



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5742

by Rep. Scott Drury

SYNOPSIS AS INTRODUCED:

5 ILCS 140/2	from Ch. 116, par. 202
5 ILCS 140/7	from Ch. 116, par. 207
5 ILCS 140/9	from Ch. 116, par. 209
5 ILCS 140/9.5	
5 ILCS 140/11	from Ch. 116, par. 211

Amends the Freedom of Information Act. Changes the definition of "recurrent requester" to exclude requests made by members of the General Assembly and requests made to access and disseminate information pertaining to public policy and the administration of State government. Exempts from disclosure under the Act certain records in which opinions of a public body or its agents are expressed. Provides that the exemption does not apply if the records were produced in connection with the preparation of a report that is required to be publicly produced by an agency of the executive branch. Provides that the public body shall include with each denial of a request for public records an index that includes specified information. Provides that except in the case of a recurrent requester, a public body denying a request for public records shall place in an interest-bearing escrow account or other segregated account of the public body the sum of \$7,500 for each request denied. Provides that the deposited funds shall remain in the account for a period of 60 days after the date of the public body's final denial of a request, or, if a requester has sought review of the denial or challenged the denial in court, until the review process has been completed or a final order has been entered. Provides that if a determination is made that the public body improperly denied a request to inspect or copy a public record, the deposited funds shall be awarded to the requester in addition to or as part of any other award. Makes other changes.

LRB100 18103 HEP 36383 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 Freedom of Information Act is amended by
5 changing Sections 2, 7, 9, 9.5, and 11 as follows:

6 (5 ILCS 140/2) (from Ch. 116, par. 202)

7 Sec. 2. Definitions. As used in this Act:

8 (a) "Public body" means all legislative, executive,
9 administrative, or advisory bodies of the State, state
10 universities and colleges, counties, townships, cities,
11 villages, incorporated towns, school districts and all other
12 municipal corporations, boards, bureaus, committees, or
13 commissions of this State, any subsidiary bodies of any of the
14 foregoing including but not limited to committees and
15 subcommittees thereof, and a School Finance Authority created
16 under Article 1E of the School Code. "Public body" does not
17 include a child death review team or the Illinois Child Death
18 Review Teams Executive Council established under the Child
19 Death Review Team Act, or a regional youth advisory board or
20 the Statewide Youth Advisory Board established under the
21 Department of Children and Family Services Statewide Youth
22 Advisory Board Act.

23 (b) "Person" means any individual, corporation,

1 partnership, firm, organization or association, acting
2 individually or as a group.

3 (c) "Public records" means all records, reports, forms,
4 writings, letters, memoranda, books, papers, maps,
5 photographs, microfilms, cards, tapes, recordings, electronic
6 data processing records, electronic communications, recorded
7 information and all other documentary materials pertaining to
8 the transaction of public business, regardless of physical form
9 or characteristics, having been prepared by or for, or having
10 been or being used by, received by, in the possession of, or
11 under the control of any public body.

12 (c-5) "Private information" means unique identifiers,
13 including a person's social security number, driver's license
14 number, employee identification number, biometric identifiers,
15 personal financial information, passwords or other access
16 codes, medical records, home or personal telephone numbers, and
17 personal email addresses. Private information also includes
18 home address and personal license plates, except as otherwise
19 provided by law or when compiled without possibility of
20 attribution to any person.

21 (c-10) "Commercial purpose" means the use of any part of a
22 public record or records, or information derived from public
23 records, in any form for sale, resale, or solicitation or
24 advertisement for sales or services. For purposes of this
25 definition, requests made by news media and non-profit,
26 scientific, or academic organizations shall not be considered

1 to be made for a "commercial purpose" when the principal
2 purpose of the request is (i) to access and disseminate
3 information concerning news and current or passing events, (ii)
4 for articles of opinion or features of interest to the public,
5 or (iii) for the purpose of academic, scientific, or public
6 research or education.

7 (d) "Copying" means the reproduction of any public record
8 by means of any photographic, electronic, mechanical or other
9 process, device or means now known or hereafter developed and
10 available to the public body.

11 (e) "Head of the public body" means the president, mayor,
12 chairman, presiding officer, director, superintendent,
13 manager, supervisor or individual otherwise holding primary
14 executive and administrative authority for the public body, or
15 such person's duly authorized designee.

