

THE CITIZEN ADVOCACY CENTER'S



Guide to the Illinois Local Records Act

(Issued 1/2018)

Introduction

Increasingly, citizens are aware of their rights to government records granted to them through the Freedom of Information Act. They know that in Illinois, existing records are available to them, but that the state's FOIA does not require any government to create a record to satisfy a FOIA request. What is not as well known is that Illinois law mandates that government bodies maintain and dispose of existing records under a regulated process through the Local Records Commission.

This guide provides detail on the requirements in the Illinois Local Records Act, which help to ensure that existing records of a government body are available for public inspection and copying.

182 N. York St.
Elmhurst, IL 60126

Phone
(630) 833-4080

Fax
(630) 833-4083

E-Mail
cac@citizenadvocacycenter.org

Website
citizenadvocacycenter.org

What is the Illinois Local Records Act?

The Illinois Local Records Act (LRA) is the state's governing statute for public record retention and disposal that applies to all local governments. 50 ILCS 205. In Illinois, no public record, as defined in the LRA, may be disposed of without the approval of the appropriate records commission.

What is a “public record” according to the Local Records Act?

A public record can be any “book, paper, map, photograph, born-digital electronic material, digitized electronic material, electronic material with a combination of digitized and born-digital material, or other official documentary material, regardless of physical form or characteristics, made, produced, executed or received by any agency or officer pursuant to law or in connection with the transaction of public business and preserved or appropriate for preservation by such agency or officer, as any successor thereof, as evidence of the organization, function, policies, decisions, procedures, or other activities thereof, or because of the informational data contained therein.” 50 ILCS 205/3.

What records are covered by the disposal procedures described in the Local Records Act?

But for a few exceptions, “all public records made or received by, or under the authority of, or coming into the custody, control or possession of any officer or agency shall not be mutilated, destroyed, transferred, removed or otherwise damaged or disposed of, in whole or in part, except as provided by law.” 50 ILCS 205/4(a). The statute defines “agency” as “any court, and all parts, boards, departments, bureaus and commissions of any county, municipal corporation or political subdivision.” All local governments are covered by the LRA.

There are limited exceptions to the mandate for record retention. The following items are not public records and can be legally disposed of at any time without permission from the Local Records Commission:

- materials from a library or museum that are made or acquired and preserved solely for reference or exhibitions;
- extra copies of documents that exist only for convenience of reference; and
- stocks of publications and of processed documents.

Finally, paper copies of registration records, as defined in Section 1 of the Library Records Confidentiality Act (75 ILCS 70/1), shall not be considered public records once the information contained in the paper registration records is transferred into a secure electronic format and checked for accuracy. 50 ILCS 205/3.

Which agency regulates under the Local Records Act?

The Illinois Local Records Commission, housed under the Secretary of State's office, is responsible for regulating the preservation and/or destruction of public records.

- Cook County has its own Local Records Commission, which is chaired by the Cook County board president. Other members include the mayor of the county's largest city (Chicago), the Cook County State's attorney, the Cook County Comptroller, the State Archivist, and the State Historian.
- The Local Records Commission for all other public bodies is in Springfield, and it is chaired by the chairman of a county board and comprised of the State Archivist and Historian, as well as the following members to be appointed by the Governor: a mayor/president of a city/village/town, a State's attorney, and a county auditor. 50 ILCS 205/6.

The State Archivist is the Secretary of State. 50 ILCS 205/3.

The Commission issues regulations which are binding on all agencies, including:

- establishing procedures for compiling lists and schedules of public records proposed for disposal;
- procedures for the physical destruction or other disposition of such public records;
- procedures for the management and preservation of electronically generated and maintained records; and
- standards for the reproduction of such public records by photography, microphotographic processes, or digitized electronic format. 50 ILCS 205/7.

Any agency may dispose of the original of any reproduced record, but only if:

- the reproduction process forms a durable medium that accurately and legibly reproduces the original records in all details; and
- the medium does not permit additions, deletions, or changes to the original document image; and
- if electronic, the records are retained in a trustworthy manner so that the records are accessible and usable for reference during the period of time the records must be retained.

Agencies need to apprise their Local Records Commission of disposal of any original document or reproduction of a document. 50 ILCS 205/7.

What is the process for disposing of a public record?

