



Citizen Advocacy Center's Journalist Guide to the Freedom of Information Act

“A popular government without proper information or the means of acquiring it is but a prologue to a farce or a tragedy – or perhaps both. Knowledge will forever govern ignorance; and the people who mean to be their own governors, must arm themselves with the power which knowledge gives.”
(James Madison, Letter to W. T. Barry, 1822).

The Role of Journalists

Journalists play an essential role in our democracy and in arming members of the public with knowledge to hold their public officials accountable. As a policy, the public is entitled to full and complete information regarding the affairs of government as well as the policies of public officials. (5 ILCS 140/1) Journalists who know what open government laws require of public bodies and how to use and enforce those laws play a crucial role in maintaining a healthy democracy. This publication is meant to help journalists use government information to write effective and accurate stories as they related to government activity.

Public Access to Public Documents

The Illinois FOIA is a state law that says “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 specific limitations, the FOIA allows anyone to inspect and obtain copies of all public records prepared, possessed, used by, or in the control of any public body. This access to government information is fundamental to our system of open government, and journalists play a key role in ensuring that the public is informed about the actions of public bodies on matters of public concern. When covering government stories, the following list of public documents are a good place to start when reporting on government activity.

1) Verify Press Releases

Verifying information distributed by public bodies in a press release is essential to accurate reporting. When provided with a press release or attending a press conference, ask what documentation the public body or official has to substantiate information put forth. If none is provided, make a FOIA request for all information relative contained in the press release or stated at the press conference.

2) Lawsuits filed against a public body.

While public bodies may convene in closed session to discuss litigation matters, most court documents filed in the course of litigation are public records and can be accessed by any individual. Litigation filed against the public body will be accessible at the Clerk’s office in the Circuit Court where the public body is located. Visit the Clerk and ask for how to search for court filings that involve the specific public body as the defendant or plaintiff. Reviewing these documents will provide insight as to major issues affecting the public body that are not discussed in open session.

Example: School District states teacher’s union and district agreed on contract wherein district was extraordinarily generous to teachers, with a 8% salary increase over the course of three years.

Verification: Through a FOI request for the contract, reporter learns that while there is a 8% increase in salary compensation, no contributions to pensions are made by the district and there is a 50% cut in salary for teaching extracurricular activities.

Financial Information

a. Government Budgets

Obtaining government budgets, budget requests submitted department heads and accompany memos, knowing how to read a government budget, and being able to track where and how public bodies spend tax payers dollars are essential skills for journalists. Often times public bodies discuss only the highlights of finances during budget meetings and generally refer to the “budget binder.”

Obtaining a full copy of government budgets and reading them with a critical eye, especially in relation to high profile community issues, can produce solid, well researched stories.

Example: Finding how much a public body really spends on legal bills.

Within municipal budgets there is often a line item expenditure for independent contractors that include attorney fees. However, this is often not the total amount ultimately spent on lawyers.

To find out what the total legal bills are to a municipality, journalists should ask where there are other legal expenditures and look within each category of funds to identify additional line items that reference legal fees. For example, most public bodies have an additional line item within the “Tax Increment Financing” fund for additional legal services.

b. Routine Business Expenses and Reports

By making a FOIA request for routine business expenses, journalists can monitor government activity. The following are unequivocally accessible under the FOIA because they involve the expenditures of public funds.

- *Cell phone bills*
- *Credit card bills*
- *Travel vouchers*
- *Expense records of management*
- *Audit reports*
- *Department Annual Reports*
- *Administrator and staff contracts*
- *Responsive bidding proposals (for projects subject to bidding)*

c. Legal Bills

Reviewing legal bills submitted by attorneys is an excellent manner in which journalists can monitor how public bodies are directing resources. While there is an exemption under the FOIA to protect attorney – client privileged, a public body can not claim exemption entirely.