16 (f) "News media" means a newspaper or other periodical
17 issued at regular intervals whether in print or electronic
18 format, a news service whether in print or electronic format, a
19 radio station, a television station, a television network, a
20 community antenna television service, or a person or
21 corporation engaged in making news reels or other motion
22 picture news for public showing.

23 (g) "Recurrent requester", as used in Section 3.2 of this
24 Act, means a person that, in the 12 months immediately
25 preceding the request, has submitted to the same public body
26 (i) a minimum of 50 requests for records, (ii) a minimum of 15

1 requests for records within a 30-day period, or (iii) a minimum
2 of 7 requests for records within a 7-day period. For purposes
3 of this definition, requests made by news media, ~~and~~
4 non-profit, scientific, or academic organizations, and members
5 of the General Assembly shall not be considered in calculating
6 the number of requests made in the time periods in this
7 definition when the principal purpose of the requests is (i) to
8 access and disseminate information concerning news and current
9 or passing events, (ii) for articles of opinion or features of
10 interest to the public, ~~or~~ (iii) for the purpose of academic,
11 scientific, or public research or education, or (iv) to access
12 and disseminate information pertaining to public policy and the
13 administration of State government.

14 For the purposes of this subsection (g), "request" means a
15 written document (or oral request, if the public body chooses
16 to honor oral requests) that is submitted to a public body via
17 personal delivery, mail, telefax, electronic mail, or other
18 means available to the public body and that identifies the
19 particular public record the requester seeks. One request may
20 identify multiple records to be inspected or copied.

21 (h) "Voluminous request" means a request that: (i) includes
22 more than 5 individual requests for more than 5 different
23 categories of records or a combination of individual requests
24 that total requests for more than 5 different categories of
25 records in a period of 20 business days; or (ii) requires the
26 compilation of more than 500 letter or legal-sized pages of

1 public records unless a single requested record exceeds 500
2 pages. "Single requested record" may include, but is not
3 limited to, one report, form, e-mail, letter, memorandum, book,
4 map, microfilm, tape, or recording.

5 "Voluminous request" does not include a request made by
6 news media and non-profit, scientific, or academic
7 organizations if the principal purpose of the request is: (1)
8 to access and disseminate information concerning news and
9 current or passing events; (2) for articles of opinion or
10 features of interest to the public; or (3) for the purpose of
11 academic, scientific, or public research or education.

12 For the purposes of this subsection (h), "request" means a
13 written document, or oral request, if the public body chooses
14 to honor oral requests, that is submitted to a public body via
15 personal delivery, mail, telefax, electronic mail, or other
16 means available to the public body and that identifies the
17 particular public record or records the requester seeks. One
18 request may identify multiple individual records to be
19 inspected or copied.

20 (i) "Severance agreement" means a mutual agreement between
21 any public body and its employee for the employee's resignation
22 in exchange for payment by the public body.

23 (Source: P.A. 98-806, eff. 1-1-15; 98-1129, eff. 12-3-14;
24 99-78, eff. 7-20-15; 99-478, eff. 6-1-16.)

25 (5 ILCS 140/7) (from Ch. 116, par. 207)

1 Sec. 7. Exemptions.

2 (1) When a request is made to inspect or copy a public
3 record that contains information that is exempt from disclosure
4 under this Section, but also contains information that is not
5 exempt from disclosure, the public body may elect to redact the
6 information that is exempt. The public body shall make the
7 remaining information available for inspection and copying.
8 Subject to this requirement, the following shall be exempt from
9 inspection and copying:

10 (a) Information specifically prohibited from
11 disclosure by federal or State law or rules and regulations
12 implementing federal or State law.

13 (b) Private information, unless disclosure is required
14 by another provision of this Act, a State or federal law or
15 a court order.

16 (b-5) Files, documents, and other data or databases
17 maintained by one or more law enforcement agencies and
18 specifically designed to provide information to one or more
19 law enforcement agencies regarding the physical or mental
20 status of one or more individual subjects.

