

# HB0831



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB0831

Introduced 2/9/2009, by Rep. William B. Black

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Public Access Counselor and Formal Complaint Act. Establishes the Governor-appointed position of public access counselor to receive inquiries and publish interpretive and educational materials about the Freedom of Information Act and the Open Meetings Act. Requires the counselor to receive complaints and issue advisory opinions on denials of access to public records and public meetings. Provides for the operation of the counselor's office.

LRB096 09418 JAM 19575 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Public  
5 Access Counselor and Formal Complaint Act.

6 Section 5. Definitions. As used in this Act:

7 "Counselor" means the public access counselor appointed  
8 pursuant to this Act.

9 "Office" means the office of the public access counselor  
10 established pursuant to this Act.

11 "Public access laws" means:

12 (1) the Freedom of Information Act (5 ILCS 140/); and

13 (2) the Open Meetings Act (5 ILCS 120/).

14 "Public body" has the same meaning as defined in:

15 (1) the Freedom of Information Act (5 ILCS 140/); and

16 (2) the Open Meetings Act (5 ILCS 120/).

17 "Person" means an individual, a business, a corporation, an  
18 association, or an organization. The term does not include a  
19 public body.

20 "Public record" has the same meaning as defined in:

21 (1) the Freedom of Information Act (5 ILCS 140/); and

22 (2) the Open Meetings Act (5 ILCS 120/).

1           Section 10. Establishment of office. The office of the  
2 public access counselor is established. The office shall be  
3 administered by the public access counselor appointed under  
4 Section 15.

5           Section 15. Appointment; term. The Governor shall appoint a  
6 public access counselor for a term of 4 years at a salary to be  
7 fixed by the Governor.

8           Section 20. Removal for cause. The Governor may remove the  
9 counselor for cause.

10          Section 25. Vacancies in office. If a vacancy occurs in the  
11 office of public access counselor, the Governor shall appoint  
12 an individual to serve for the remainder of the counselor's  
13 unexpired term.

14          Section 30. Requirements for position.

15           (a) The counselor must be a licensed attorney.

16           (b) The counselor shall apply the counselor's full effort  
17 to the duties of the office and may not be actively engaged in  
18 any other occupation, practice, profession, or business.

19          Section 35. Powers and duties. The counselor shall have the  
20 following powers and duties:

21           (1) To establish and administer a program to train

1 public officials and to educate the public on the rights of  
2 the public and the responsibilities of public bodies under  
3 the public access laws. The counselor may contract with an  
4 individual or a public or private entity to fulfill the  
5 counselor's responsibility under this subsection.

6 (2) To conduct research.

7 (3) To prepare interpretive and educational materials  
8 and programs in cooperation with the Office of the Attorney  
9 General.

10 (4) To distribute to newly elected or appointed public  
11 officials the public access laws and educational materials  
12 concerning the public access laws.

13 (5) To respond to informal inquiries made by the public  
14 and public bodies by telephone, in writing, in person, by  
15 facsimile, or by electronic mail concerning the public  
16 access laws.

17 (6) To issue advisory opinions to interpret the public  
18 access laws upon the request of a person or a public body.  
19 However, the counselor may not issue an advisory opinion  
20 concerning a specific matter with respect to which a  
21 lawsuit has been filed under the public access laws.

22 (7) To make recommendations to the General Assembly  
23 concerning ways to improve public access.

24 Section 40. Additional personnel. The counselor may employ  
25 additional personnel necessary to carry out the functions of

1 the office, subject to appropriation.

2 Section 45. Annual report by counselor. The counselor shall  
3 submit a report not later than June 30 of each year to the  
4 General Assembly concerning the activities of the counselor for  
5 the previous year. The report must include, but is not limited  
6 to, the following information:

7 (1) The total number of inquiries and complaints  
8 received each from the public, the media, and government  
9 agencies.

10 (2) The number of inquiries and complaints received  
11 each from the public, the media, and government agencies.

12 (3) The number of inquiries and complaints that were  
13 resolved.

14 (4) The number of complaints received about each of the  
15 following:

16 (A) State agencies.

17 (B) County agencies.

18 (C) City agencies.

19 (D) Township agencies.

20 (E) Village agencies.

21 (F) School districts.

22 (G) Other local agencies.

23 (5) The number of complaints received concerning each  
24 of the following:

25 (A) Public records.

1 (B) Public meetings.

2 (6) The total number of written advisory opinions  
3 issued and pending.

4 Section 50. Formal complaint procedure.

5 (a) With respect to the complaint process and grounds for  
6 complaint:

7 (1) A person or public body may file a complaint with  
8 the office of the public access counselor when:

9 (A) The right to inspect or copy records is denied  
10 under the Freedom of Information Act.

11 (B) The right to attend any public meeting of a  
12 public body is denied under the Open Meetings Act.

13 (b) A complaint is considered filed on the date it is:

14 (1) Received by the office of the counselor; or

15 (2) Postmarked, if received more than 30 days after the  
16 date of the denial that is the subject of the complaint.

17 (c) A person or a public body is not required to file a  
18 complaint under this Act before filing an action under the  
19 public access laws.

20 Section 55. Cooperation from a public body. A public body  
21 shall cooperate with the counselor in any investigation or  
22 proceeding under this Act.

23 Section 60. Complaint forwarded to public body. When the

1 counselor receives a complaint filed pursuant to Section 50,  
2 the counselor shall immediately forward a copy of the complaint  
3 to the public body that is the subject of the complaint.

4 Section 65. Advisory opinion. Except as provided in Section  
5 70, the counselor shall issue an advisory opinion on the  
6 complaint not later than 30 days after the complaint is filed.

7 Section 70. Priority of complaint. If the counselor  
8 determines that a complaint has priority, the counselor shall  
9 issue an advisory opinion on the complaint not later than 7  
10 days after the complaint is filed.

11 The counselor shall adopt rules pursuant to the Illinois  
12 Administrative Procedure Act establishing criteria for  
13 complaints that have priority.

14 Section 75. Form for complaint. The counselor shall  
15 determine the form of a formal complaint filed pursuant to this  
16 Act.

17 Section 80. Statute of limitations. An informal inquiry or  
18 other request for assistance under this Act does not delay the  
19 running of a statute of limitation that applies to a lawsuit  
20 under the public access laws.