



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB4165

Introduced 2/27/2009, by Rep. Barbara Flynn Currie - William B. Black

SYNOPSIS AS INTRODUCED:

5 ILCS 120/3.5 new
5 ILCS 120/7.5 new
5 ILCS 140/3.5 new
5 ILCS 140/9.5 new
5 ILCS 140/11.5 new
15 ILCS 205/7 new

Amends the Open Meetings Act, the Freedom of Information Act, and the Attorney General Act. Requires each public body to have a freedom of information officer to process requests for inspection and copying of public records. Establishes within the Attorney General's Office an Office of the Public Access Counselor, and requires the Attorney General to appoint the Counselor. Authorizes the Counselor to issue binding opinions on a public body's compliance with the Open Meetings Act or on a public body's denial of access to public records, when requested by the denied party. Provides for administrative review of Public Access Counselor's opinions.

LRB096 11799 RCE 22614 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 5. The Open Meetings Act is amended by adding
5 Sections 3.5 and 7.5 as follows:

6 (5 ILCS 120/3.5 new)

7 Sec. 3.5. Public Access Counselor; opinions.

8 (a) A person who believes that a violation of this Act has
9 occurred may file a request for review with the Public Access
10 Counselor established in the Office of the Attorney General.
11 The request for review must be in writing, be signed by the
12 requestor, and include a summary of the facts supporting the
13 allegation.

14 (b) The Public Access Counselor shall immediately notify
15 the State's Attorney of the county in which the alleged
16 violation occurred that a request for review has been received
17 and shall forward a copy of the complaint. The State's Attorney
18 shall determine whether he or she wishes to conduct an
19 investigation of the alleged violation. If the State's Attorney
20 elects not to conduct an investigation, he or she shall notify
21 the Public Access Counselor, who may then proceed to review the
22 allegations. The Public Access Counselor shall notify the
23 public body of the request for review within 7 working days

1 thereafter.

2 (c) The public body shall provide access to records and
3 otherwise fully cooperate with the Public Access Counselor to
4 the extent necessary for the Public Access Counselor to issue a
5 timely opinion as to the allegation of a violation.
6 Alternatively, the Public Access Counselor may issue subpoenas
7 to any person or public body having knowledge of or records
8 pertaining to an alleged violation of this Act. For purposes of
9 conducting a thorough review, the Public Access Counselor shall
10 have the same right to examine a verbatim recording of a
11 meeting closed to the public or the minutes of a closed meeting
12 as does a court in a civil action brought to enforce the Act.

13 (d) Unless the Public Access Counselor extends the time on
14 written notice to the requestor and public body and includes a
15 statement of the reasons for the extension in the notice, the
16 Public Access Counselor shall issue to the requestor and the
17 public body an opinion in response to the request for review
18 within 60 days after initiating review. The opinion shall be
19 binding upon both the requestor and the public, subject to
20 judicial review under Section 7.5 of this Act.

21 (e) If the requestor files suit under Section 3 with
22 respect to the same alleged violation that is the subject of a
23 pending request for review, the requestor shall notify the
24 Public Access Counselor, and the Public Access Counselor shall
25 take no further action with respect to the request for review.

26 (f) Records that are obtained by the Public Access

1 Counselor from a person or a public body for purposes of review
2 and issuance of an opinion under this Section may not be
3 disclosed to the public by the Public Access Counselor. Those
4 records while in the possession of the Public Access Counselor
5 shall be exempt from disclosure under the Freedom of
6 Information Act.

7 (5 ILCS 120/7.5 new)

8 Sec. 7.5. Administrative review. An opinion issued by the
9 Public Access Counselor shall be considered a final decision of
10 an administrative agency, for purposes of administrative
11 review under the Administrative Review Law.

12 Section 10. The Freedom of Information Act is amended by
13 adding Sections 3.5, 9.5, and 11.5 as follows:

14 (5 ILCS 140/3.5 new)

15 Sec. 3.5. Freedom of Information Officer.

16 (a) Each public body shall designate an official or
17 employee to act as its Freedom of Information officer. The
18 Freedom of Information officer shall receive requests
19 submitted to the public body under this Act, direct such
20 requests to appropriate persons within the public body or to
21 appropriate persons in another public body, ensure that the
22 public body responds to requests in a timely fashion, and issue
23 final responses under this Act. Upon receiving a request for a

1 public record, the Freedom of Information officer shall:

2 (i) Note the date of receipt on the written
3 request;

4 (ii) Compute the day on which the period for
5 response will expire and make a notation of that
6 date on the written request;

7 (iii) Maintain an electronic or paper copy of a
8 written request, including all documents submitted
9 with the request until the request has been
10 complied with or denied; and

11 (iv) Create a file for the retention of the
12 original request, a copy of the response, a record
13 of written communications with the requester, and
14 a copy of other communications.

15 (b) All Freedom of Information Officers shall, within 6
16 months after the effective date of this amendatory Act of the
17 96th General Assembly, successfully complete an electronic
18 training curriculum to be developed by the Public Access
19 Counselor. Thereafter, whenever a new Freedom of Information
20 Officer is designated by a public body, that person shall
21 successfully complete the electronic training curriculum
22 within 30 days after assuming the position. Successful
23 completion of the required training curriculum within the
24 periods provided shall be a prerequisite to continue serving as
25 a Freedom of Information Officer.

1 (5 ILCS 140/9.5 new)

2 Sec. 9.5. Public Access Counselor; opinions.

3 (a) A person whose request to inspect or copy a public
4 record is denied by a public body may file a request for review
5 with the Public Access Counselor established in the Office of
6 the Attorney General. The request for review must be in
7 writing, signed by the requestor, and include (i) a copy of the
8 request for access to records and (ii) any responses from the
9 public body.

