

1 TITLE 2: GOVERNMENTAL ORGANIZATION
2 SUBTITLE D: CODE DEPARTMENTS
3 CHAPTER XXV: DEPARTMENT OF EMPLOYMENT SECURITY
4

5 PART 1301
6 ACCESS TO RECORDS OF THE DEPARTMENT OF EMPLOYMENT SECURITY
7

8 SUBPART A: INTRODUCTION
9

10 Section

- 11 1301.110 Summary and Purpose
12 1301.120 Definitions
13

14 SUBPART B: CLASSIFICATION OF RECORDS
15

16 Section

- 17 1301.201 Records that Will Be Disclosed
18 1301.202 Records that Will Be Withheld from Disclosure
19 1301.203 Statutory Exemptions
20 1301.210 Office to Which Requests are Submitted (Repealed)
21 1301.220 Form and Content of Requests (Repealed)
22

23 SUBPART C: REQUESTING RECORDS FROM THE AGENCY
24

25 Section

- 26 1301.301 Submittal of Requests for Records
27 1301.302 Information To Be Provided in Requests for Records
28 1301.303 Requests for Records for Commercial Purposes
29 1301.310 Timeline for Department Response (Repealed)
30 1301.320 Categories of Department Responses (Repealed)
31

32 SUBPART D: AGENCY RESPONSE TO REQUESTS FOR RECORDS
33

34 Section

- 35 1301.401 Timeline for Agency Response
36 1301.402 Requests for Records that the Agency Considers Unduly Burdensome
37 1301.403 Requests for Records that Require Electronic Retrieval
38 1301.404 Denials of Requests for Records
39 1301.405 Requests for Review of Denials – Public Access Counselor
40 1301.406 Circuit Court Review
41 1301.407 Administrative Review
42 1301.410 Appeal of a Denial (Repealed)
43 1301.420 Director's Response to Appeal (Repealed)

44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86

SUBPART E: PROCEDURES FOR PROVIDING RECORDS TO REQUESTERS

- Section
- 1301.510 Inspection of Records
- 1301.511 Copying of Records; Fees
- 1301.512 Reduction and Waiver of Fees
- 1301.520 Copies of Public Records (Repealed)
- 1301.530 General Materials Available from the Office of the Commissioner (Repealed)
- 1301.APPENDIX A Fee Schedule for Duplication and Certification of Records
- 1301.ILLUSTRATION A Request for Public Records (Repealed)
- 1301.ILLUSTRATION B Denial of Request for Public Records (Repealed)
- 1301.ILLUSTRATION C Partial Approval of Request for Public Records (Repealed)
- 1301.ILLUSTRATION D Deferral of Response to Request for Public Records (Repealed)
- 1301.ILLUSTRATION E FOIA Appeal – Director's Response (Repealed)

AUTHORITY: Implementing and authorized by Section 3(h) of the Freedom of Information Act [5 ILCS 140], implementing Sections 1700 and 1701 of the Unemployment Insurance Act [820 ILCS 405] and Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100].

SOURCE: Adopted at 8 Ill. Reg. 12899, effective July 10, 1984; amended at 35 Ill. Reg. 6066, effective March 25, 2011; amended at 48 Ill. Reg. _____, effective _____.

SUBPART A: INTRODUCTION

Section 1301.120 Definitions

a) Terms not defined in this Section shall have the same meaning as in the Freedom of Information Act and the Illinois Unemployment Insurance Act.

b) The following definitions are applicable for purposes of this Part:

"Act" means the Illinois Unemployment Insurance Act [820 ILCS 405].

"Agency" means the Illinois Department of Employment Security.

~~"Commercial purpose" means the use of any part of a record or records, or information derived from records, in any form for sale, resale, or solicitation or advertisement for sales or services. For purposes of this definition, requests made by news media and non-profit, scientific, or academic organizations shall not be considered to be made for a "commercial purpose" when the principal purpose of the request is:~~

87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129

~~to access and disseminate information concerning news and current or passing events;~~
~~for articles of opinion or features of interest to the public; or~~
~~for the purpose of academic, scientific, or public research or education.~~
~~(Section 2(c-10) of FOIA)~~

~~"Copying" means the reproduction of any record by means of any photographic, electronic, mechanical, or other process, device or means now known or hereafter developed and available to the Agency. (Section 2(d) of FOIA)~~

"Director" means the Director of the Agency.

"FOIA" means the Freedom of Information Act [5 ILCS 140].

"Freedom of Information Officer" or "FOI Officer" means an individual or individuals responsible for receiving and responding to requests for public records.

