under FOIA, the “unwarranted invasion of personal privacy” means the “disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject’s right to privacy outweighs any legitimate public interest in obtaining the information.” Disclosing information that relates to the public duties of public employees is not considered an invasion of personal privacy.
- Law enforcement records that, if disclosed, would interfere with a pending or reasonably contemplated proceeding or that would disclose the identity of a confidential source.
- Information that, if disclosed, might endanger anyone’s life or physical safety.
- Preliminary drafts or notes in which opinions are expressed or policies are formulated, unless the record is publicly cited and identified by the head of the public body.
- Business trade secrets or commercial or financial information that is proprietary, privileged or confidential and disclosure would cause a competitive harm to the person or business.
- Proposals and bids for any contract, until a final selection is made.
- Requests that are “unduly burdensome.” (See next question.)

What does “unduly burdensome” mean?

A FOIA exemption exists for requests that are unduly burdensome. A request may be considered unduly burdensome if there is no way to narrow the request, and the burden on the public body to produce the information outweighs the public interest in the information. However, before relying on this exemption, the public body must first give the requestor an opportunity to reduce the request to a manageable size. If it is still unduly burdensome, the public body must explain in writing the reasons why the request is unduly burdensome and the extent to which compliance will burden the operations of the public body. Such a response is considered a denial.

What is a “clearly unwarranted invasion of personal privacy”?

FOIA contains an exemption for records that, if disclosed, would result in a “clearly unwarranted invasion of personal privacy.” An “unwarranted invasion of personal privacy” means the “disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject’s right to privacy outweighs any legitimate public interest in obtaining the information.” Under FOIA, the disclosure of information that relates to the public duties of public employees is not considered an invasion of personal privacy.

COMMERCIAL REQUESTS

What is a request for information made for a commercial purpose?

A commercial request is when the requester seeks to use part or all of the public records for sale, resale, or solicitation or advertisement for sales or services. Requests by the news media, not-for-profit organizations, scientific or academic institutions are not considered commercial information requests.

Are commercial information requests treated differently?

Yes. A public body has 21 business days to respond to a request for information that is made for a commercial purpose. The public body can either: (1) provide the requested records; (2) advise when the records will be provided and the costs; (3) deny the request (if it falls under an exception); or (4) advise the requestor that the request is unduly burdensome.

Can the public entity charge fees for copies of the information?

Yes, but the fees are limited. For traditional black and white, letter or legal sized copies (8 ½ x 11 or 11 x 17) , the first 50 pages are free, and any additional pages can cost no more than 15 cents a page. For color copies or abnormal size copies, the public body can charge the actual cost of copying.

REDACTIONS

Can a public body remove or black out information from produced documents?

Yes, if a record contains information that is exempt from disclosure under FOIA, a public body can remove or black out that exempt information from the public records. This is called “redaction.” But the public body must produce the remaining information.

Is there any information that a public body MUST withhold or redact? Although there may be legitimate reasons to redact or withhold certain types of information, the only information that the Freedom of Information Act requires a public body to redact are the home addresses, home/private telephone numbers and social security numbers of employees noted on certified payroll records that are required to be submitted to a public body under the Prevailing Wage Act.

OTHER FOIA QUESTIONS

Does a request for a copy of an ordinance require a FOIA request?

No. Ordinances are public documents that should be immediately available to the public without a FOIA request.

Can a public body allow you to inspect but not copy public documents?

No. They must allow you to inspect and obtain copies of public documents.

Agenda Report

Subject: **Identity Theft Prevention Policy**

Prepared by: Ed McKee, Finance Director

Date: October 1, 2009

Ref: October 14, 2008 Study Session
 October 21, 2008 Council Meeting

In November 2008, the Village passed Ordinance MC-7-2008 to comply with the Fair and Accurate Credit Transactions (FACT) Act of 2003. This law required the Village to implement policies and procedures to detect, prevent, and mitigate the impact of identity theft. The Village is considered a creditor under this law as services are provided by the Village (electric, water, refuse, ...) before a customer pays for those services.