21 (c) Personal information contained within public
22 records, the disclosure of which would constitute a clearly
23 unwarranted invasion of personal privacy, unless the
24 disclosure is consented to in writing by the individual
25 subjects of the information. "Unwarranted invasion of
26 personal privacy" means the disclosure of information that

1 is highly personal or objectionable to a reasonable person
2 and in which the subject's right to privacy outweighs any
3 legitimate public interest in obtaining the information.
4 The disclosure of information that bears on the public
5 duties of public employees and officials shall not be
6 considered an invasion of personal privacy.

7 (d) Records in the possession of any public body
8 created in the course of administrative enforcement
9 proceedings, and any law enforcement or correctional
10 agency for law enforcement purposes, but only to the extent
11 that disclosure would:

12 (i) interfere with pending or actually and
13 reasonably contemplated law enforcement proceedings
14 conducted by any law enforcement or correctional
15 agency that is the recipient of the request;

16 (ii) interfere with active administrative
17 enforcement proceedings conducted by the public body
18 that is the recipient of the request;

19 (iii) create a substantial likelihood that a
20 person will be deprived of a fair trial or an impartial
21 hearing;

22 (iv) unavoidably disclose the identity of a
23 confidential source, confidential information
24 furnished only by the confidential source, or persons
25 who file complaints with or provide information to
26 administrative, investigative, law enforcement, or

1 penal agencies; except that the identities of
2 witnesses to traffic accidents, traffic accident
3 reports, and rescue reports shall be provided by
4 agencies of local government, except when disclosure
5 would interfere with an active criminal investigation
6 conducted by the agency that is the recipient of the
7 request;

8 (v) disclose unique or specialized investigative
9 techniques other than those generally used and known or
10 disclose internal documents of correctional agencies
11 related to detection, observation or investigation of
12 incidents of crime or misconduct, and disclosure would
13 result in demonstrable harm to the agency or public
14 body that is the recipient of the request;

15 (vi) endanger the life or physical safety of law
16 enforcement personnel or any other person; or

17 (vii) obstruct an ongoing criminal investigation
18 by the agency that is the recipient of the request.

19 (d-5) A law enforcement record created for law
20 enforcement purposes and contained in a shared electronic
21 record management system if the law enforcement agency that
22 is the recipient of the request did not create the record,
23 did not participate in or have a role in any of the events
24 which are the subject of the record, and only has access to
25 the record through the shared electronic record management
26 system.

1 (e) Records that relate to or affect the security of
2 correctional institutions and detention facilities.

3 (e-5) Records requested by persons committed to the
4 Department of Corrections or a county jail if those
5 materials are available in the library of the correctional
6 facility or jail where the inmate is confined.

7 (e-6) Records requested by persons committed to the
8 Department of Corrections or a county jail if those
9 materials include records from staff members' personnel
10 files, staff rosters, or other staffing assignment
11 information.

12 (e-7) Records requested by persons committed to the
13 Department of Corrections if those materials are available
14 through an administrative request to the Department of
15 Corrections.

16 (e-8) Records requested by a person committed to the
17 Department of Corrections or a county jail, the disclosure
18 of which would result in the risk of harm to any person or
19 the risk of an escape from a jail or correctional
20 institution or facility.

21 (e-9) Records requested by a person in a county jail or
22 committed to the Department of Corrections containing
23 personal information pertaining to the person's victim or
24 the victim's family, including, but not limited to, a
25 victim's home address, home telephone number, work or
26 school address, work telephone number, social security

1 number, or any other identifying information, except as may
2 be relevant to a requester's current or potential case or
3 claim.

4 (e-10) Law enforcement records of other persons
5 requested by a person committed to the Department of
6 Corrections or a county jail, including, but not limited
7 to, arrest and booking records, mug shots, and crime scene
8 photographs, except as these records may be relevant to the
9 requester's current or potential case or claim.

10 (f) Preliminary drafts, notes, recommendations,
11 memoranda and other records in which opinions of the public
12 body or its agents are expressed, or policies or actions
13 are formulated, except that a specific record or relevant
14 portion of a record shall not be exempt when the record is
15 publicly cited and identified by the head of the public
16 body. The exemption provided in this paragraph (f) extends
17 to all those records of officers and agencies of the
18 General Assembly that pertain to the preparation of
19 legislative documents. The exemption provided in this
20 paragraph (f) does not apply to preliminary drafts, notes,
21 recommendations, memoranda, and other records in which
22 opinions are expressed if the records were produced in
23 connection with the preparation of a report that is
24 required to be publicly produced by an agency of the
25 executive branch.