~~"News media" means a newspaper or other periodical issued at regular intervals, news service in paper or electronic form, radio station, television station, television network, community antenna television service, or person or corporation engaged in making news reels or other motion picture news for public showing. (Section 2(f) of FOIA)~~

~~"Person" means any individual, corporation, partnership, firm, organization or association, acting individually or as a group. (Section 2(b) of FOIA)~~

~~"Private information" means unique identifiers, including a person's Social Security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person. (Section 2(e-5) of FOIA)~~

"Public Access Counselor" means an individual appointed to that office by the Attorney General under Section 7 of the Attorney General Act [15 ILCS 205].

~~"Public body" means 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 I E of the School Code [105 ILCS 5]. (Section 2(a) of FOIA)~~

~~"Records" means all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of or under the control of the Agency. (Section 2(c) of FOIA)~~

"Requester" means a person who submits to the Agency a written request, electronically or on paper, for records.

~~"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. (Section 7(1)(c) of FOIA)~~

(Source: Amended at 48 Ill. Reg. _____, effective _____)

SUBPART B: CLASSIFICATION OF RECORDS

Section 1301.201 Records that Will Be Disclosed

Upon receiving a request meeting the requirements of this Part, the Agency shall disclose to the requester all records requested except that it shall not disclose certain records as provided in Section 1301.202 or 1301.203. Records covered under this Section shall include, but are not limited to, records identified in Sections 2.5, 2.10, 2.15, and 2.20 of FOIA.÷

- a) ~~Records of funds. All records relating to the obligation, receipt, and use of public funds of the Agency are records subject to inspection and copying by the public. (Section 2.5 of FOIA)~~
- b) ~~Payrolls. Certified payroll records submitted to the Agency under Section 5(a)(2) of the Prevailing Wage Act [820 ILCS 130] are records subject to inspection and copying in accordance with the provisions of FOIA; except that contractors' and employees' addresses, telephone numbers, and Social Security numbers will be redacted by the Agency prior to disclosure. (Section 2.10 of FOIA)~~

- 173 e) ~~Criminal history records. The following documents maintained by the Agency~~
 174 ~~pertaining to criminal history record information are records subject to~~
 175 ~~inspection and copying by the public pursuant to FOIA:~~
 176
 177 1) ~~Court records that are public;~~
 178
 179 2) ~~Records that are otherwise available under State or local law; and~~
 180
 181 3) ~~Records in which the requesting party is the individual identified, except~~
 182 ~~as provided under Section 1301.202(a)(5)(F). (Section 2.15(b) of FOIA)~~
 183
 184 d) ~~Settlement agreements. All settlement agreements entered into by or on behalf of~~
 185 ~~the Agency are records subject to inspection and copying by the public, provided~~
 186 ~~that information exempt from disclosure under Section 1301.202 or 1301.203 of~~
 187 ~~this Part may be redacted. (Section 2.20 of FOIA)~~
 188
 189 (Source: Amended at 48 Ill. Reg. _____, effective _____)
 190

191 **Section 1301.202 Records that Will Be Withheld from Disclosure**

192
 193 ~~When a request is made to inspect or copy a record that contains information that is otherwise~~
 194 ~~exempt from disclosure under this Section, but also contains information that is not exempt from~~
 195 ~~disclosure, the Agency shall make the remaining information available for inspection and~~
 196 ~~copying. (Section 7(1) of FOIA)~~
 197

- 198 a) Information and data that meet one or more exemption as set forth in Section 7 of
 199 FOIA will be withheld. If it is not unduly burdensome, as defined in Section
 200 1301.402, to redact exempt information and data from a record and produce a
 201 redacted copy of the record, the exempt information may be redacted and the
 202 redacted record produced as provided for in Section 7 of FOIA. Subject to this
 203 requirement and Section 7 of FOIA, the following shall be exempt from
 204 inspection and copying:
 205
 206 1) ~~Information specifically prohibited from disclosure by federal or State law~~
 207 ~~or rules and regulations implementing federal or State law; (Section~~
 208 ~~7(1)(a) of FOIA)~~
 209
 210 2) ~~Private information, unless disclosure is required by another provision of~~
 211 ~~FOIA, a State or federal law or a court order; (Section 7(1)(b) of FOIA)~~
 212
 213 3) ~~Files, documents, and other data or databases maintained by one or more~~
 214 ~~law enforcement agencies and specifically designed to provide~~
 215 ~~information to one or more law enforcement agencies regarding the~~

216 ~~physical or mental status of one or more individual subjects; (Section 7(1)~~
217 ~~(b 5) of FOIA)~~