One aspect of the law is that an annual review must take place on 1) the Village's policies, and 2) any instances where potential identity theft might have occurred. Factors that can be indicative of identity theft are commonly referred to as red flags. The Village's policy includes 13 red flags including notification received by the Village from credit reporting agencies, personal identification not looking original or matching the applicant, mail not received by the customer, and other events that could be a sign of compromised customer identity.

In terms of the program itself, the staff has been able to work within the guidelines established about a year ago and no revisions are currently recommended. A copy of ordinance MC-7-2008 and the Village's policy are attached.

In terms of red flag events, as of the date of this memo, two red flag events occurred that required the intervention of the finance director.

The first event occurred on October 23, 2008. A customer of more than one year of service indicated that he never received the original utility bill and that was why he was late in making payments.

I confirmed that the address on the account was correct. I did not advise the staff to handle this customer's billing in any special way. On November 5, 2008, shortly after the utility bill was mailed, I visited this customer and noted that the current bill was in the customer's mail pile. The customer was advised to contact me directly if he does not receive his original bill again. The customer has not contacted me since.

The second event occurred on March 3, 2009. A staff person noticed that someone purchasing a vehicle sticker put down a name different than that of the utility customer we believed to reside at that address. The police department verified the utility customer noted in our records appeared to be correct. The police notified and the person claiming to live in Winnetka (who did not) to discontinue listing that address as his own.

Recommendation: Please provide this information to the Village Council as an information only report.

**AN ORDINANCE AMENDING
CHAPTERS 2.48 AND 4.04 OF THE WINNETKA VILLAGE CODE
TO PROVIDE FOR IDENTITY THEFT PROTECTION PROCEDURES**

WHEREAS, the Village of Winnetka (“Village”) is a home rule municipality in accordance with Article VII, Section 6 of the Constitution of the State of Illinois of 1970 and, pursuant thereto, has the authority, except as limited by said Section 6 of Article VII, to exercise any power and perform any function pertaining to the government and affairs of the Village, including the power to regulate for the protection of the public health, safety and welfare; and

WHEREAS, the United States Congress has enacted the Fair and Accurate Credit Transactions (FACT) Act of 2003, which requires that creditors implement policies and procedures to detect, prevent, and mitigate the impact of identity theft; and

WHEREAS, the FACT Act has a mandatory compliance date of November 1, 2008; and

WHEREAS, as required by the FACT Act, the Federal Trade Commission (FTC) and federal banking agencies have issued final rules and guidelines for implementing the FACT Act; and

WHEREAS, because the Village provides a variety of services, including electric, water and refuse service, before the customer is required to pay for them, and because the Village occasionally enters into payment plans with customers with past due accounts, the Village is considered a creditor under the FACT Act and must implement policies and procedures as required by the FACT Act and applicable federal rules.

NOW, THEREFORE, the Council of the Village of Winnetka do ordain as follows:

SECTION 1: The foregoing recitals are hereby incorporated as the findings of the Council of the Village of Winnetka, as if fully set forth herein.

SECTION 2: Subsection E of Section 2.48.010 of Chapter 2.48, “Finance Department,” of Title 2 of the Winnetka Village Code, “Administration and Personnel,” is hereby amended to provide as follows:

E. Powers and Duties. The Finance Director shall be subject to the control and direction of the Village Manager and shall be head of the Finance Department. Subject to the approval of the Village Manager, the Finance Director shall have both control over all of the property and employees of the Finance Department and the power to appoint and remove such employees as may be required for the efficient operation of the Department. In addition to the duties required by state law, the Finance Director shall have the following duties, functions and responsibilities:

