

AN ACT concerning government.

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

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

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

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

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

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

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

(d) The circuit court shall have the jurisdiction to enjoin the public body from withholding public records and to order the production of any public records improperly withheld from

the person seeking access. If the public body can show that exceptional circumstances exist, and that the body is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records.

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

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

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

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

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

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

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

(j) If the court determines that a public body willfully and intentionally failed to comply with this Act, or otherwise acted in bad faith, the court shall also impose upon the public body a civil penalty of not less than \$2,500 nor more than \$5,000 for each occurrence. In assessing the civil penalty, the court shall consider in aggravation or mitigation the budget of the public body and whether the public body has previously been

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

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

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

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

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

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

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

(5 ILCS 140/11.6 new)

Sec. 11.6. Noncompliance with binding opinion.

(a) The requester may file an action under Section 11 and there shall be a rebuttable presumption that the public body willfully and intentionally failed to comply with this Act for purposes of subsection (j) of Section 11 if:

(1) the Attorney General issues a binding opinion pursuant to Section 9.5;

(2) the public body does not file for administrative review of the binding opinion within 35 days after the binding opinion is served on the public body; and

(3) the public body does not comply with the binding opinion within 35 days after the binding opinion is served on the public body.

For purposes of this subsection (a), service of the binding opinion shall be by personal delivery or by depositing the opinion in the United States mail as provided in Section 3-103 of the Code of Civil Procedure.

(b) The presumption in subsection (a) may be rebutted by the public body showing that it is making a good faith effort to comply with the binding opinion, but compliance was not possible within the 35-day time frame.

(c) This Section applies to binding opinions of the Attorney General requested or issued on or after the effective date of this amendatory Act of the 99th General Assembly.