

Citizen Advocacy Center

Guide to Illinois' Freedom of Information Act

In 1984, the Illinois General Assembly enacted the Illinois Freedom of Information Act (“the Act”). The Act states that “all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees.” 5 ILCS 140/1. Within specified limitations, the Act declares that it is a fundamental obligation of government to operate openly and to provide requested public records as expediently and efficiently as possible. Access to government information is fundamental to our system of open government and to the rights of citizens to be informed about the actions of public bodies. Anyone (including individuals, groups, associations, corporations, firms, partnerships or organizations) may obtain access to government-held information.

WHAT INFORMATION IS AVAILABLE?

Except for limited circumstances, public records that have been prepared by or for, been or being used by, received by, in the possession of or under the control of any public body are subject to disclosure under the Act. Examples of records available under the Act are: orders, rules, policy statements, planning policies and decisions, reports or studies, public contracts, the names, titles and salaries of public employees, and the voting records of all public bodies. Information can be available in electronic as well as paper format.

WHO IS SUBJECT TO THE ACT?

Only public bodies are subject to the Act. Public bodies include any legislative, executive, administrative or advisory bodies of the State; state universities and colleges; counties and municipalities; school districts and all other municipal corporations, boards, bureaus, committees, or commissions of the State; and any subsidiary bodies (such as committees and subcommittees) that are supported by or expend tax revenue. 5 ILCS 140/2 The judiciary is not subject to this law, but court records and proceedings generally are open to the public. Copley Press, Inc. Administrative Office of Courts, 271 Ill. App. 3d 548.

HOW TO FIND INFORMATION

Every public body must make their existing records available to the public unless there is an exception which allows a withholding of the document. The Act does not require public bodies to answer specific questions but a public body must maintain a list of the types or categories of public records, as well as provide directions for requesting a record and directions, non-technical language, for accessing electronic data. 5 ILCS 140/5

If a requester does not know which public body has the records, an informal, polite telephone call to the public body's Freedom of Information (FOI) officer is a good place to start. Every public body must have a FOI officer who has completed an annual training program. 5 ILCS 140/3.5. The FOI officer is responsible for receiving requests, issuing responses and developing a list of documents or categories of records that the public body shall immediately disclose upon request. 5 ILCS 140/3.5(a).

HOW TO MAKE A REQUEST

- **Put it in writing**

Under the Act, a written request is required and can be delivered personally, via mail or by email. 5 ILCS 140/3 (c). A public body may not demand that a standard form is completed or inquire as to the reason for why information is sought, except when a fee waiver is requested. 5 ILCS 140/3(c).

The requester should keep a copy of request. Also, a request sent by certified mail with a return receipt is an option so that a requester can prove the date on which your request was received. The date a public body receives a request triggers the time limits for a response. A public body may, but is not required, to honor verbal requests.

- **Be specific**

A specific request will avoid confusion and expedite the process. If information on a certain topic is desired, but there are some documents not sought (e.g. newspaper clippings, or records created before or after a certain date), it is proper to request the omission of some records. A preferred format should also be stated (e.g. paper copy or USB memory card)

- **Request a fee waiver or reduction**

The Act gives public bodies the discretion to grant a fee waiver or reduction for a request that is in the public interest. 5 ILCS 140/6(c).

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SAMPLE REQUEST LETTER

Date

(If desired: Certified mail -- return receipt requested)

(Freedom of Information Officer name)

(address of appropriate office of the public body)

Dear *(Freedom of Information Officer)*,

Pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., this is a request for a copy of the following record(s):

(Describe the subject or the documents containing the information that you want)

If any record or portion of a record responsive to this request is contained in a record or portion of a record deemed unresponsive to the request, I would like to inspect the entire document. Under the Freedom of Information Act, all non-exempt portions of any partially-exempt documents must be disclosed.

If any fee in excess of \$___ will be incurred in fulfilling this request, please obtain my approval before the fee is incurred.

[Or, if applicable, request a fee reduction or waiver: I request a waiver of any fees your office would ordinarily impose in responding to a request. I do not seek these records for commercial purposes and I intend to disseminate the information because disclosure is in the public interest in that it _____.]

If any records or portions of records are withheld, please state the exemption on which you rely, the basis on which the exemption is invoked, and the address to which an appeal should be addressed. Thank you for your prompt consideration of my request. If you have any questions, or if I can be of assistance, please contact me at _____.

Sincerely,

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WHAT IT MAY COST

Paper Copies: The first 50 black and white, letter or legal sized pages of a requested document are free of charge. If more than 50 pages are requested public bodies can charge a maximum fee of \$.15 per page. The fee for color copies or copies of irregular size should not exceed the actual cost for copying records. The cost for certification of a record should not be greater than \$1. 5 ILCS 140/6(b).

No Charge for Search Time: A public body may not charge a requester for the time and effort of a search for records. 5 ILCS 140/6(b).