26 (g) Trade secrets and commercial or financial

1 information obtained from a person or business where the
2 trade secrets or commercial or financial information are
3 furnished under a claim that they are proprietary,
4 privileged or confidential, and that disclosure of the
5 trade secrets or commercial or financial information would
6 cause competitive harm to the person or business, and only
7 insofar as the claim directly applies to the records
8 requested.

9 The information included under this exemption includes
10 all trade secrets and commercial or financial information
11 obtained by a public body, including a public pension fund,
12 from a private equity fund or a privately held company
13 within the investment portfolio of a private equity fund as
14 a result of either investing or evaluating a potential
15 investment of public funds in a private equity fund. The
16 exemption contained in this item does not apply to the
17 aggregate financial performance information of a private
18 equity fund, nor to the identity of the fund's managers or
19 general partners. The exemption contained in this item does
20 not apply to the identity of a privately held company
21 within the investment portfolio of a private equity fund,
22 unless the disclosure of the identity of a privately held
23 company may cause competitive harm.

24 Nothing contained in this paragraph (g) shall be
25 construed to prevent a person or business from consenting
26 to disclosure.

1 (h) Proposals and bids for any contract, grant, or
2 agreement, including information which if it were
3 disclosed would frustrate procurement or give an advantage
4 to any person proposing to enter into a contractor
5 agreement with the body, until an award or final selection
6 is made. Information prepared by or for the body in
7 preparation of a bid solicitation shall be exempt until an
8 award or final selection is made.

9 (i) Valuable formulae, computer geographic systems,
10 designs, drawings and research data obtained or produced by
11 any public body when disclosure could reasonably be
12 expected to produce private gain or public loss. The
13 exemption for "computer geographic systems" provided in
14 this paragraph (i) does not extend to requests made by news
15 media as defined in Section 2 of this Act when the
16 requested information is not otherwise exempt and the only
17 purpose of the request is to access and disseminate
18 information regarding the health, safety, welfare, or
19 legal rights of the general public.

20 (j) The following information pertaining to
21 educational matters:

22 (i) test questions, scoring keys and other
23 examination data used to administer an academic
24 examination;

25 (ii) information received by a primary or
26 secondary school, college, or university under its

1 procedures for the evaluation of faculty members by
2 their academic peers;

3 (iii) information concerning a school or
4 university's adjudication of student disciplinary
5 cases, but only to the extent that disclosure would
6 unavoidably reveal the identity of the student; and

7 (iv) course materials or research materials used
8 by faculty members.

9 (k) Architects' plans, engineers' technical
10 submissions, and other construction related technical
11 documents for projects not constructed or developed in
12 whole or in part with public funds and the same for
13 projects constructed or developed with public funds,
14 including but not limited to power generating and
15 distribution stations and other transmission and
16 distribution facilities, water treatment facilities,
17 airport facilities, sport stadiums, convention centers,
18 and all government owned, operated, or occupied buildings,
19 but only to the extent that disclosure would compromise
20 security.

21 (l) Minutes of meetings of public bodies closed to the
22 public as provided in the Open Meetings Act until the
23 public body makes the minutes available to the public under
24 Section 2.06 of the Open Meetings Act.

25 (m) Communications between a public body and an
26 attorney or auditor representing the public body that would

1 not be subject to discovery in litigation, and materials
2 prepared or compiled by or for a public body in
3 anticipation of a criminal, civil or administrative
4 proceeding upon the request of an attorney advising the
5 public body, and materials prepared or compiled with
6 respect to internal audits of public bodies.

7 (n) Records relating to a public body's adjudication of
8 employee grievances or disciplinary cases; however, this
9 exemption shall not extend to the final outcome of cases in
10 which discipline is imposed.

11 (o) Administrative or technical information associated
12 with automated data processing operations, including but
13 not limited to software, operating protocols, computer
14 program abstracts, file layouts, source listings, object
15 modules, load modules, user guides, documentation
16 pertaining to all logical and physical design of
17 computerized systems, employee manuals, and any other
18 information that, if disclosed, would jeopardize the
19 security of the system or its data or the security of
20 materials exempt under this Section.