1. To assist the Budget Officer in the preparation of the annual budgets, and to prepare tax levy and tax abatement ordinances;
2. To supervise all expenditures of the Village and to maintain accurate records of such expenditures;
3. To keep the financial records of the Village;
4. To oversee all purchases made by the Village and to develop and recommend procedures for such purchases;
5. To prepare financial reports and statements;
6. To issue bills and collect fees for water, electric, sewer, refuse and other services rendered by the Village;
7. To invest Village funds with the approval of the Treasurer;
8. To collect, and to maintain accurate records of, the following: all special assessments; all cash deposits required by the Village, including deposits for electric, sewer and water service; all fees for licenses and permits issued by the Village; and all payments of fines and fees, as provided in this code;
9. To collect late fees and to recover costs related to the collection of any unpaid or delinquent fees, fines, deposits or other payments due and owing to the Village;
10. To retain deposits and excess payments that may otherwise be subject to refunds, for the sole purpose of applying the retained amount to pay all or part of a delinquent account owed by the person making the deposit; ~~and~~
11. To develop and implement procedures to detect, prevent, and mitigate the impact of identity theft in accordance with section 4.04.020 of this Code and applicable federal laws, rules and regulations; and
12. To perform such other services as may be required by the Village Manager.

SECTION 3: Chapter 4.04, “Fiscal Provisions Generally” of Title 4 of the Winnetka Village Code, “Revenue and Finance,” is hereby amended to provide as follows:

Chapter 4.04

~~FISCAL-GENERAL PROVISIONS-GENERALLY~~

Sections:

- 4.04.010** **Disposition of funds.**
4.04.020 **Identity Theft Protection**

Section 4.04.010 **Disposition of funds.**

No person shall be paid from the treasury upon any warrant except from the money belonging to the particular funds, or budget item, upon which such warrant shall be drawn; nor shall money be transferred by the Treasurer from one fund to another after the money has been received by the Treasurer, nor appropriated to any other purpose than that for which it has been collected or paid, except as provided in Section 4.08.010(D) of this code. (Ord. MC-228-99 § 1 (part), 1999; prior code § 3.04 (part))

Section 4.04.020 **Identity Theft Protection.**

A. Statement of Policy. It is the policy of the Village of Winnetka to establish procedures to detect, prevent, and mitigate the impact of identity theft, as required by the Fair and Accurate

Credit Transactions Act of 2003 and applicable rules promulgated by the Federal Trade Commission and federal banking agencies pursuant to said Act.

B. Development of Procedures. The Finance Director, under the supervision of the Village Manger, shall be responsible for developing the Village of Winnetka Identity Theft Protection Procedures, which shall establish procedures appropriate to the Village's operations for the detection, prevention, and mitigation of the impact of identity theft, as required by the aforesaid Act. The procedures shall include a requirement that all incidents of identity theft be reported to the Winnetka Police Department and any other law enforcement agency having jurisdiction over such matters for investigation and prosecution.

C. Village Council Review and Approval. The Village of Winnetka Identity Theft Protection Procedures, and amendments thereto, shall be subject to the review and approval of the Village Council.

D. Annual Report. During the fourth calendar quarter of each year, the Finance Director shall report to the Village Council regarding the implementation of the Village procedures, including reports of identity theft and recommendations for modifications to the procedures.

SECTION 4: This Ordinance is passed by the Council of the Village of Winnetka in the exercise of its home rule powers pursuant to Section 6 of Article VII of the Illinois Constitution of 1970.

SECTION 5: This Ordinance shall take effect immediately upon its passage, approval and posting as provided by law.

PASSED this 6th day of November, 2008, pursuant to the following roll call vote:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED this 6th day of November, 2008.

Signed:

Village President

Countersigned:

Village Clerk

Introduced: October 21, 2008

Posted: October 22, 2008

Passed and Approved: November 6, 2008

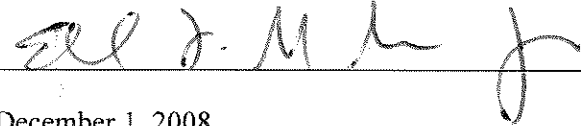
Posted: November 7, 2008

**VILLAGE OF WINNETKA
IDENTITY THEFT PREVENTION PROGRAM**

Village Council Review: October 14, 2008

Program Administrator: Finance Director

Signature:



Effective Date: December 1, 2008.