Electronic Records: A public body is required to produce electronic records in the electronic format *specified by the requester, if feasible.* 5 ILCS 140/6(a). The CAC interprets this to include a request for an electronic search for information embedded in an electronic document. If the public body is unable to produce the electronic record in the format requested, the requester has the choice of requesting the records in either the electronic format in which it is maintained, or in paper format. A public body may charge the actual cost of recording the medium, whether for a disc or tape. 5 ILCS 140/6(a).



Fee waiver or reduction

Public bodies may waive or reduce the fees if disclosure is in the public interest. A waiver or reduction may be available if (a) the request is for information on the health, safety and welfare or the legal rights of the general public, (b) there is an intent to disseminate the information, and (c) no personal or commercial benefit will be received from document disclosure. 5 ILCS 140/6(c).

AGENCY RESPONSE

Under the Act, a public body has **five working days** to respond to a written request for information. (5 ILCS 140/3(d).) There are three types of response: disclosure, delay and denial.

Disclosure of Public Records

The public body must disclose all records responsive to a request unless a valid exemption applies. (See: AFSCME v. County of Cook, 136 Ill. 2d 334, construing 5 ILCS 140/1;)

Delay of Production for Public Records

Inform the requestor in writing: When a public body needs more than five working days to respond, the public body must inform the requester in writing, *within the initial five working days*, that:

- additional time is necessary;
- the date on which a response will occur;
- the specific, statutory reason for the delay.

Communication must include documentation for why an extension is required:

When a public body needs more time to respond, an additional five working days for the the following reasons are allowed under the Act:

- the records are stored in a different location;
- the request requires a compilation of a substantial number of specified records;
- an extensive search is required;
- a compilation of the records within five working days is unduly burdensome; and
- consultation for the production of records is necessary.

When an extension is requested and public body fails to respond:

- The request is deemed denied;
- If the public body subsequently produces the records after the extension has expired, a public body *may not charge a fee for copies.*
- If a public body requests an extension and then fails to respond, it can not claim that the request is unduly burdensome.

A Requester and Public Body May Agree on

Extension Deadline. The agreement must be in writing and relieves the public body of having to comply with legal deadlines in the Act.

Denial of Disclosure of Public Records

Must be in writing. A denial must be made in writing and reference a specific legal reason in the Act to justify non-disclosure. A public body has the burden of proving by *clear and convincing evidence* that it is exempt.

A non-response within five days is a denial.

Unduly burdensome requests: For requests that are denied because they are unduly burdensome, the public body must offer the opportunity for the requester to narrow, or revise the request. Repeat requests from the same person for the same records previously denied are considered unduly burdensome.

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Recurrent Requesters: For requests that are denied because the requester is deemed “recurrent,” the public body must demonstrate that in the 12 months immediately preceding the request, the requester has submitted to the same public body either:

- 7 requests in a day period
- 15 requests in a 30 day period
- 50 requests in a 365 day period

One request mailed/ emailed to the public body may include an ask for multiple records to be inspected or copied. Under the FOIA, this is counted as one request.

If the recurrent requester determination is correct, the timeline by which the public body responds to request changes. A public body now has 21 business days after receipt to respond. The response shall (1) estimate the time required by the public body to respond with records requested and an estimate for the fees to be charged, which the public body may require the person to pay in full before copying the requested documents; or (2) the public body may take appropriate exceptions; or (3) it may notify the requester that the request is unduly burdensome and must be reduced in scope.

Members of the news media, non-profit, scientific or academic organizations are not to be considered recurrent requesters.



NON—EXEMPT RECORDS

Contractor Records: These are records that are not in the possession of a public body but are in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body, and directly relate to a governmental function

Records of funds: These are records that relate to the obligation, receipt and use of public funds of the State, units of local government and school districts are public records subject to inspection and copying by the public

Payrolls: Certified payroll records submitted to a public body under the Prevailing Wage Act are public records subject to inspection and copying. 5 ILCS 140/2.10

Arrest reports and criminal history records

Settlement agreements: All settlement agreements entered into by or on behalf of a public body are public records subject to inspection and copying by the public

EXEMPTED INFORMATION

There are more than 40 exemptions within the Act that allows a public body to withhold information from being disclosed to the public. The Act divides the exemptions into two categories: 1) information that is exempt by virtue of the record, and 2) information that is exempt because another state or federal law mandates that the information is exempt.

Under the Act, if non-exempt information is embedded within exempt information, the public body *must* delete (redact) the exempt material and disclose the rest.

Below is an overview of the types of information exempted from public disclosure under the Act:

Private and personal information that could constitute a clearly unwarranted invasion of privacy. The definition of “unwarranted invasion of personal privacy” is “information that, if disclosed, 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.”

Investigative Records in the possession of any public body created during administrative enforcement proceedings and any law enforcement or correctional agency for law enforcement purposes can be withheld if:

- interfere with pending or actually and reasonably contemplated law enforcement proceedings that is the recipient of the request;
- interfere with active administrative enforcement proceedings conducted by the public body that is the recipient of the request;
- create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing;
- unavoidably disclose the identity of a confidential source or information that could only be furnished by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies.