21 (p) Records relating to collective negotiating matters
22 between public bodies and their employees or
23 representatives, except that any final contract or
24 agreement shall be subject to inspection and copying.

25 (q) Test questions, scoring keys, and other
26 examination data used to determine the qualifications of an

1 applicant for a license or employment.

2 (r) The records, documents, and information relating
3 to real estate purchase negotiations until those
4 negotiations have been completed or otherwise terminated.
5 With regard to a parcel involved in a pending or actually
6 and reasonably contemplated eminent domain proceeding
7 under the Eminent Domain Act, records, documents and
8 information relating to that parcel shall be exempt except
9 as may be allowed under discovery rules adopted by the
10 Illinois Supreme Court. The records, documents and
11 information relating to a real estate sale shall be exempt
12 until a sale is consummated.

13 (s) Any and all proprietary information and records
14 related to the operation of an intergovernmental risk
15 management association or self-insurance pool or jointly
16 self-administered health and accident cooperative or pool.
17 Insurance or self insurance (including any
18 intergovernmental risk management association or self
19 insurance pool) claims, loss or risk management
20 information, records, data, advice or communications.

21 (t) Information contained in or related to
22 examination, operating, or condition reports prepared by,
23 on behalf of, or for the use of a public body responsible
24 for the regulation or supervision of financial
25 institutions or insurance companies, unless disclosure is
26 otherwise required by State law.

1 (u) Information that would disclose or might lead to
2 the disclosure of secret or confidential information,
3 codes, algorithms, programs, or private keys intended to be
4 used to create electronic or digital signatures under the
5 Electronic Commerce Security Act.

6 (v) Vulnerability assessments, security measures, and
7 response policies or plans that are designed to identify,
8 prevent, or respond to potential attacks upon a community's
9 population or systems, facilities, or installations, the
10 destruction or contamination of which would constitute a
11 clear and present danger to the health or safety of the
12 community, but only to the extent that disclosure could
13 reasonably be expected to jeopardize the effectiveness of
14 the measures or the safety of the personnel who implement
15 them or the public. Information exempt under this item may
16 include such things as details pertaining to the
17 mobilization or deployment of personnel or equipment, to
18 the operation of communication systems or protocols, or to
19 tactical operations.

20 (w) (Blank).

21 (x) Maps and other records regarding the location or
22 security of generation, transmission, distribution,
23 storage, gathering, treatment, or switching facilities
24 owned by a utility, by a power generator, or by the
25 Illinois Power Agency.

26 (y) Information contained in or related to proposals,

1 bids, or negotiations related to electric power
2 procurement under Section 1-75 of the Illinois Power Agency
3 Act and Section 16-111.5 of the Public Utilities Act that
4 is determined to be confidential and proprietary by the
5 Illinois Power Agency or by the Illinois Commerce
6 Commission.

7 (z) Information about students exempted from
8 disclosure under Sections 10-20.38 or 34-18.29 of the
9 School Code, and information about undergraduate students
10 enrolled at an institution of higher education exempted
11 from disclosure under Section 25 of the Illinois Credit
12 Card Marketing Act of 2009.

13 (aa) Information the disclosure of which is exempted
14 under the Viatical Settlements Act of 2009.

15 (bb) Records and information provided to a mortality
16 review team and records maintained by a mortality review
17 team appointed under the Department of Juvenile Justice
18 Mortality Review Team Act.

19 (cc) Information regarding interments, entombments, or
20 inurnments of human remains that are submitted to the
21 Cemetery Oversight Database under the Cemetery Care Act or
22 the Cemetery Oversight Act, whichever is applicable.

23 (dd) Correspondence and records (i) that may not be
24 disclosed under Section 11-9 of the Illinois Public Aid
25 Code or (ii) that pertain to appeals under Section 11-8 of
26 the Illinois Public Aid Code.

1 (ee) The names, addresses, or other personal
2 information of persons who are minors and are also
3 participants and registrants in programs of park
4 districts, forest preserve districts, conservation
5 districts, recreation agencies, and special recreation
6 associations.