This Identity Theft Prevention Program is hereby adopted by the above-named Illinois municipality pursuant to and in compliance with the Identity Theft Rules of the Federal Trade Commission (FTC), Part 681 of Title 16 of the Code of Federal Regulations (16 CFR Part 681).

Purpose

The purpose of this Identity Theft Prevention Program (Program) is to protect customers of the Municipality's utility services from identity theft. The Program is intended to establish reasonable policies and procedures to facilitate the detection, prevention and mitigation of identity theft in connection with the opening of new Covered Accounts and activity on existing Covered Accounts.

Scope

This Program applies to the creation, modification and access to Identifying Information of a customer of one or more of the utilities operated by the Village and all employees. This Program does not replace or repeal any previously existing policies or programs addressing some or all of the activities that are the subject of this Program, but rather it is intended to supplement any such existing policies and programs.

Definitions

When used in this Program, the following terms have the meanings set forth opposite their name, unless the context clearly requires that the term be given a different meaning:

Covered Account: The term "covered account" means an account that the Municipality offers or maintains, primarily for personal, family or household purposes, that involves or is designed to permit multiple payments of transactions. (16 CFR 681.2(b)(3)(i)). A utility account is a "covered account." The term "covered account" also includes other accounts offered or maintained by the Municipality for which there is a reasonably foreseeable risk to customers the Municipality or its customers from identity theft. (16 CFR 681.2(b)(3)(ii)).

Identity Theft: The term “identity theft” means a fraud committed or attempted using the identifying information of another person without authority. (16 CFR §681.2(b)(8) and 16 CFR §603.2(a)).

Identifying Information: The term “identifying information” means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number. Additional examples of “identifying information” are set forth in 16 CFR §603.2(a).

Red Flag: The term “Red Flag” means a pattern, practice or specific activity that indicates the possible existence of identity theft.

Certain terms used but not otherwise defined herein shall have the meanings given to them in the FTC’s Identity Theft Rules (16 CFR Part 681) or the Fair Credit Reporting Act of 1970 (15 U.S.C. §1681 *et seq.*), as amended by the Fair and Accurate Credit Transactions Act of 2003 into law on December 4, 2003. (Public Law 108-159).

Administration of the Program

The initial adoption and approval of the Identity Theft Prevention Program shall be by Ordinance of the Village Council. Thereafter, changes to the Program of a day-to-day operational character and decisions relating to the interpretation and implementation of the Program may be made by the Finance Director who shall be the Program Administrator. Major revisions of this policy shall be approved by the City Council.

Development, implementation, administration and oversight of the Program will be the responsibility of the Program Administrator. The Program Administrator will report at least annually to the Village Council regarding compliance with this Program.

Issues to be addressed in the annual Identity Theft Prevention Report include:

1. The effectiveness of the policies and procedures in addressing the risk of Identity Theft in connection with the opening of new Covered Accounts and activity with respect to existing Covered Accounts.
2. Service provider arrangements.
3. Significant incidents involving Identity Theft and management’s response.
4. Recommendations for material changes to the Program, if needed, for improvement.