Public bodies may redact the portions of the billing as it relates to disclosing advice conferred, but not as to services rendered, such as letters written, memo drafted, phone calls, ect.

d. Government Policies

Accessing government policies allows a journalist to monitor government accountability, transparency, and accessibility. The following is a basic list of

policies that any journalist who covers government issues should obtain:

- *Procurement or contracting policies*
- *Ethics ordinance*
- *Email Communication and retention policies*
- *Public Employee Reimbursement Policies*
- *School district athletic codes, student discipline policies and any other student behavior policies*

Example: Procurement Policies. If a controversial contract is being debated or awarded by a public body, making a FOI request for the procurement and ethics policy, in addition to any professional service contracts that have been awarded outside of the competitive bidding process, are outstanding ways to report on how government agencies identify and award contracts.

e. Survey of Government Responsiveness to Requests for Information

While the FOIA is explicit in mandating that public bodies produce public information in a timely and complete manner, public body compliance with the FOIA varies tremendously among public bodies. Journalists who conduct FOIA surveys testing public body compliance will have a wealth of stories to produce. The following are typical surveys:

- *Cost of Information:* The FOIA states that public bodies may only charge for the ‘actual cost of reproduction’ of public documents, however, amounts charged by public bodies varies tremendously. Comparing the amounts charged by public bodies for raises legitimate questions about a public body’s compliance with the law. One public body may charge \$.5 per page whereas another may charge \$1.
- *Timely responsiveness to FOIA requests:* Public bodies are required to respond to FOIA requests within seven working days, however, many public bodies fail to respond within the statutory timeline or decline to respond in any respect.
- *Public disclosure of public employees names and salary figures:* The FOIA specifically states that the public is entitled to know the names and salary amounts of public employees, however, many public bodies inappropriately withhold such information based on privacy reasons.
- *Disclosure of email communications:* Electronic communications among public officials as well as among employees are public records as defined under the FOIA and are therefore subject to public disclosure. Testing compliance among

public bodies as to responsiveness for electronic records is an effective manner in which to determine if government policies are keeping up with daily technological use.

f. *Cross referencing public contractors with campaign contribution databases*

Illinois recently passed legislation to prohibit businesses that have contracts with the state of \$50,000 or more from giving donations to the campaigns of those who supervise or regulate those contacts in an attempt to limit prevalent “pay to play” activity, however, the law does not apply to local government entities.

That being said, Illinois has very solid public disclosure requirements, even for campaigns at the local level. Illinois law mandates that donations over \$500 must be disclosed by the candidate, regardless of the campaign. Contributions for candidates for school board, park board, city council, county board, as well as a host of other local public bodies can be obtained at www.isbe.state.il.us

The Illinois State Board of Elections has an on-line database of campaign contribution disclosure statements filed by candidates that is searchable not only in terms of campaign contributions, but also campaign expenditures. While campaign contributions to public officials who vote on contracts is certainly not evidence of quid pro quo activity, writing stories about how much contractors who obtain business with a public body give to public officials who vote on contracts raises issues of government transparency.

g. *Police Information:* Monitoring police serves a dual purpose: alerting readers to crime trends in their community and keeping a watchful eye on one of the most powerful entities under government control. While information related to on-going investigations, litigation, and privacy may be redacted, disclosable information will help produce interesting and compelling stories. Journalists should be sure to know that public bodies are required to disclose documents even if some portions have to be redacted!

- *Police Reports*
- *Driving Records*
- *Criminal Records*

Procedural Tips & FOIA Request:

- *Making a FOI requests is more of an art than a science.* It is important to have a specific idea of what you are trying to access rather than

embarking on a fishing expedition with a broad request. Public bodies must keep a list of the records normally maintained by the public body. Obtain a copy of the records list to help determine what information is being sought.

- *Know the law* and whether or not you are entitled to the information. If you have any questions, contact a community lawyer at the Citizen Advocacy Center for free assistance.
- *Start with a phone call.* Starting with a conversation with the appropriate person will help identify the actual records sought. It may also lead to the production of records without having to make a FOIA request. Additionally, starting with a phone call will circumvent making multiple requests (and possibly being charged) for information irrelevant to what you are looking for.
- If the verbal request leads to the non-production of documentation, submit a FOI request immediately and keep track of deadlines. Make copies of all documents. If the request is denied, file the appropriate appeal and write a story about the denial of clearly accessible public records.

Specifics for how to access the FOIA

Who is Subject to FOIA?

Only public bodies are subject to the FOIA. 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. The judiciary is not subject to this law, but court records and proceedings generally are open to the public.

How to Find Information

Under the FOIA, every public body must make their existing records available to the public. The FOIA does not require these bodies to answer specific questions, create new records, or keep a central library or index of all government records. Consequently, if you do not know which public body has the records that you seek, an informal, polite telephone call may be the best place to start. Speaking with those public bodies who have the

names or responsibilities related to your topic might help you identify the appropriate body to which you should address your request.