7 (ff) The names, addresses, or other personal
8 information of participants and registrants in programs of
9 park districts, forest preserve districts, conservation
10 districts, recreation agencies, and special recreation
11 associations where such programs are targeted primarily to
12 minors.

13 (gg) Confidential information described in Section
14 1-100 of the Illinois Independent Tax Tribunal Act of 2012.

15 (hh) The report submitted to the State Board of
16 Education by the School Security and Standards Task Force
17 under item (8) of subsection (d) of Section 2-3.160 of the
18 School Code and any information contained in that report.

19 (ii) Records requested by persons committed to or
20 detained by the Department of Human Services under the
21 Sexually Violent Persons Commitment Act or committed to the
22 Department of Corrections under the Sexually Dangerous
23 Persons Act if those materials: (i) are available in the
24 library of the facility where the individual is confined;
25 (ii) include records from staff members' personnel files,
26 staff rosters, or other staffing assignment information;

1 or (iii) are available through an administrative request to
2 the Department of Human Services or the Department of
3 Corrections.

4 (jj) Confidential information described in Section
5 5-535 of the Civil Administrative Code of Illinois.

6 (1.5) Any information exempt from disclosure under the
7 Judicial Privacy Act shall be redacted from public records
8 prior to disclosure under this Act.

9 (2) A public record that is not in the possession of a
10 public body but is in the possession of a party with whom the
11 agency has contracted to perform a governmental function on
12 behalf of the public body, and that directly relates to the
13 governmental function and is not otherwise exempt under this
14 Act, shall be considered a public record of the public body,
15 for purposes of this Act.

16 (3) This Section does not authorize withholding of
17 information or limit the availability of records to the public,
18 except as stated in this Section or otherwise provided in this
19 Act.

20 (Source: P.A. 99-298, eff. 8-6-15; 99-346, eff. 1-1-16; 99-642,
21 eff. 7-28-16; 100-26, eff. 8-4-17; 100-201, eff. 8-18-17.)

22 (5 ILCS 140/9) (from Ch. 116, par. 209)

23 Sec. 9. (a) Each public body denying a request for public
24 records shall notify the requester in writing of the decision
25 to deny the request, the reasons for the denial, including a

1 detailed factual basis for the application of any exemption
2 claimed, and the names and titles or positions of each person
3 responsible for the denial. Each notice of denial by a public
4 body shall also inform such person of the right to review by
5 the Public Access Counselor and provide the address and phone
6 number for the Public Access Counselor. Each notice of denial
7 shall inform such person of his right to judicial review under
8 Section 11 of this Act.

9 (b) When a request for public records is denied on the
10 grounds that the records are exempt under Section 7 of this
11 Act, the notice of denial shall specify the exemption claimed
12 to authorize the denial and the specific reasons for the
13 denial, including a detailed factual basis and a citation to
14 supporting legal authority. Copies of all notices of denial
15 shall be retained by each public body in a single central
16 office file that is open to the public and indexed according to
17 the type of exemption asserted and, to the extent feasible,
18 according to the types of records requested.

19 (c) Any person making a request for public records shall be
20 deemed to have exhausted his or her administrative remedies
21 with respect to that request if the public body fails to act
22 within the time periods provided in Section 3 of this Act.

23 (d) The public body shall include with each denial of a
24 request for public records an index that includes:

25 (i) a description of the nature of the contents of each
26 document withheld, or each deletion from a released

1 document;

2 (ii) the date on which each document withheld was
3 created;

4 (iii) each author and recipient of each document
5 withheld;

6 (iv) a statement of the exemption or exemptions claimed
7 for each withheld document or each deletion in a released
8 document.

9 (e) A public body denying a request for public records
10 shall place in an interest-bearing escrow account or other
11 segregated account of the public body the sum of \$7,500 for
12 each request denied. The deposited funds shall remain in the
13 account for a period of 60 days after the date of the public
14 body's final denial of a request, or, if a requester has sought
15 review under Section 9.5 of this Act or filed an action under
16 Section 11 of this Act, until the review process has been
17 completed or a final order has been entered. If a determination
18 is made that the public body improperly denied a request to
19 inspect or copy a public record, the deposited funds shall be
20 awarded to the requester in addition to or as part of any other
21 award. This paragraph (e) does not apply to requests made by a
22 recurrent requester.