218
219 4) ~~Personal information contained within records, the disclosure of which~~
220 ~~would constitute a clearly unwarranted invasion of personal privacy,~~
221 ~~unless the disclosure is consented to in writing by the individual subjects~~
222 ~~of the information. "Unwarranted invasion of personal privacy" means~~
223 ~~the disclosure of information that is highly personal or objectionable to a~~
224 ~~reasonable person and in which the subject's right to privacy outweighs~~
225 ~~any legitimate public interest in obtaining the information. The disclosure~~
226 ~~of information that bears on the public duties of public employees and~~
227 ~~officials shall not be considered an invasion of personal privacy; (Section~~
228 ~~7(1)(c) of FOIA)~~

229
230 5) ~~Records in the possession of any public body created in the course of~~
231 ~~administrative enforcement proceedings, and any law enforcement or~~
232 ~~correctional agency for law enforcement purposes, but only to the extent~~
233 ~~that disclosure would:~~

234
235 A) ~~Interfere with pending or actually and reasonably contemplated~~
236 ~~law enforcement proceedings conducted by any law enforcement~~
237 ~~or correctional agency that is the recipient of the request;~~

238
239 B) ~~Interfere with active administrative enforcement proceedings~~
240 ~~conducted by the public body that is the recipient of the request;~~

241
242 C) ~~Create a substantial likelihood that a person will be deprived of a~~
243 ~~fair trial or an impartial hearing;~~

244
245 D) ~~Unavoidably disclose the identity of a confidential source,~~
246 ~~confidential information furnished only by the confidential source,~~
247 ~~or persons who file complaints with or provide information to~~
248 ~~administrative, investigative, law enforcement, or penal agencies,~~
249 ~~except that the Agency will provide traffic accident reports, the~~
250 ~~identities of witnesses to traffic accidents, and rescue reports,~~
251 ~~except when disclosure would interfere with an active criminal~~
252 ~~investigation;~~

253
254 E) ~~Disclose unique or specialized investigative techniques other than~~
255 ~~those generally used and known, or disclose internal documents of~~
256 ~~correctional agencies related to detection, observation or~~
257 ~~investigation of incidents of crime or misconduct, and disclosure~~
258 ~~would result in demonstrable harm to the Agency;~~

259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301

- ~~F) *Endanger the life or physical safety of law enforcement personnel or any other person; or*~~
- ~~G) *Obstruct an ongoing criminal investigation by the Agency; (Section 7(1)(d) of FOIA)*~~
- ~~6) *Records that relate to or affect the security of correctional institutions and detention facilities; (Section 7(1)(e) of FOIA)*~~
- ~~7) *Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the Agency. The exemption provided in this subsection (a)(7) extends to all those records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents; (Section 7(1)(f) of FOIA)*~~
- ~~8) *Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested. All trade secrets and commercial or financial information obtained by a public body, including a public pension fund, from a private equity fund or a privately held company within the investment portfolio of a private equity fund as a result of either investing or evaluating a potential investment of public funds in a private equity fund. The exemption contained in this subsection (a)(8) does not apply to the aggregate financial performance information of a private equity fund, nor to the identity of the fund's managers or general partners. The exemption contained in this subsection (a)(8) does not apply to the identity of a privately held company within the investment portfolio of a private equity fund, unless the disclosure of the identity of a privately held company may cause competitive harm. Nothing in this subsection (a)(8) shall be construed to prevent a person or business from consenting to disclosure; (Section 7(1)(g) of FOIA)*~~
- ~~9) *Proposals and bids for any contract, grant, or agreement, including information that if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contract or*~~