Public bodies must maintain a list of the types or categories of records in their possession along with directions, in non-technical language, for accessing electronic data. They must also provide directions for requesting a record and a directory of the employees assigned to process disclosure requests for that public body. If no one is available to answer your questions over the telephone, the directory should be on display in each administrative or regional office of the body. The list of records should be available to be copied, and can be requested through the mail.

How to Make a Request

Put it in writing

A written request will allow you to take advantage of the time limits and appeal mechanisms provided in the FOIA. Consider sending the request by certified mail and request a return receipt. This will provide documentation for the date on which your request was received, which triggers the time limits for the public body to respond. Also, be sure to check with the public body from which you are seeking information to determine if there are specific requirements for filing a FOIA request. Some public bodies require certain forms to submit a request or require that requests be delivered in person.

Be specific

Your letter must specify the records you want. If you request all records of a broad category, collecting the records might unduly burden the public body, which could justify a delay or refusal to release the records. If you want information on a certain topic, but know there are some kinds of material you do not want (e.g. newspaper clippings, or records created before or after a certain date), you can ask that these be omitted. You should also state your preferred format (e.g. paper copy or diskette). A specific request will avoid confusion and high copying fees.

SAMPLE FOIA REQUEST

Date:

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

(name and title of official)

(address of appropriate office of the public body)

Dear *(name)*,

Pursuant to the Illinois Freedom of Information FOIA, 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 FOIA, 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,

FOIA Alert! Public Bodies are not required to compile records they do not normally maintain.

Issue: Journalist makes a request for cell phone records. Public body states they do not keep the itemized records of calls made, but only the total amount billed.

Question: Does the public body have to produce the document that details the specific calls made?

Response: It depends. If the itemized billing is in the receipt or possession of the public body, the public body must turn over the documents. If the record can be obtain through a simple electronic search for records, the current FOIA law is unclear as to whether or not the public body must turn over the documents. This is an example of the law being out of date with technology.

What It May Cost

Reasonable copying costs

The FOIA allows public bodies to charge reasonable fees to pay for copying costs or for the use of their copying equipment, but they may not charge for the time and effort of a search for records. If an abstract of a driving record is requested, however, additional fees may apply. The list of fees charged by a public body must be available at its administrative or regional office(s). If the fees charged are unreasonable, the courts will consider the public body to have denied you access to the records.

Fee waiver or reduction

Public bodies may waive or reduce the fees if disclosure is in the public interest. You might receive a waiver or reduction if:

- (a) the request is for information on the health, safety and welfare or the legal rights of the general public,
- (b) the requestor plans to disseminate the information, or
- (c) the requestor will not receive a personal or commercial benefit from the disclosure of the documents.

Under law, one does not have to disclose the purpose for which records are sought. However, if a fee waiver or reduction has been requested, disclosure is necessary.

The Agency Response

A public body has seven working days to respond after it receives a written request for information under the FOIA. **There are three types of response: delay, disclosure and denial.**

Delay

A public body may inform you in writing that it requires an additional 7 working days to respond to a request for any of the following reasons:

- the requested materials are stored at other locations;
- the request requires the collection of a substantial number of specified records;
- the request is couched in categorical terms and the response requires an extensive search;

- the requested records have not been located in the course of a routine search and additional efforts are being made to locate them;
- the requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure under the FOIA;
- the public body cannot comply with the request within the time limits without unduly burdening or interfering with the operation of the public body;
- before responding to the request, the public body must consult with other public bodies that have an interest in the records.

Disclosure

The public body must disclose all records responsive to your request unless an exemption provided in the FOIA applies. It is their burden to show that the exemption applies.

Denial

A denial must be made in writing, and must include the names and titles of everyone responsible for the denial. It must also give the reasons for the denial. If no response is received within the time limit, the FOIA request is considered denied. If the request is denied under one or more of the FOIA's exemptions (described below), the letter must specify which exemptions apply. The denial must also include notice of your right to appeal the denial. A body may also deny a request that is burdensome, but must first meet with the requester in an effort to reduce the burden. Repeated requests for the same document are generally considered burdensome.

