FOIA requests, costs increasing in many municipalities

By Melissa Silverberg

The law allowing residents and business to request public records may be dubbed the Illinois Freedom of Information Act, but as municipalities are seeing more and more requests come in each year, officials say the cost to comply with the law is anything but free.

A Daily Herald survey of 55 municipalities showed that the number of Freedom of Information Act requests received has increased in nearly all towns over the past few years that officials have been tracking the numbers.

Between 2011 and 2013, 17 suburbs saw an increase of more than 25 percent. Towns including Aurora, Hampshire, Des Plaines and Prospect Heights saw the number of requests increase by more than 50 percent.

Municipal clerks and lawyers said that responding to these requests takes staff time and money away from other responsibilities to the point of being a burden, but First Amendment experts say it is worth the cost to increase transparency of government.

The requests aren't all coming from investigative journalists looking to expose corruption, but mostly from regular citizens looking for police reports and information about their homes or their neighbors.

"People are interested in how their government works," said Don Craven, general counsel to the Illinois Press Association. Craven said the numbers could also be going up due an increase in awareness or a change in how requests for information are recorded in municipal records.

"Some towns now require people to file FOIA requests for information that in the past was just made available," he said. "Some would say that's how you increase the number of FOIA requests."

While the law is statewide, it is up to each municipality how they handle FOIA requests. Someone walking into a police department looking for arrest reports from the previous night could be handed the reports immediately in one town, while another may require the person to file a FOIA, which allows officials to take more time and redact certain information they feel shouldn't be public.

"There are some public officials who go out of their way to respond to requests and make it very easy," Craven said. "But then there are some who look at them not as public records, but, 'They're my records, and I'm not going to give you my records.' There's a misconception there because these are the public's records." If an official requested is made, staff members have time to respond -- 21 days for commercial requests, five for noncommercial, and they can seek exemptions for revealing certain information under provisions the Illinois FOIA law.

An updated FOIA law went into effect in 2010. Craven said it was designed to make it easier for people to access public records, but Brian Day, lead staff attorney with the Illinois Municipal League,
said it opened up a much broader scope of information that was available, which could account for the increase in records requests.

In Schaumburg, where the village received almost 2,700 requests last year, an online system has helped staff organize, track and assign the requests.

Each request that comes in is logged and assigned to a department, though the majority are sent to community development or police, said Rita Elsner, assistant village attorney. Elsner said some of the requests are for information that is already available on the village website and residents can be easily directed to the answer, but those requests still count in the annual total. "Anytime someone asks for a record, that counts," she said.

How much time it takes to respond to requests varies, officials said. For some queries it can be a quick answer or search of online records; for others it can mean hours spent looking through archives and microfiche trying to find the right information.

While some suggest that officials could save themselves time if they made all information available online, municipal clerks said that's not possible.

Requests for home or business blueprints, police reports or other records with personal information should not be shared online, Elsner said.

A large segment of requests are coming from commercial businesses.

For example, if a company is hired to do an environmental assessment of an area, it can request historical information that can take a long time to find, Elsner said.

"It irks me to no end," Elsner said. "They make money off it, but they come to us to do all the work." Municipalities are able to charge for commercial requests at a rate of $10 an hour after the first 10 hours, but Day said that is far from the $200 an hour rate that a lawyer may be charging the village to help respond to requests.

"It's using public resources for private purposes," said Day, who believes the law shouldn't allow such requests. Day contended that other abuses of the law can also put a burden on municipalities. He cited as an example a southern Illinois community where an ex-employee filed more than 600 requests in one year in what he sees as an attempt to cause busy work for the village.

"The law is being used for wider purposes than I think it was intended for," Day said. "FOIA was intended to provide transparency for what government is doing, but it's being used as a sort of information clearinghouse for other purposes.

Craven said, though, that abuses of the law are rare.

And Rolling Meadows City Clerk Ginny Cotugno, who has seen requests triple in five years, said the increase hasn't been too hard to handle. Requests jumped from 307 in 2009 to 952 in 2013. Most are police-related, she said, such as people looking for accident reports.
Cotugno said she thought it would be more time consuming to put all of the police reports online than to respond to individual requests as they are made.

The costs can add up though. In Hawthorn Woods, a small suburb of about 7,600 people, elected officials took notice.

Midway through 2011, the village board asked Village Clerk Donna Lobaito to start tracking the number of responses along with staff time and money spent responding. From August to December of 2011, Hawthorn Woods received 23 requests. For 2012, it was 48. The number almost doubled to 85 in 2013.

When Lobaito tracked money spent on copying, staff time and legal costs, she found Hawthorn Woods spent $4,247.59 last year, or an average cost of about $50 per request.

Craven said it is worth the cost.

"The law makes it rather clear that the production of public records is a fundamental purpose of public bodies," Craven said. "In a system of government that relies on an educated public, what could be more important than educating the public, educating the electorate with those public records."

Some officials say though that the requests are taking up too much time for already understaffed offices.

"It can be extremely time consuming, and it takes away from other things I could be working on," said Julie Kamka, clerk in Buffalo Grove, which received 957 requests in 2013, up from 664 in 2009. "But legally, we have to do it." Kamka said she often spends a few hours a day working on requests, which is not her main job responsibility.

"It is significant," said Robin Ward, assistant village attorney in Arlington Heights, of the time spent responding to requests. "There are weeks we spend 50 to 60 percent of our time on it; other times it could be 5 percent."

Another complaint is that some requests are so broad or complicated.

"The problem isn't so much with the volume as it is with the complexity, time span and volume of information requested," said Barbara Weber, FOIA officer for Bloomingdale. "Many requests now require extensive microfiche searches, copying hundreds of pages of email correspondence, all of which must be reviewed to ensure that all exempt information is redacted before presented." Craven said he hears such comments all the time, but they are no excuse for a failure to comply.

"I can't think of anything more important for a governmental body to do," he said.