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The Freedom of Information Act (5 ILCS 140/1 et seq.)

The Freedom of Information Act (FOIA) originally became effective on July 1, 1984. Although various provisions of FOIA had been added or amended since its enactment, there was no comprehensive revision of the Act until 2010. PA 96-542, effective January 1, 2010, revised FOIA to address numerous problems that had become apparent over the previous 25 years.
PA 96-542 also codified a non-judicial procedure for addressing issues concerning compliance with the Freedom of Information and Open Meetings Acts by creating within the Attorney General’s office the Public Access Counselor, a position dedicated to resolving complaints without litigation.
The Purpose of FOIA

“The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a fundamental obligation of government to operate openly and provide public records as expeditiously and efficiently as possible in compliance with this Act.”
Definition of Public Records

The definition of “public records” (5 ILCS 140/2(c)) includes:

“[A]ll * * * documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, possessed or under the control of any public body.”
“Electronic communications” are expressly included within the definition of “public records.”

“Electronic communications” includes e-mails and other media that create a record (in contrast, for example, to telephone calls.)
Definition of “Public Body”

“all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees thereof…”
Presumption of Openness

Under FOIA, there is a presumption that records are open to inspection or copying:

“Presumption. All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.” (5 ILCS 140/1.2).
Responding to a Request

A public body must generally respond to a FOIA request within 5 business days after receipt of a written request. The time for response may be extended for an additional 5 business days for one of the reasons specified in the Act.
A FOIA request may be granted, denied, or granted in part and denied in part. Each public body denying a request for public records shall notify the requester in writing of the decision to deny the request, the reasons for the denial, including a detailed factual basis for the application of any exemption claimed, and the names and titles or positions of each person responsible for the denial.
Each notice of denial by a public body shall inform the requester of his or her right to seek review by the Public Access Counselor and shall provide the address and phone number for the Public Access Counselor. Each notice of denial shall also inform the requester of his right to judicial review under Section 11 of FOIA.
Failure by a public body to respond to a request within the time permitted is considered a denial of the request. A public body that fails to respond to a request within the time permitted or any extension but thereafter provides the requester with copies of the requested public records may not impose a fee for those copies. Further, a public body that fails to respond to the request within the time permitted may not treat the request as unduly burdensome.
Exemptions

To enable public bodies to maintain certain types of sensitive public records confidentially, FOIA provides a number of exceptions to the requirement that public records be made available for public inspection. The exemptions do not, however, prohibit the dissemination of information; rather, they merely authorize the withholding of information. *Roehrborn v. Lambert*, 277 Ill. App. 3d 181, 186 (1st Dist. 1995), appeal denied, 166 Ill. 2d 554.
The exemptions can be categorized into the following six categories:

Personal Privacy
Law Enforcement and Security
Educational Matters
Legal Proceedings
Internal Operations
Business and Finance
Private Information

“Private information” is exempt from disclosure unless disclosure is required by another provision of the Freedom of Information Act, a State or federal law or a court order. 5 ILCS 140/7(1)(b).
For purposes of FOIA, “private information” includes:

“* * * * unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.” (5 ILCS 140/2(c-5).)
Information Exempt Under Other Laws

Section 7(1)(a) of FOIA exempts from disclosure:

“Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.”
Section 7(1)(a) applies only when a law or rule implementing a law specifically prohibits the public body from releasing the information in question. *Better Government Ass’n v. Blagojevich*, 899 N.E.2d 382, 389 (4th Dist. 2008).
The terms “rules” and “regulations,” as used in Section 7(1)(a), do not include informally adopted policies or institutional guidelines that do not specifically implement a provision of a law.
Unwarranted Invasion of Personal Privacy

The previous categories of information that was exempt “per se” from disclosure as an unwarranted invasion of personal privacy (for example, records contained in a personnel file) were deleted by PA 96-542. Section 7(1)(c) now provides:
“(c) Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. ’Unwarranted invasion of personal privacy’ means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.”
Personal information has been defined by the courts as information "that is private and confidential." Chicago Tribune v. Board of Education of the City of Chicago, 332 Ill. App. 3d 60 (1st Dist. 2002).
Deliberative Process/Preliminary Documents

Also exempted from disclosure under FOIA are:

“Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body.” 5 ILCS 140/7(1)(f).
Other Statutory Exemptions

In addition to the exemptions previously noted, several existing exemptions have been revised, consolidated or deleted. Statutory exemptions referring to other statutes have been consolidated in section 7.5 (5 ILCS 140/7.5).
Public bodies should always refer to the specific text of the pertinent exemption(s) in determining whether a record, or certain information contained in a record, is exempted from disclosure. A record that contains both exempt information and non-exempt information is not exempt from disclosure. Although the public body may elect to redact the exempt information, it must disclose the nonexempt information.
Commercial Purpose Requests

“’Commercial purpose’ means the use of any part of a public record or records, or information derived from public records, in any form for sale, resale, or solicitation or advertisement for sales or services.” 5 ILCS 140/2(c-10).
Excepted from the definition of “commercial purpose” are “requests made by news media and non-profit, scientific, or academic organizations * * * when the principal purpose of the request is (i) to access and disseminate information concerning news and current or passing events, (ii) for articles of opinion or features of interest to the public, or (iii) for the purpose of academic, scientific, or public research or education.”
The general time periods for compliance with or denial of a request to inspect or copy records do not apply to requests for records made for a commercial purpose. Such requests are subject to section 3.1 of the Act (5 ILCS 140/3.1).
A public body must respond to a request for records to be used for a commercial purpose within 21 working days after receipt. A public body may: provide the records; advise when the records will be furnished and the cost; deny the request if the records are exempted from disclosure; or advise the requestor that the request is unduly burdensome and must be narrowed.
Copying Fees