- 302 ~~agreement with the body, until an award or final selection is made.~~
303 ~~Information prepared by or for the body in preparation of a bid~~
304 ~~solicitation shall be exempt until an award or final selection is made;~~
305 ~~(Section 7(1)(h) of FOIA)~~
306
- 307 10) ~~Valuable formulae, computer geographic systems, designs, drawings and~~
308 ~~research data obtained or produced by the Agency when disclosure could~~
309 ~~reasonably be expected to produce private gain or public loss. The~~
310 ~~exemption for "computer geographic systems" provided in this subsection~~
311 ~~(a)(10) does not extend to requests made by news media as defined in~~
312 ~~Section 1301.120 when the requested information is not otherwise exempt~~
313 ~~and the only purpose of the request is to access and disseminate~~
314 ~~information regarding the health, safety, welfare or legal rights of the~~
315 ~~general public; (Section 7(1)(i) of FOIA)~~
316
- 317 11) ~~The following information pertaining to educational matters:~~
318
- 319 A) ~~Test questions, scoring keys, and other examination data used to~~
320 ~~administer an academic exam;~~
321
- 322 B) ~~Information received by a primary or secondary school, college,~~
323 ~~or university under its procedure for the evaluation of faculty~~
324 ~~members by their academic peers;~~
325
- 326 C) ~~Information concerning a school's or university's adjudication of~~
327 ~~student disciplinary cases, but only to the extent that disclosure~~
328 ~~would unavoidably reveal the identity of the student; and~~
329
- 330 D) ~~Course materials or research materials used by faculty members;~~
331 ~~(Section 7(1)(j) of FOIA)~~
332
- 333 12) ~~Architects' plans and engineers' technical submissions, and other~~
334 ~~construction related technical documents for projects not constructed or~~
335 ~~developed in whole or in part with public funds and for projects~~
336 ~~constructed or developed with public funds, including but not limited to~~
337 ~~power generating and distribution stations and other transmission and~~
338 ~~distribution facilities, water treatment facilities, airport facilities, sport~~
339 ~~stadiums, convention centers, and all government owned, operated, or~~
340 ~~occupied buildings, but only to the extent that disclosure would~~
341 ~~compromise security; (Section 7(1)(k) of FOIA)~~
342
- 343 13) ~~Minutes of meetings of public bodies closed to the public as provided in~~
344 ~~the Open Meetings Act [5 ILCS 120] until the public body makes the~~

- 345 ~~minutes available to the public under Section 2.06 of the Open Meetings~~
 346 ~~Act; (Section 7(1)(l) of FOIA)~~
 347
 348 14) ~~Communications between the Agency and an attorney or auditor~~
 349 ~~representing the Agency that would not be subject to discovery in~~
 350 ~~litigation, and materials prepared or compiled by or for the Agency in~~
 351 ~~anticipation of a criminal, civil or administrative proceeding upon the~~
 352 ~~request of an attorney advising the Agency, and materials prepared or~~
 353 ~~compiled with respect to internal audits of the Agency; (Section 7(1)(m) of~~
 354 ~~FOIA)~~
 355
 356 15) ~~Records relating to the Agency's adjudication of employee grievances or~~
 357 ~~disciplinary cases; however, this exemption shall not extend to the final~~
 358 ~~outcome of cases in which discipline is imposed; (Section 7(1)(n) of~~
 359 ~~FOIA)~~
 360
 361 16) ~~Administrative or technical information associated with automated data~~
 362 ~~processing operations, including but not limited to software, operating~~
 363 ~~protocols, computer program abstracts, file layouts, source listings, object~~
 364 ~~modules, load modules, user guides, documentation pertaining to all~~
 365 ~~logical and physical design of computerized systems, employee manuals,~~
 366 ~~and any other information that, if disclosed, would jeopardize the security~~
 367 ~~of the system or its data or the security of materials exempt under this~~
 368 ~~Section; (Section 7(1)(o) of FOIA)~~
 369
 370 17) ~~Records relating to collective negotiating matters between the Agency and~~
 371 ~~its employees or representatives, except that any final contract or~~
 372 ~~agreement shall be subject to inspection and copying; (Section 7(1)(p) of~~
 373 ~~FOIA)~~
 374
 375 18) ~~Test questions, scoring keys, and other examination data used to~~
 376 ~~determine the qualifications of an applicant for a license or employment;~~
 377 ~~(Section 7(1)(q) of FOIA)~~
 378
 379 19) ~~The records, documents and information relating to real estate purchase~~
 380 ~~negotiations until those negotiations have been completed or otherwise~~
 381 ~~terminated. With regard to a parcel involved in a pending or actually and~~
 382 ~~reasonably contemplated eminent domain proceeding under the Eminent~~
 383 ~~Domain Act [735 ILCS 30], records, documents and information relating~~
 384 ~~to that parcel shall be exempt except as may be allowed under discovery~~
 385 ~~rules adopted by the Illinois Supreme Court. The records, documents and~~
 386 ~~information relating to a real estate sale shall be exempt only until a sale~~
 387 ~~is consummated; (Section 7(1)(r) of FOIA)~~