Identity Theft Prevention Elements

Identification of Relevant Red Flags

The Municipality has considered the guidelines and the illustrative examples of possible Red Flags from the FTC's Identity Theft Rules and has reviewed the Municipality's past history with instances of identity theft, if any. The municipality hereby determines that the following are the relevant Red Flags for purposes of this Program given the relative size of the Municipality and the limited nature and scope of the services that the Municipality provides to its citizens:

- A. Alerts, notifications, or other warnings received from consumer reporting agencies or service providers.
 - 1. A Consumer Reporting Agency alerts the Village of a credit freeze, address disparity, or that an account has been noted to have abusive or fraudulent activity.
- B. The presentation of suspicious documents.
 - 2. Documents provided for ID do not appear to be genuine and unaltered.
 - 3. The photo or physical description is not consistent with the appearance of the applicant.
 - 4. Information given to open the account is not consistent with the ID of the applicant.
- C. The presentation of suspicious personal identifying information, such as a suspicious address change.
 - 5. Personal ID is of the same type associated with fraudulent activity: fictitious address, mail box drop, or prison or phone number is invalid; it is associated with a pager or answering service.
 - 6. Personal ID provided is associated with known fraudulent activity.
 - 7. Personal ID is inconsistent with utility records.
 - 8. The customer fails to provide all needed personal ID upon request.

D. The unusual use of, or other suspicious activity related to, a Covered Account.

9. The utility is notified of unauthorized charges or transactions in connection with a customer's account.

10. Customer notifies utility that they are not receiving their bill.

11. Mail sent to customer is repeatedly returned.

12. Payments are made in a manner associated with fraud. For example, a deposit or initial payment is made and no payments are made thereafter.

E. Notice of Possible Identity Theft.

13. Utility is notified by law enforcement officials or others, that it has opened a fraudulent account for a person engaged in identity theft.

Detection of Red Flags

The employees of the Municipality that interact directly with customers on a day-to-day basis shall have the initial responsibility for monitoring the information and documentation provided by the customer and any third-party service provider in connection with the opening of new accounts and the modification of or access to existing accounts and the detection of any Red Flags that might arise. Management shall see to it that all employees who might be called upon to assist a customer with the opening of a new account or with modifying or otherwise accessing an existing account are properly trained such that they have a working familiarity with the relevant Red Flags identified in this Program so as to be able to recognize any Red Flags that might surface in connection with the transaction.

An Employee who is not sufficiently trained to recognize the Red Flags identified in this Program shall not open a new account for any customer, modify any existing account or otherwise provide any customer with access to information in an existing account without the direct supervision and specific approval of a management employee. Management employees shall be properly trained such that they can recognize the relevant Red Flags identified in this Program and exercise sound judgment in connection with the response to any unresolved Red Flags that may present themselves in connection with the opening of a new account or with modifying or accessing of an existing account. Management employees shall be responsible for making the final decision on any such unresolved Red Flags.

The Program Administrator shall establish from time to time a written policy setting forth the manner in which a prospective new customer may apply for service, the information and documentation to be provided by the prospective customer in connection with an application for a new utility service account, the steps to be taken by the employee assisting the customer with the application in verifying the customer's identity and the manner in which the information and documentation provided by the customer and any third-party service provider shall be maintained. Such policy shall be generally consistent with the spirit of the Customer Identification Program rules (31 CFR 103.121) implementing Section 326(a) of the USA PATRIOT Act but need not be as detailed. The Program Administrator shall establish from time to time a written policy setting forth the manner in which customers with existing accounts shall establish their identity before being allowed to make modifications to or otherwise gain access to existing accounts.

Response to Detected Red Flags

If the responsible employees of the Municipality as set forth in the previous section are unable, after making a good faith effort, to form a reasonable belief that they know the true identity of a customer attempting to open a new account or modify or otherwise access an existing account based on the information and documentation provided by the customer and any third-party service provider, the Municipality shall not open the new account or modify or otherwise provide access to the existing account as the case may be. Opening new accounts or the modification or access to existing accounts will be on a non-discriminatory basis based on the Village's policies.