How to Appeal

If a public body denies access to information requested under the FOIA, you may appeal to the head of the public body. The head of the public body is "the president, mayor, chairman, presiding officer, director, superintendent, manager, supervisor or individual otherwise holding primary executive and administrative authority for the public body, or such person's duly authorized designee." 5 ILCS 140/1.02(a). A letter to the head of the public body specifying which records were withheld and stating why the denial was incorrect will start the appeal process. Within 7 working days, the head of the body must review the appeal letter, the requested record(s), determine whether denial is proper under the FOIA and notify you of the determination.

Additionally, the position of Public Access Counselor has been created by the Illinois Attorney General's Office to respond to FOIA questions. While the Public Access Counselor has no enforcement power, he or she can investigate and issue an advisory opinion requesting that the public body disclose public information. The Public Access Counselor can be reached at:

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

If the head of the public body also denies access, you may go to court for access to the records. To appeal the decision of a State body, you must file a complaint in the circuit court of the county where the public body has its principal office, or in your home county. To appeal the decision of some other public body, you must file in the county of the principal office of the body. These suits will take precedent over other cases and must be heard at the earliest possible date. In court, the burden is on the public body to prove that the material is exempt under the FOIA. The court will review the decision without any deference to the public body's prior decisions. In addition to granting access to the requested records, the court may award court costs and reasonable attorney fees to a party that substantially prevails in a FOIA lawsuit. 5 ILCS 140/11(i). If the body still refuses to disclose the information, they may be held in contempt of court.

SAMPLE APPEAL LETTER

Date

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

(Name and title of the head of public body)

(Address of public body)

Dear *(name)*,

This is an appeal under the Illinois Freedom of Information Act. I am appealing the action of *(name of employee who denied the original request)*, dated "X", in response to my Freedom of Information request dated "X". I am enclosing copies of my request and the response.

My request was for information regarding *(describe original request)*. I was denied access to *(describe documents withheld)* on the grounds that *(give reasons cited by public body)*.

The denial of my request was unjustified under the Freedom of Information Act because *(assert your reasons for appealing)*. As you know, your office has seven working days to respond to this appeal. If you need to contact me, I can be reached at "X".

Sincerely,

The FOIA exempts certain kinds of information from disclosure. If a requested record contains some exempt and some non-exempt information, the FOIA requires that the public body delete the exempt material and disclose the rest.

The types of information exempted from public disclosure under the Freedom of Information FOIA include:

- Information specifically prohibited from disclosure by a federal or State law other than the FOIA. For example, the Appellate Court of Illinois, Second District, has held that an Election Code provision that required the sealing of election records made the release of such information exempt from FOIA. Kibort v. Westrom, 862 N.E.2d 609 (Ill. Ct. App. 2d Dist., 2007).
- Information that would constitute an invasion of personal privacy if it were disclosed, including personal medical information, information revealing the identity of people who file complaints, criminal history not part of a public record, personal financial information, academic or professional examination or evaluation results, library circulation information, information concerning adjudication of student or employee grievance or disciplinary cases, and personal insurance records;
- Information related to public safety and security, including information compiled by any law enforcement or correctional agency for law enforcement purposes, any information that could interfere with pending or actual law enforcement proceedings, information regarding the identity of a confidential source, information relating to the security of correctional facilities, user guides or employee manuals that would jeopardize an informational system or its data, vulnerability and security assessment plans or policies designed to respond to potential attacks, plans of architects and engineers when the plans would jeopardize security, and maps or other records regarding the location or security of utilities.

- Information regarding employment and disciplinary actions of a public body, including employee personnel files, job applicant information, and collective negotiating information (though the final contract is accessible).
- Information involving negotiations for the purchase of real property, which is exempt until the sale is completed;
- Information that could be considered valuable intellectual property of an individual or public body including trade secrets, valuable formulae, computer geographic systems, designs, drawings and research data created by any public body that could be expected to produce private gain or public loss, and course or research materials used by university faculty members; and
- Information that is protected by the attorney client privilege, including communications between a public body and its attorney regarding current or anticipated litigation, or materials prepared or compiled for internal audits or at the request of an advising attorney.

To view the exhaustive list of information specifically exempted from disclosure under the FOIA or to determine if the specific information you are seeking could be exempt from disclosure, see 5 ILCS 140/7 or contact the Citizen Advocacy Center for free legal assistance.

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 - 140/11. 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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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:

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