388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429

- 20) ~~Any and all proprietary information and records related to the operation of an intergovernmental risk management association or self-insurance pool or jointly self-administered health and accident cooperative or pool. Insurance or self-insurance (including any intergovernmental risk management association or self-insurance pool) claims, loss or risk management information, records, data, advice or communications; (Section 7(1)(s) of FOIA)~~
- 21) ~~Information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a public body responsible for the regulation or supervision of financial institutions or insurance companies, unless disclosure is otherwise required by State law; (Section 7(1)(t) of FOIA)~~
- 22) ~~Information that would disclose or might lead to the disclosure of secret or confidential information, codes, algorithms, programs or private keys intended to be used to create electronic or digital signatures under the Electronic Commerce Security Act [5 ILCS 175]; (Section 7(1)(u) of FOIA)~~
- 23) ~~Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this subsection (a)(23) may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations; (Section 7(1)(v) of FOIA)~~
- 24) ~~Maps and other records regarding the location or security of generation, transmission, distribution, storage, gathering, treatment, or switching facilities owned by a utility, by a power generator, or by the Illinois Power Agency; (Section 7(1)(x) of FOIA)~~
- 25) ~~Information contained in or related to proposals, bids, or negotiations related to electric power procurement under Section 1-75 of the Illinois Power Agency Act [20 ILCS 3855] and Section 16-111.5 of the Public Utilities Act [220 ILCS 5] that is determined to be confidential and~~

430 *proprietary by the Illinois Power Agency or by the Illinois Commerce*
431 *Commission; (Section 7(1)(y) of FOIA)*

432
433 26) *Information about students exempted from disclosure under Section 10-*
434 *20.38 or 34-18.29 of the School Code, and information about*
435 *undergraduate students enrolled at an institution of higher education*
436 *exempted from disclosure under Section 25 of the Illinois Credit Card*
437 *Marketing Act of 2009 [110 ILCS 26]; (Section 7(1)(z) of FOIA)*

438
439 27) *Information the disclosure of which is exempted under the Viatical*
440 *Settlements Act of 2009 [215 ILCS 158]; (Section 7(1)(aa) of FOIA)*

441
442 28) *Information regarding interments, entombments, or inurnments of human*
443 *remains that are submitted to the Cemetery Oversight Database under the*
444 *Cemetery Care Act [760 ILCS 100] or the Cemetery Oversight Act [225*
445 *ILCS 411], whichever is applicable. (Section 7(1)(bb) of FOIA)*

446
447 b) *Any information exempt from disclosure under the Judicial Privacy Act shall be*
448 *redacted from public records prior to disclosure under FOIA. (Section 7(1.5) of*
449 *FOIA).* *A record that is not in the possession of the Agency but is in the possession*
450 *of a party with whom the Agency has contracted to perform a governmental*
451 *function on behalf of the Agency, and that directly relates to the governmental*
452 *function and is not otherwise exempt under FOIA, shall be considered a record of*
453 *the Agency for purposes of Subpart C. (Section 7(2) of FOIA)*

454
455 c) *A public record that is not in the possession of the Agency but is in the possession*
456 *of a party with whom the Agency has contracted to perform a governmental*
457 *function on behalf of the Agency, and that directly relates to the governmental*
458 *function and is not otherwise exempt under FOIA, shall be considered a public*
459 *record of the Agency, for purposes of FOIA. (Section 7(2) of FOIA).*

460
461 (Source: Amended at 48 Ill. Reg. _____, effective _____)

462
463 **Section 1301.203 Statutory Exemptions**

464
465 Records that are required to remain confidential under Section 1900 of the Illinois
466 Unemployment Insurance Act [820 ILCS 405/1900], will not be produced as they are exempt
467 under Section 7(1)(a) of FOIA. For a non-exhaustive list of exemptions from FOIA that are
468 stated in other statutes, see Section 7.5 of FOIA. *To the extent provided for by the following*
469 *statutes, the following shall be exempt from inspection and copying:*

470
471 a) *All information determined to be confidential under Section 4002 of the*
472 *Technology Advancement and Development Act [20 ILCS 700].*

- 473
474 b) ~~Library circulation and order records identifying library users with specific~~
475 ~~materials under the Library Records Confidentiality Act [75 ILCS 70].~~
476
477 e) ~~Applications, related documents, and medical records received by the~~
478 ~~Experimental Organ Transplantation Procedures Board and any and all~~
479 ~~documents or other records prepared by the Experimental Organ Transplantation~~
480 ~~Procedures Board or its staff relating to applications it has received.~~
481
482 d) ~~Information and records held by the Department of Public Health and its~~
483 ~~authorized representatives relating to known or suspected cases of sexually~~
484 ~~transmissible disease or any information the disclosure of which is restricted~~
485 ~~under the Illinois Sexually Transmissible Disease Control Act [410 ILCS 325].~~
486
487 e) ~~Information the disclosure of which is exempted under Section 30 of the Radon~~
488 ~~Industry Licensing Act [420 ILCS 44].~~
489
490 f) ~~Firm performance evaluations under Section 55 of the Architectural,~~
491 ~~Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS~~
492 ~~535].~~
493
494 g) ~~Information the disclosure of which is restricted and exempted under Section 50~~
495 ~~of the Illinois Prepaid Tuition Act [110 ILCS 979].~~
496
497 h) ~~Information the disclosure of which is exempted under the State Officials and~~
498 ~~Employees Ethics Act [5 ILCS 430] and records of any lawfully created State or~~
499 ~~local inspector general's office that would be exempt if created or obtained by an~~
500 ~~Executive Inspector General's office under that Act.~~
501
502 i) ~~Information contained in a local emergency energy plan submitted to a~~
503 ~~municipality in accordance with a local emergency energy plan ordinance that is~~
504 ~~adopted under Section 11-21.5-5 of the Illinois Municipal Code [65 ILCS 5].~~
505
506 j) ~~Information and data concerning the distribution of surcharge moneys collected~~
507 ~~and remitted by wireless carriers under the Wireless Emergency Telephone Safety~~
508 ~~Act [20 ILCS 2605].~~
509
510 k) ~~Law enforcement officer identification information or driver identification~~
511 ~~information compiled by a law enforcement agency or the Department of~~
512 ~~Transportation under Section 11-212 of the Illinois Vehicle Code [625 ILCS 5].~~
513