RED FLAG: The identities of witnesses to traffic accidents, traffic accident reports and rescue reports must be disclosed *except* when disclosure would interfere with an active criminal investigation conducted by the agency that is the recipient of the request;

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- disclose unique or specialized investigative techniques or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct, and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request;
- endanger the life or physical safety of law enforcement personnel or any other person or obstruct an ongoing criminal investigation by the agency that is the recipient of the request.

Preliminary drafts, notes, recommendations, memoranda where opinions are expressed, or policies or actions are formulated.

RED FLAG: When a specific record or relevant portion of a record is publicly cited and identified by the head of the public body, the record is public.

Trade secrets and commercial or financial information obtained where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested.

Bid Proposals for any contract, grant or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body. Information prepared by or for the body in preparation of a bid solicitation shall be exempt.;

RED FLAG: Once an award or final selection is made, bid information is accessible.

Educational Records pertaining to test questions, scoring keys and other examination data used to administer an academic examination; information received by a school, college or university under its procedures for the evaluation of faculty members by their academic peers; information concerning a school or university's adjudication of student disciplinary cases, but only to the extent that disclosure would unavoidably reveal the identity of the student; and course materials or research materials used by faculty members.

Architects' plans, engineers' technical submissions, and other construction-related technical documents for projects not constructed or developed in whole or in part with public funds, and the same for projects constructed or developed with public funds, including but not limited to power generating and

distribution stations and other transmission and distribution facilities, water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings, but only to the extent that disclosure would compromise security.

Minutes of closed meetings

Communications between a public body and an attorney or auditor representing the public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

Adjudication of employee grievances or disciplinary cases

RED FLAG: final outcomes of grievances or disciplinary cases are accessible.

Records and documents relating to real estate purchase negotiations, including records, documents, and information regarding a parcel involved in a pending or actually and reasonably contemplated eminent domain proceeding under the Eminent Domain Act.

RED FLAG: Items subject to discovery in litigation are not exempt.

RED FLAG: Once a sale has been terminated or consummated, the information is accessible.

WHAT TO DO WHEN A REQUEST IS DENIED:

1. Appeal to the Public Access Counselor

The PAC has the statutory authority to intervene, settle, and if necessary litigate open records cases on behalf of the public seeking access to public records.

60 days to file a request for review to the PAC.

The complaint must:

- Be in writing;
- Include a copy of the request for public records; and
- Include any response by the public body.

PAC Review Procedures

- If the PAC believes a valid issue of concern is present, within seven working days of receiving the complaint, the PAC will forward a request for record production to the public body.

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- Within seven working days of receiving the request from the PAC, a public body shall provide the PAC with access to records in question. The PAC may issue subpoenas for records as well.
- The public body may also answer the allegations of an improper denial for review in a letter, brief or memorandum, which the PAC will forward to the requester. The requester will then have seven working days to respond and shall provide a copy of the response to the PAC and public body.
- The PAC shall issue a ruling within 60 days of receiving a request for review, unless an extension of time is requested, up to more than 30 business days at most.

The PAC may respond by:

- **Issue a binding ruling mandating that the public body produce the records.** If the public body produces the records, no penalty provisions apply. A public body may appeal the PAC's ruling to the circuit court. If the public body refuses to disclose the information, the PAC may seek judicial enforcement from the circuit court.
- **Issue a non-binding opinion.** The PAC may choose to mediate the dispute or resolve the matter by means other than the issuance of a binding opinion. The decision not to issue a binding opinion shall not be reviewable.
- **Issue an advisory opinion to the public body.** A public body that relies in good faith on an advisory opinion of the PAC is not liable for penalties, so long as the facts upon which the opinion is based have been fully and fairly disclosed to the Public Access Counselor.

Office of the Public Access Counselor
500 S. Second Street
Springfield, IL 62705
(217)524-1503

2. Individual May File Complaint Directly with the Circuit Court where Denial Occurred.

An individual denied access to information may forgo assistance from the PAC and file suit in the circuit court in which the denial was located. The public body has the

burden of proving by *clear and convincing evidence* that the denial of public information was justified.

Penalties to Public Body

Reasonable attorney fees

Civil Fines: If the court determines that a public body willfully and intentionally failed to comply with the Act, or 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.

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The **Citizen Advocacy Center** is an award winning, non-partisan, 501(c)(3) non-profit, free community legal organization, founded in 1994, dedicated to building democracy for the 21st Century by strengthening the public's capacities, resources, and institutions for self-governance.

The Center is open for the public to obtain free civic resource materials, ask questions of our community lawyers on matters of public concern, engage in civic discussion, learn about local issues, attend training workshops, and develop skills for participating in civic affairs.

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.

This brochure contains a general description of the Illinois Freedom of Information Act and suggestions for how to use it effectively. For specific language, consult the Act itself, 5 Illinois Compiled Statutes 140/1 et seq. This Act applies to records that public bodies prepared, used, or controlled after July 1, 1984. For access to earlier records, consult the State Records Act, 5 ILCS 160/1-160/26, or the Local Records Act, 50 ILCS 205/1-205/15. For access to federal records, consult the federal Freedom of Information Act, 5 U.S.C. § 552.

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