



Sen. Christine Radogno

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09900HB4715sam001

LRB099 17902 HEP 48391 a

1 AMENDMENT TO HOUSE BILL 4715

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 4715 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Freedom of Information Act is amended by  
5 changing Section 11 and by adding Section 11.6 as follows:

6 (5 ILCS 140/11) (from Ch. 116, par. 211)

7 Sec. 11. (a) Any person denied access to inspect or copy  
8 any public record by a public body may file suit for injunctive  
9 or declaratory relief.

10 (b) Where the denial is from a public body of the State,  
11 suit may be filed in the circuit court for the county where the  
12 public body has its principal office or where the person denied  
13 access resides.

14 (c) Where the denial is from a municipality or other public  
15 body, except as provided in subsection (b) of this Section,  
16 suit may be filed in the circuit court for the county where the

1 public body is located.

2 (d) The circuit court shall have the jurisdiction to enjoin  
3 the public body from withholding public records and to order  
4 the production of any public records improperly withheld from  
5 the person seeking access. If the public body can show that  
6 exceptional circumstances exist, and that the body is  
7 exercising due diligence in responding to the request, the  
8 court may retain jurisdiction and allow the agency additional  
9 time to complete its review of the records.

10 (e) On motion of the plaintiff, prior to or after in camera  
11 inspection, the court shall order the public body to provide an  
12 index of the records to which access has been denied. The index  
13 shall include the following:

14 (i) A description of the nature or contents of each  
15 document withheld, or each deletion from a released  
16 document, provided, however, that the public body shall not  
17 be required to disclose the information which it asserts is  
18 exempt; and

19 (ii) A statement of the exemption or exemptions claimed  
20 for each such deletion or withheld document.

21 (f) In any action considered by the court, the court shall  
22 consider the matter de novo, and shall conduct such in camera  
23 examination of the requested records as it finds appropriate to  
24 determine if such records or any part thereof may be withheld  
25 under any provision of this Act. The burden shall be on the  
26 public body to establish that its refusal to permit public

1 inspection or copying is in accordance with the provisions of  
2 this Act. Any public body that asserts that a record is exempt  
3 from disclosure has the burden of proving that it is exempt by  
4 clear and convincing evidence.

5 (g) In the event of noncompliance with an order of the  
6 court to disclose, the court may enforce its order against any  
7 public official or employee so ordered or primarily responsible  
8 for such noncompliance through the court's contempt powers.

9 (h) Except as to causes the court considers to be of  
10 greater importance, proceedings arising under this Section  
11 shall take precedence on the docket over all other causes and  
12 be assigned for hearing and trial at the earliest practicable  
13 date and expedited in every way.

14 (i) If a person seeking the right to inspect or receive a  
15 copy of a public record prevails in a proceeding under this  
16 Section, the court shall award such person reasonable  
17 attorney's ~~attorneys'~~ fees and costs. In determining what  
18 amount of attorney's fees is reasonable, the court shall  
19 consider the degree to which the relief obtained relates to the  
20 relief sought. The changes contained in this subsection apply  
21 to an action filed on or after January 1, 2010 (the effective  
22 date of Public Act 96-542) ~~this amendatory Act of the 96th~~  
23 ~~General Assembly.~~

24 (j) If the court determines that a public body willfully  
25 and intentionally failed to comply with this Act, or otherwise  
26 acted in bad faith, the court shall also impose upon the public

1 body a civil penalty of not less than \$2,500 nor more than  
2 \$5,000 for each occurrence. In assessing the civil penalty, the  
3 court shall consider in aggravation or mitigation the budget of  
4 the public body and whether the public body has previously been  
5 assessed penalties for violations of this Act. If the public  
6 body fails to comply with the court's order after 30 days and  
7 the court's order is not on appeal or stayed, the court may  
8 impose an additional penalty of up to \$1,000 for each day the  
9 violation continues. The changes contained in this subsection  
10 that are made by Public Act 96-542 apply to an action filed on  
11 or after January 1, 2010 (the effective date of Public Act  
12 96-542) ~~this amendatory Act of the 96th General Assembly.~~

13 (k) The changes to this Section made by this amendatory Act  
14 of the 99th General Assembly apply to actions filed on or after  
15 the effective date of this amendatory Act of the 99th General  
16 Assembly.

17 (Source: P.A. 96-542, eff. 1-1-10; 97-813, eff. 7-13-12;  
18 revised 10-14-15.)

19 (5 ILCS 140/11.6 new)

20 Sec. 11.6. Noncompliance with binding opinion.

21 (a) The requester may file an action under Section 11 and  
22 it shall be presumed that the public body willfully and  
23 intentionally failed to comply with this Act for purposes of  
24 subsection (j) of Section 11 if:

25 (1) the Public Access Counselor issues a binding

1 opinion pursuant to Section 9.5;

2 (2) the public body does not file for administrative  
3 review of the binding opinion within 30 days after issuance  
4 of the opinion; and

5 (3) the public body does not comply with the binding  
6 opinion within 30 days after issuance of the opinion.

7 (b) This Section applies to binding opinions of the Public  
8 Access Counselor requested or issued on or after the effective  
9 date of this amendatory Act of the 99th General Assembly."