23 (Source: P.A. 96-542, eff. 1-1-10.)

24 (5 ILCS 140/9.5)

25 Sec. 9.5. Public Access Counselor; opinions.

1 (a) A person whose request to inspect or copy a public
2 record is denied by a public body, except the General Assembly
3 and committees, commissions, and agencies thereof, may file a
4 request for review with the Public Access Counselor established
5 in the Office of the Attorney General not later than 60 days
6 after the date of the final denial. The request for review must
7 be in writing, signed by the requester, and include (i) a copy
8 of the request for access to records and (ii) any responses
9 from the public body.

10 (b) A person whose request to inspect or copy a public
11 record is made for a commercial purpose as defined in
12 subsection (c-10) of Section 2 of this Act may not file a
13 request for review with the Public Access Counselor. A person
14 whose request to inspect or copy a public record was treated by
15 the public body as a request for a commercial purpose under
16 Section 3.1 of this Act may file a request for review with the
17 Public Access Counselor for the limited purpose of reviewing
18 whether the public body properly determined that the request
19 was made for a commercial purpose.

20 (b-5) A person whose request to inspect or copy a public
21 record was treated by a public body, except the General
22 Assembly and committees, commissions, and agencies thereof, as
23 a voluminous request under Section 3.6 of this Act may file a
24 request for review with the Public Access Counselor for the
25 purpose of reviewing whether the public body properly
26 determined that the request was a voluminous request.

1 (c) Upon receipt of a request for review, the Public Access
2 Counselor shall determine whether further action is warranted.
3 If the Public Access Counselor determines that the alleged
4 violation is unfounded, he or she shall so advise the requester
5 and the public body and no further action shall be undertaken.
6 In all other cases, the Public Access Counselor shall forward a
7 copy of the request for review to the public body within 7
8 business days after receipt and shall specify the records or
9 other documents that the public body shall furnish to
10 facilitate the review. Within 7 business days after receipt of
11 the request for review, the public body shall provide copies of
12 records requested and shall otherwise fully cooperate with the
13 Public Access Counselor. If a public body fails to furnish
14 specified records pursuant to this Section, or if otherwise
15 necessary, the Attorney General may issue a subpoena to any
16 person or public body having knowledge of or records pertaining
17 to a request for review of a denial of access to records under
18 the Act. To the extent that records or documents produced by a
19 public body contain information that is claimed to be exempt
20 from disclosure under Section 7 of this Act, the Public Access
21 Counselor shall not further disclose that information.

22 (d) Within 7 business days after it receives a copy of a
23 request for review and request for production of records from
24 the Public Access Counselor, the public body may, but is not
25 required to, answer the allegations of the request for review.
26 The answer may take the form of a letter, brief, or memorandum.

1 The Public Access Counselor shall forward a copy of the answer
2 to the person submitting the request for review, with any
3 alleged confidential information to which the request pertains
4 redacted from the copy. The requester may, but is not required
5 to, respond in writing to the answer within 7 business days and
6 shall provide a copy of the response to the public body.

7 (e) In addition to the request for review, and the answer
8 and the response thereto, if any, a requester or a public body
9 may furnish affidavits or records concerning any matter germane
10 to the review.

11 (f) Unless the Public Access Counselor extends the time by
12 no more than 30 business days by sending written notice to the
13 requester and the public body that includes a statement of the
14 reasons for the extension in the notice, or decides to address
15 the matter without the issuance of a binding opinion, the
16 Attorney General shall examine the issues and the records,
17 shall make findings of fact and conclusions of law, and shall
18 issue to the requester and the public body an opinion in
19 response to the request for review within 60 days after its
20 receipt. The opinion shall be binding upon both the requester
21 and the public body, subject to administrative review under
22 Section 11.5.

23 In responding to any request under this Section 9.5, the
24 Attorney General may exercise his or her discretion and choose
25 to resolve a request for review by mediation or by a means
26 other than the issuance of a binding opinion. The decision not

1 to issue a binding opinion shall not be reviewable.