Subject to the collection of the requisite fee (if applicable), a public body is required to furnish copies of public records to a requestor. The fee for black and white, letter or legal sized copies may not exceed 15 cents per page. No fees may be charged for the first 50 pages of black and white, letter or legal sized copies requested by a requester. If a public body provides copies in color or in a size other than letter or legal, the public body may charge its actual cost for reproducing the records.
Public Act 097-0579, effective August 26, 2011, added the following language applicable to commercial requests:

(f) A public body may charge up to $10 for each hour spent by personnel in searching for and retrieving a requested record. No fees shall be charged for the first 8 hours spent by personnel in searching for or retrieving a requested record. A public body may charge the actual cost of retrieving and transporting public records from an off-site storage facility when the public records are maintained by a third-party storage company under contract with the public body.
If a public body imposes a fee pursuant to this subsection (f), it must provide the requester with an accounting of all fees, costs, and personnel hours in connection with the request for public records. The provisions of this subsection (f) apply only to commercial requests.
Fees for Electronic Copies

If a person requests a copy of a record that is maintained in an electronic format, the public body must furnish it in the electronic format specified by the requester, if feasible. If it is not feasible to furnish the public records in the specified electronic format, then the public body may furnish it in the format in which it is maintained by the public body, or in paper format, at the option of the requester.
A public body may only charge the requester for the actual cost of purchasing the recording medium, whether disc, diskette, tape, or other medium.

Statutory fees applicable to copies of public records when furnished in a paper format shall not be applicable to those records when furnished in an electronic format, unless the General Assembly otherwise provides.
Recurrent Requesters

Public Act 97-0579 also created new guidelines for dealing with persons who submit frequent requests for information to the same public body, or “recurrent requesters.”
The term “recurrent requester” means a person who, in the 12 months immediately preceding the request, has submitted to the same public body (i) a minimum of 50 requests for records, (ii) a minimum of 15 requests for records within a 30-day period, or (iii) a minimum of 7 requests for records within a 7-day period. In general, news media and non-profit, scientific, or academic organizations are excluded from this categorization.
A "request" means a written document (or oral request, if the public body chooses to honor oral requests) that is submitted to a public body via personal delivery, mail, telefax, electronic mail, or other means available to the public body and that identifies the particular public record the requester seeks. One request may identify multiple records to be inspected or copied.
Within 5 business days after receiving a request from a recurrent requester, a public body must notify the requester (i) that the public body is treating the request as a recurrent request, (ii) of the reasons why the public body is treating the request as a recurrent request, and (iii) that the public body will send an initial response within 21 business days after receipt in accordance with subsection 3.2(a) of FOIA. The public body shall also notify the requester of the proposed responses that can be asserted to a recurrent requester.
A public body must respond to a request for records from a recurrent requester within 21 working days after receipt. A public body may: provide the records; advise when the records will be furnished and the cost; deny the request if the records are exempted from disclosure; or advise the requestor that the request is unduly burdensome and must be narrowed.
Unless the records are exempt from disclosure, a public body shall comply with a request from a recurrent requester within a reasonable period considering the size and complexity of the request.
Public Access Counselor

Public Act 96-542 created in the Office of the Attorney General the Office of Public Access Counselor. The primary function of the PAC is to resolve disputes involving potential violations of the Open Meetings Act or the Freedom of Information Act in response to requests for review by an aggrieved party, by mediating or otherwise informally resolving the dispute or by issuing a binding opinion.
The PAC may also issue advisory (non-binding) opinions with respect to the Open Meetings Act and the Freedom of Information Act either in response to a request for review or otherwise, and may respond to informal inquiries made by the public and public bodies.
PAC Procedures

A person whose (non-commercial) request to inspect or copy a public record is denied by a public body may file a request for review with the Public Access Counselor not later than 60 days after the date of the final denial. The request for review must be in writing, signed by the requester, and include (i) a copy of the request for access to records and (ii) any responses from the public body.
A person whose request to inspect or copy a public record was treated by the public body as a request for a commercial purpose under Section 3.1 of FOIA, however, may file a request for review with the Public Access Counselor only for the limited purpose of reviewing whether the public body properly determined that the request was made for a commercial purpose.
Unless the Public Access Counselor extends the time by no more than 21 business days, or decides to address the matter without the issuance of a binding opinion, the Attorney General shall examine the issues and the records, shall make findings of fact and conclusions of law, and shall issue to the requester and the public body an opinion in response to the request for review within 60 days after its receipt. The opinion shall be binding upon both the requester and the public body, subject to judicial review.
Upon receipt of a binding opinion concluding that a violation of FOIA has occurred, the public body is required either to take necessary action immediately to comply with the directive of the opinion, or to initiate judicial review. If the opinion concludes that no violation of the Act has occurred, the requester may initiate judicial review.
A public body that discloses records in accordance with an opinion of the Attorney General is immune from all liabilities by reason thereof and shall not be liable for penalties under FOIA.
A binding opinion issued by the Attorney General is be considered a final decision of an administrative agency, for purposes of judicial review under the Administrative Review Law.
The Attorney General may also issue advisory opinions to public bodies regarding compliance with FOIA.

A review may be initiated upon receipt of a written request from the head of the public body or its attorney, which contains sufficient accurate facts from which a determination can be made.
Judicial Enforcement

Appeals to the head of the public body were eliminated by P.A. 96-542. Accordingly, when a request is denied in whole or in part by a public body, the requester may file an action in circuit court seeking relief.
If a person seeking the right to inspect or receive a copy of a public record substantially prevails in a judicial enforcement proceeding, the court shall award such person reasonable 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.
Additionally, if the court determines that a public body willfully and intentionally failed to comply with FOIA, 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 FOIA.
Conclusion
Contact Information

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