10 (b) The Public Access Counselor shall forward a copy of a
11 proper request for review to the public body within 7 working
12 days after receipt. The public body shall provide access to
13 records and otherwise fully cooperate with the Counselor to the
14 extent necessary for the Counselor to issue a timely opinion as
15 to the propriety of the denial. Alternatively, the Public
16 Access Counselor may issue subpoenas to any person or public
17 body having knowledge of or records pertaining to a request for
18 review of a denial of access to records under this Act.

19 (c) Unless the Public Access Counselor extends the time on
20 written notice to the requestor and public body and includes a
21 statement of the reasons for the extension in the notice, the
22 Counselor shall issue to the requestor and the public body an
23 opinion in response to the request for review within 60 days
24 after its receipt. The opinion shall be binding upon both the
25 requestor and the public body, subject to judicial review under
26 Section 11.

1 (d) If the requestor files suit under Section 11 with
2 respect to the same denial that is the subject of a pending
3 request for review, the requestor shall notify the Public
4 Access Counselor, and the Public Access Counselor shall take no
5 further action with respect to the request for review.

6 (e) Records that are the subject of a request for review
7 and obtained by the Public Access Counselor from a public body
8 for purposes of issuing an opinion under this Section may not
9 be disclosed to the public by the Public Access Counselor.

10 (5 ILCS 140/11.5 new)

11 Sec. 11.5. Administrative review. An opinion issued by the
12 Public Access Counselor shall be considered a final decision of
13 an administrative agency, for purposes of administrative
14 review under the Administrative Review Law.

15 Section 15. The Attorney General Act is amended by adding
16 Section 7 as follows:

17 (15 ILCS 205/7 new)

18 Sec. 7. Public Access Counselor.

19 (a) The General Assembly finds that members of the public
20 have encountered obstacles in obtaining copies of public
21 records from units of government, that many of those obstacles
22 result from difficulties that both members of the public and
23 public bodies have had in interpreting and applying the Freedom

1 of Information Act. The General Assembly further finds that
2 members of the public have encountered difficulties in
3 resolving alleged violations of the Open Meetings Act. The
4 public's significant interest in access to public records and
5 in open meetings would be better served if there were a central
6 office available to provide advice and education with respect
7 to the interpretation and implementation of the Freedom of
8 Information Act and the Open Meetings Act.

9 (b) Therefore, there is created in the Office of the
10 Attorney General the Office of Public Access Counselor. The
11 Attorney General shall appoint a Public Access Counselor on the
12 basis of experience and demonstrated knowledge and ability. The
13 Public Access Counselor's Office shall be comprised of the
14 Public Access Counselor and such assistant attorneys general
15 and other staff as are deemed necessary by the Attorney
16 General. A separate appropriation shall be made to the Attorney
17 General to fund the operations of the Office of Public Access
18 Counselor.

19 (c) The Public Access Counselor shall have the power:

20 (1) to establish and administer a program to train
21 public officials and educate the public on the rights of
22 the public and the responsibilities of public bodies under
23 the Freedom of Information Act and the Open Meetings Act;

24 (2) to prepare and distribute interpretive or
25 educational materials and programs;

26 (3) to issue binding opinions as provided in Section

1 9.5 of the Freedom of Information Act and Section 3.5 of
2 the Open Meetings Act; except that the Public Access
3 Counselor may not issue an opinion concerning a specific
4 matter with respect to which a lawsuit has been filed under
5 Section 11 of the Freedom of Information Act or Section 3
6 of the Open Meetings Act;

7 (4) to respond to informal inquiries made by the public
8 and public bodies;

9 (5) to conduct research on compliance issues;

10 (6) to make recommendations to the General Assembly
11 concerning ways to improve access to public records and on
12 other issues pertaining to public access to the processes
13 of government;

14 (7) to develop and make available on the Attorney
15 General's website or by other means an electronic training
16 curriculum for Freedom of Information Officers; successful
17 completion of the training program within the requisite
18 time periods shall be a prerequisite to continue serving as
19 a Freedom of Information Officer; and

20 (8) to adopt rules necessary to implement these powers.

21 (d) To accomplish the objectives and to carry out the
22 duties prescribed by this Section, the Public Access Counselor,
23 in addition to other powers conferred upon him or her by this
24 Section, may issue subpoenas as provided in Section 9.5 of the
25 Freedom of Information Act and Section 3.5 of the Open Meetings
26 Act. Service by the Public Access Counselor of any subpoena

1 upon any person shall be made:

2 (i) personally by delivery of a duly executed
3 copy thereof to the person to be served, or in the
4 case of a public body, in the manner provided in
5 Section 2-211 of the Civil Practice Law; or

6 (ii) by mailing by certified mail a duly
7 executed copy thereof to the person to be served at
8 his or her last known abode or, in the case of a
9 public body, to its principal place of business.

10 (e) If any person or public body fails or refuses to obey
11 any subpoena issued by the Public Access Counselor, the
12 Attorney General may file a complaint in the circuit court for
13 the:

14 (i) granting of injunctive relief; and

15 (ii) granting of such other relief as may be
16 required.

17 (f) The Public Access Counselor shall post his or her
18 opinions on the official website of the Office of the Attorney
19 General, with links to those opinions from the official home
20 page, and shall make them available for inspection in his or
21 her office. Further, the Public Access Counselor, at least
22 annually, shall post the following information on the Attorney
23 General's website:

24 (1) the number of complaints received since the date of
25 the last report;

26 (2) the number of opinions issued since the date of the

1 last report; and

2 (3) a summary of the decisions issued since the date of

3 the last report.