The Program Administrator shall establish from time to time a written policy setting forth the steps to be taken in the event of an unresolved Red Flag situation. Consideration should be given to aggravating factors that may heighten the risk of Identity Theft, such as a data security incident that results in unauthorized access to a customer's account, or a notice that a customer has provided account information to a fraudulent individual or website. Appropriate responses to prevent or mitigate Identity Theft when a Red Flag is detected include:

1. Monitoring a Covered Account for evidence of Identity Theft.
2. Contacting the customer.
3. Changing any passwords, security codes, or other security devices that permit access to a Covered Account.
4. Reopening a Covered Account with a new account number.
5. Not opening a new Covered Account.
6. Closing an existing Covered Account.
7. Not attempting to collect on a Covered Account or not selling a Covered Account to a debt collector.
8. Notifying law enforcement.
9. Determining that no response is warranted under the particular circumstances.

Program Management and Accountability

Initial Risk Assessment – Covered Accounts

Utility accounts for personal, family and household purposes are specifically included within the definition of “covered account” in the FTC’s Identity Theft Rules. Therefore, the Municipality determines that with respect to its residential utility accounts it offers and/or maintains covered accounts. The Municipality also performed an initial risk assessment to determine whether the utility offers or maintains any other accounts for which there are reasonably foreseeable risks to customers or the utility from identity theft. In making this determination the Municipality considered (1) the methods it uses to open its accounts, (2) the methods it uses to access its accounts, and (3) its previous experience with identity theft, and it concluded that it does not offer or maintain any such other covered accounts.

Program Updates – Risk Assessment

The Program, including relevant Red Flags, is to be updated as often as necessary but at least annually to reflect changes in risks to customers from Identity Theft. Factors to consider in the Program update include:

1. An assessment of the risk factors identified above.
2. Any identified Red Flag weaknesses in associated account systems or procedures.
3. Changes in methods of Identity Theft.
4. Changes in methods to detect, prevent, and mitigate Identity Theft.
5. Changes in business arrangements, including mergers, acquisitions, alliances, joint ventures, and service provider arrangements.

Training and Oversight

All staff and third-party service providers performing any activity in connection with one or more Covered Accounts are to be provided appropriate training and receive effective oversight to ensure that the activity is conducted in accordance with policies and procedures designed to detect, prevent, and mitigate the risk of Identity Theft.

Other Legal Requirements

Awareness of the following related legal requirements should be maintained:

- 31 U.S.C. 5318 (g) – Reporting of Suspicious Activities
- 15 U.S.C. 1681 c-1 (h) – Identity Theft Prevention; Fraud Alerts and Active Duty Alerts – Limitations on Use of Information for Credit Extensions
- 15 U.S.C. 1681 s-2 – Responsibilities of Furnishers of Information to Consumer Reporting Agencies
- 15 U.S.C. 1681 m – Requirements on Use of Consumer Reports

Village of Winnetka

Red Flag Events

A	B	C	D	E
Alerts, Notifications or Warnings from Consumer Reporting Agency	Suspicious Documents	Suspicious Personal I.D. Information	Unusual Use or Suspicious Activity related to the Covered Account	Notice of Theft
1. A Consumer Reporting Agency alerts the Village of a credit freeze, address disparity, or that an account has been noted to have abusive or fraudulent activity.	2. Documents provided for ID do not appear to be genuine and unaltered.	5. Personal ID is of the same type associated with fraudulent activity.: fictitious address, mail box drop, or prison or phone number is invalid; it is associated with a pager or answering service.	9. The utility is notified of unauthorized charges or transactions in connection with a customer's account.	13. Utility is notified by law enforcement officials or others, that it has opened a fraudulent account for a person engaged in identity theft.
	3. The photo or physical description is not consistent with the appearance of the applicant.	6. Personal ID provided is associated with known fraudulent activity.	10. Customer notifies utility that they are not receiving their bill.	
	4. Information given to open the account is not consistent with the ID of the applicant.	7. Personal ID is inconsistent with utility records.	11. Mail sent to customer is repeatedly returned.	
		8. The customer fails to provide all needed personal ID upon request.	12. Payments are made in a manner associated with fraud. For example, a deposit or initial payment is made and no payments are made thereafter.	