2 Upon receipt of a binding opinion concluding that a
3 violation of this Act has occurred, the public body shall
4 either take necessary action immediately to comply with the
5 directive of the opinion or shall initiate administrative
6 review under Section 11.5. If the opinion concludes that no
7 violation of the Act has occurred, the requester may initiate
8 administrative review under Section 11.5.

9 Except as provided in subsection (e) of Section (9) of this
10 Act, a ~~A~~ public body that discloses records in accordance with
11 an opinion of the Attorney General is immune from all
12 liabilities by reason thereof and shall not be liable for
13 penalties under this Act.

14 (g) If the requester files suit under Section 11 with
15 respect to the same denial that is the subject of a pending
16 request for review, the requester shall notify the Public
17 Access Counselor, and the Public Access Counselor shall take no
18 further action with respect to the request for review and shall
19 so notify the public body.

20 (h) The Attorney General may also issue advisory opinions
21 to public bodies regarding compliance with this Act. A review
22 may be initiated upon receipt of a written request from the
23 head of the public body or its attorney, which shall contain
24 sufficient accurate facts from which a determination can be
25 made. The Public Access Counselor may request additional
26 information from the public body in order to assist in the

1 review. A public body that relies in good faith on an advisory
2 opinion of the Attorney General in responding to a request is
3 not liable for penalties under this Act, so long as the facts
4 upon which the opinion is based have been fully and fairly
5 disclosed to the Public Access Counselor.

6 (Source: P.A. 97-579, eff. 8-26-11; 98-1129, eff. 12-3-14.)

7 (5 ILCS 140/11) (from Ch. 116, par. 211)

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

11 (a-5) In accordance with Section 11.6 of this Act, a
12 requester may file an action to enforce a binding opinion
13 issued under Section 9.5 of this Act.

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

18 (c) Where the denial is from a municipality or other public
19 body, except as provided in subsection (b) of this Section,
20 suit may be filed in the circuit court for the county where the
21 public body is located.

22 (d) The circuit court shall have the jurisdiction to enjoin
23 the public body from withholding public records and to order
24 the production of any public records improperly withheld from
25 the person seeking access. If the public body can show that

1 exceptional circumstances exist, and that the body is
2 exercising due diligence in responding to the request, the
3 court may retain jurisdiction and allow the agency additional
4 time to complete its review of the records.

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

9 (i) A description of the nature or contents of each
10 document withheld, or each deletion from a released
11 document, provided, however, that the public body shall not
12 be required to disclose the information which it asserts is
13 exempt; and

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

16 (f) In any action considered by the court, the court shall
17 consider the matter de novo, and shall conduct such in camera
18 examination of the requested records as it finds appropriate to
19 determine if such records or any part thereof may be withheld
20 under any provision of this Act. The burden shall be on the
21 public body to establish that its refusal to permit public
22 inspection or copying is in accordance with the provisions of
23 this Act. Any public body that asserts that a record is exempt
24 from disclosure has the burden of proving that it is exempt by
25 clear and convincing evidence.

26 (g) In the event of noncompliance with an order of the

1 court to disclose, the court may enforce its order against any
2 public official or employee so ordered or primarily responsible
3 for such noncompliance through the court's contempt powers.

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

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

18 (j) In accordance with the presumption set forth in Section
19 1.2 of this Act and good faith compliance with the Act, if ~~if~~
20 the court determines that a public body willfully and
21 intentionally failed to comply with this Act, or otherwise
22 acted in bad faith, the court shall also impose upon the public
23 body a civil penalty of not less than \$2,500 nor more than
24 \$5,000 for each occurrence. In assessing the civil penalty, the
25 court shall consider in aggravation or mitigation the budget of
26 the public body and whether the public body has previously been

1 assessed penalties for violations of this Act. The court may
2 impose an additional penalty of up to \$1,000 for each day the
3 violation continues if:

4 (1) the public body fails to comply with the court's
5 order after 30 days;

6 (2) the court's order is not on appeal or stayed; and

7 (3) the court does not grant the public body additional
8 time to comply with the court's order to disclose public
9 records.

10 The changes contained in this subsection made by Public Act
11 96-542 apply to an action filed on or after January 1, 2010
12 (the effective date of Public Act 96-542).

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. 99-586, eff. 1-1-17; 99-642, eff. 7-28-16.)