- 514 ~~l) Records and information provided to a residential health care facility resident~~
- 515 ~~sexual assault and death review team or the Executive Council under the Abuse~~
- 516 ~~Prevention Review Team Act [210 ILCS 28].~~
- 517
- 518 ~~m) Information provided to the predatory lending database created pursuant to~~
- 519 ~~Article 3 of the Residential Real Property Disclosure Act [765 ILCS 77], except to~~
- 520 ~~the extent authorized under that Article.~~
- 521
- 522 ~~n) Defense budgets and petitions for certification of compensation and expenses for~~
- 523 ~~court appointed trial counsel as provided under Sections 10 and 15 of the Capital~~
- 524 ~~Crimes Litigation Act [725 ILCS 124]. This subsection (n) shall apply until the~~
- 525 ~~conclusion of the trial of the case, even if the prosecution chooses not to pursue~~
- 526 ~~the death penalty prior to trial or sentencing.~~
- 527
- 528 ~~o) Information that is prohibited from being disclosed under Section 4 of the Illinois~~
- 529 ~~Health and Hazardous Substances Registry Act [410 ILCS 525].~~
- 530
- 531 ~~p) Security portions of system safety program plans, investigation reports, surveys,~~
- 532 ~~schedules, lists, data, or information compiled, collected or prepared by or for the~~
- 533 ~~Regional Transportation Authority under Section 2.11 of the Regional~~
- 534 ~~Transportation Authority Act [70 ILCS 3615] or the St. Clair County Transit~~
- 535 ~~District under the Bi State Transit Safety Act [45 ILCS 111].~~
- 536
- 537 ~~q) Information prohibited from being disclosed by the Personnel Records Review Act~~
- 538 ~~[820 ILCS 40].~~
- 539
- 540 ~~r) Information prohibited from being disclosed by the Illinois School Student~~
- 541 ~~Records Act [105 ILCS 10].~~
- 542
- 543 ~~s) Information the disclosure of which is restricted under Section 5-108 of the Public~~
- 544 ~~Utilities Act [220 ILCS 5]. (Section 7.5 of FOIA)~~
- 545

546 (Source: Amended at 48 Ill. Reg. _____, effective _____)

547

548 **SUBPART C: REQUESTING RECORDS FROM THE AGENCY**

549

550 **Section 1301.303 Requests for Records for Commercial Purposes**

551

552 It is a violation of FOIA for a person to knowingly obtain a record for a commercial purpose

553 without disclosing that it is for a commercial purpose if requested to do so by the Agency. The

554 Agency shall respond to a request for records to be used for a commercial purpose in accordance

555 with Section 3.1(c) of FOIA.

556

- 557 a) ~~It is a violation of FOIA for a person to knowingly obtain a record for a~~
558 ~~commercial purpose without disclosing that it is for a commercial purpose if~~
559 ~~requested to do so by the Agency. (Section 3.1(c) of FOIA)~~
560
561 b) ~~The Agency shall respond to a request for records to be used for a commercial~~
562 ~~purpose within 21 working days after receipt. The response shall:~~
563
564 1) ~~Provide to the requester an estimate of the time required by the Agency to~~
565 ~~provide the records requested and an estimate of the fees to be charged,~~
566 ~~which the Agency may require the person to pay in full before copying the~~
567 ~~requested documents;~~
568
569 2) ~~Deny the request pursuant to one or more of the exemptions set out in~~
570 ~~Section 1301.202 or 1301.203;~~
571
572 3) ~~Notify the requester that the request is unduly burdensome and extend an~~
573 ~~opportunity to the requester to attempt to reduce the request to~~
574 ~~manageable proportions; or~~
575
576 4) ~~Provide the records requested. (Section 3.1(a) of FOIA)~~
577
578 e) ~~Unless the records are exempt from disclosure, the Agency shall comply with a~~
579 ~~request within a reasonable period considering the size and complexity of the~~
580 ~~request, and giving priority to records requested for non-commercial purposes.~~
581 ~~(Section 3.1(b) of FOIA)~~
582