The LRA requires that the head of each agency (the superintendent of a school district, for example) submit to their Local Records Commission an inventory of their records and a proposed retention schedule stating the length of time each records category will be retained. An agency can dispose of records after the minimum retention period for each record category is met, provided:

- no litigation is pending or anticipated,
- all audit requirements have been met, and
- the agency has received an approved Local Records Disposal Certificate from the appropriate Local Records Commission.

The disposal application form, or “Local Records Disposal Certificate,” must be submitted to the appropriate Local Records Commission prior to the destruction of any record, and at least 30 days before the date the agency wishes to dispose of the records. The Local Records Commission determines which public records have no administrative, legal, research, or historical value and should be destroyed or otherwise disposed of, and it will authorize destruction accordingly. 50 ILCS 205/10. See also the Illinois Administrative Code, title. 44, subtitle. C, chapter 1, part 4000 for the detailed regulations governing the management of governmental records. Local Records Disposal Certificates are considered permanent public records and can be accessed through a FOIA request.

The provisions of the Election Code do not supersede the provisions of the LRA with respect to procedures for the disposal of election records. Local election authorities must comply with the provisions of the LRA when destroying public records. 50 ILCS 205/14a.

What is the relationship of LRA to the Freedom of Information Act (FOIA)?

The LRA establishes guidelines for keeping and destroying public records whereas FOIA provides for public access to these records. When the LRA was signed, it specifically stated that the statute was to apply to public inspection of records and reports prepared or received prior to the date of its signing on July 1, 1984. For records received after that date, the statute states that they shall be covered under the provisions of FOIA for public access. 50 ILCS 205/15. Unlike FOIA’s coverage, the LRA has provisions governing court record retention and disposal. 50 ILCS 205/4(a).

How do I obtain a copy of specific public records?

While the Freedom of Information Act governs the procedures for obtaining public records from local governments and state agencies, the LRA requires that reports and records of the obligation, receipt, and use of public funds of local governments must be kept at the site of

the agency and be made available for inspection during regular office hours, although the public body may require 24 hours' notice in writing prior to inspection. 50 ILCS 205/3a. These include certified audits, management letters, and other audit reports made by the Auditor General, County Auditors, other officers, or by licensed Certified Public Accountants permitted to perform audits under the Illinois Public Accounting Act, that have been presented to the governing board of the public body.

The LRA also provides for the availability of arrest records and reports to the news media for inspection and copying no later than 72 hours from the arrest; "news media" is defined as being any newspaper or other periodical issued at regular intervals, whether in print or electronic format. 50 ILCS 205/3b. The following information must be made available:

- identifying information, including name, age, address, and photograph;
- charges relating to the arrest;
- the time and location of the arrest;
- the name of the arresting law enforcement agency; and
- In the case of incarceration, the amount of bail or bond, and the times and dates of incarceration and transfers.

Records may be withheld if it is determined that disclosure would:

- interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency;
- endanger the life or physical safety of law enforcement or correctional personnel or any other person; or
- compromise the security of any correctional facility.

50 ILCS 205/3b(b).

Are there penalties for failing to comply with the Local Records Act?

If a public official alters, destroys, defaces, removes, or conceals any public record, they are subject to prosecution by the state's attorney for a Class 4 felony; however, these acts must be done knowingly and with the intent to defraud any party, public officer, or entity. 50 ILCS 205/4(a)

Specific internet posting requirement:

The LRA was amended in 2014 to require any unit of local government or school district that serves a population of less than 1,000,000, and that maintains an internet website other than a social media/social networking website, to post to its website a mechanism for members of the public to electronically communicate with elected officials of that unit of local government or school district.

About the Citizen Advocacy Center

The Citizen Advocacy Center, a nonpartisan, 501(c)(3), not-for-profit organization, is dedicated to building democracy for the 21st Century by strengthening the public's capacities, resources, and institutions for self government. If you are interested in more information, becoming a volunteer, or making a tax-deductible contribution to the Center, please feel free to contact us at:

182 N. York Rd.

Elmhurst, IL 60126-0420

Phone: (630) 833-4080

Fax: (630) 833-4083

E-Mail: cac@citizenadvocacycenter.org

Website: citizenadvocacycenter.org

©2018. Citizen Advocacy Center. All rights reserved. No part of this brochure may be reproduced in any form or by any means without the prior, written permission of the Citizen Advocacy Center.