583 (Source: Amended at 48 Ill. Reg. _____, effective _____)
584

585 SUBPART D: AGENCY RESPONSE TO REQUESTS FOR RECORDS

586 **Section 1301.402 Requests for Records that the Agency Considers Unduly Burdensome**

587 The Agency will fulfill requests calling for all records falling within a category unless
588 compliance with the request would be unduly burdensome for the Agency, there is no way to
589 narrow the request, and the burden on the Agency outweighs the public interest in the
590 information. The Agency will act in accordance with Section 3(g) of FOIA in determining
591 whether the request is unduly burdensome and how it will respond to a request that it determines
592 is unduly burdensome.
593
594
595

- 596 a) ~~The Agency will fulfill requests calling for all records falling within a category~~
597 ~~unless compliance with the request would unduly burden the Agency, there is no~~
598 ~~way to narrow the request, and the burden on the Agency outweighs the public~~
599 ~~interest in the information. Before invoking this exemption, the Agency will~~

600 ~~extend to the requester an opportunity to confer with it in an attempt to reduce the~~
601 ~~request to manageable proportions. (Section 3(g) of FOIA) The amended~~
602 ~~request must be in writing.~~

603
604 b) ~~If the Agency determines that a request is unduly burdensome, it shall do so in~~
605 ~~writing, specifying the reasons why it would be unduly burdensome and the extent~~
606 ~~to which compliance will so burden the operations of the Agency. Such a~~
607 ~~response shall be treated as a denial of the request for information. (Section 3(g)~~
608 ~~of FOIA)~~

609
610 e) ~~Repeated requests for records that are unchanged or identical to records~~
611 ~~previously provided or properly denied under this Part from the same person~~
612 ~~shall be deemed unduly burdensome. (Section 3(g) of FOIA)~~

613
614 (Source: Amended at 48 Ill. Reg. _____, effective _____)

615
616 **Section 1301.404 Denials of Requests for Records**

617
618 a) The Agency will deny requests for records when:

- 619
620 1) Compliance with the request would unduly burden the Agency, as
621 determined pursuant to Section 1301.402, and the requester has not
622 reduced the request to manageable proportions; or
623
624 2) The records are exempt from disclosure pursuant to ~~Section 7 or 7.5 of~~
625 ~~FOIA or~~ Section 1301.202 or 1301.203 or are otherwise exempt under
626 FOIA.

627
628 b) The denial of a request for records will be made in accordance with Section 9 of
629 FOIA ~~must be in writing.~~

630
631 1) ~~The notification shall include a description of the records denied; the~~
632 ~~reason for the denial, including a detailed factual basis for the application~~
633 ~~of any exemption claimed; and the names and titles or positions of each~~
634 ~~person responsible for the denial (Section 9(a) of FOIA);~~

635
636 2) ~~Each notice of denial shall also inform such person of the right to review~~
637 ~~by the Public Access Counselor and provide the address and phone~~
638 ~~number for the Public Access Counselor (Section 9(a) of FOIA); and~~

639
640 3) ~~When a request for records is denied on the grounds that the records are~~
641 ~~exempt under Section 7 or 7.5 of FOIA, the notice of denial shall specify~~
642 ~~the exemption claimed to authorize the denial and the specific reasons for~~

~~the denial, including a detailed factual basis and a citation to the supporting legal authority (Section 9(b) of FOIA).~~

- c) A requester may treat the Agency's failure to respond to a request for records within 5 business days after receipt of the written request as a denial for purposes of the right to review by the Public Access Counselor.
- d) If the Agency has given written notice pursuant to Section 1301.401(d), failure to respond to a written request within the time permitted for extension may be treated as a denial for purposes of the right to review by the Public Access Counselor.
- e) *Any person making a request for records shall be deemed to have exhausted his or her administrative remedies with respect to that request if the Agency fails to act within the time periods provided in Section 1301.401. (Section 9(c) of FOIA)*

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 1301.405 Requests for Review of Denials – Public Access Counselor

A person whose request to inspect or copy a public record is denied by the Agency will be informed by the Agency that the person may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the date of the final denial. The law pertaining to requests for review with the Public Access Counselor is found at Section 9.5 of FOIA.

- a) ~~A person whose request to inspect or copy a record is denied by the Agency may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the date of the final denial. (Section 9.5(a) of FOIA)~~
- b) ~~If the Agency asserts that the records are exempt under Section 1301.202(a)(4) or (a)(7), it will, within the time periods provided for responding to a request, provide written notice to the requester and the Public Access Counselor of its intent to deny the request in whole or in part. The notice will include:~~
 - 1) ~~A copy of the request for access to records;~~
 - 2) ~~The proposed response from the Agency; and~~
 - 3) ~~A detailed summary of the Agency's basis for asserting the exemption. (Section 9.5(b) of FOIA)~~

- 686 e) ~~Upon receipt of a notice of intent to deny from the Agency, the Public Access~~
687 ~~Counselor shall determine whether further inquiry is warranted. The Public~~
688 ~~Access Counselor shall process the notification of intent to deny as detailed in~~
689 ~~Section 9.5(b) of FOIA. Times for response or compliance by the Agency under~~
690 ~~Section 1301.401 will be tolled until the Public Access Counselor concludes his~~
691 ~~or her inquiry. (Section 9.5(b) of FOIA)~~
692
- 693 d) ~~Within 7 working days after the Agency receives a request for review from the~~
694 ~~Public Access Counselor, the Agency shall provide copies of records requested~~
695 ~~and shall otherwise fully cooperate with the Public Access Counselor. (Section~~
696 ~~9.5(c) of FOIA)~~
697
- 698 e) ~~Within 7 working days after it receives a copy of a request for review and request~~
699 ~~for production of records from the Public Access Counselor, the Agency may, but~~
700 ~~is not required to, answer the allegations of the request for review. The answer~~
701 ~~may take the form of a letter, brief, or memorandum. The Public Access~~
702 ~~Counselor shall forward a copy of the answer to the person submitting the request~~
703 ~~for review, with any alleged confidential information to which the request~~
704 ~~pertains redacted from the copy. (Section 9.5(d) of FOIA)~~
705
- 706 f) ~~The requester may, but is not required to, respond in writing to the answer within~~
707 ~~7 working days and shall provide a copy of the response to the Agency. (Section~~
708 ~~9.5(d) of FOIA)~~
709
- 710 g) ~~In addition to the request for review, and the answer and response thereto, if any,~~
711 ~~a requester or the Agency may furnish affidavits or records concerning any~~
712 ~~matter germane to the review. (Section 9.5(e) of FOIA)~~
713
- 714 h) ~~A binding opinion from the Attorney General shall be binding upon both the~~
715 ~~requester and the Agency, subject to administrative review under Section~~
716 ~~1301.407. (Section 9.5(f) of FOIA)~~
717
- 718 i) ~~If the Attorney General decides to exercise his or her discretion to resolve a~~
719 ~~request for review by mediation or by a means other than issuance of a binding~~
720 ~~opinion, the decision not to issue a binding opinion shall not be reviewable.~~
721 ~~(Section 9.5(f) of FOIA)~~
722
- 723 j) ~~Upon receipt of a binding opinion concluding that a violation of FOIA has~~
724 ~~occurred, the Agency shall either take necessary action immediately to comply~~
725 ~~with the directive of the opinion or shall initiate administrative review under~~
726 ~~Section 1301.407. If the opinion concludes that no violation of FOIA has~~
727 ~~occurred, the requester may initiate administrative review under Section~~
728 ~~1301.407. (Section 9.5(f) of FOIA)~~

729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750

- ~~k) If the Agency discloses records in accordance with an opinion of the Attorney General, the Agency is immune from all liabilities by reason thereof and shall not be liable for penalties under FOIA. (Section 9.5(f) of FOIA)~~

- ~~l) If the requester files suit under Section 1301.406 with respect to the same denial that is the subject of a pending request for review, the requester shall notify the Public Access Counselor, and the Public Access Counselor shall so notify the Agency. (Section 9.5(g) of FOIA)~~

- ~~m) The Attorney General may also issue advisory opinions to the Agency regarding compliance with FOIA. A review may be initiated upon receipt of a written request from the Director of the Agency or the Agency's Chief Legal Counsel, which shall contain sufficient accurate facts from which a determination can be made. The Public Access Counselor may request additional information from the Agency in order to assist in the review. If the Agency relies in good faith on an advisory opinion of the Attorney General in responding to a request, the Agency is not liable for penalties under FOIA, so long as the facts upon which the opinion is based have been fully and fairly disclosed to the Public Access Counselor. (Section 9.5(h) of FOIA)~~

(Source: Amended at 48 Ill. Reg. _____, effective _____)