



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1216

Introduced 2/6/2019, by Sen. Thomas Cullerton

SYNOPSIS AS INTRODUCED:

5 ILCS 140/1.2

5 ILCS 140/11

from Ch. 116, par. 211

Amends the Freedom of Information Act. Provides that a public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that release of the record would harm an interest protected by the asserted exemption. Removes the requirement that, before imposing specified civil penalties, the court find that a public body willfully and intentionally failed to comply with the Act or otherwise acted in bad faith. Provides that in assessing the civil penalty, the court shall consider in aggravation or mitigation, among other factors, whether the public body acted in bad faith and the extent to which the public body delayed the resolution of the request or lawsuit. Provides that, under specified circumstances, the court shall (rather than may) impose an additional penalty of up to \$1,000 for each day the violation continues.

LRB101 06259 HEP 51285 b

1 AN ACT concerning government.

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

4 Section 5. The Freedom of Information Act is amended by
5 changing Sections 1.2 and 11 as follows:

6 (5 ILCS 140/1.2)

7 Sec. 1.2. Presumption. All records in the custody or
8 possession of a public body are presumed to be open to
9 inspection or copying. Any public body that asserts that a
10 record is exempt from disclosure has the burden of proving by
11 clear and convincing evidence that it is exempt and that
12 release of the record would harm an interest protected by the
13 asserted exemption.

14 (Source: P.A. 96-542, eff. 1-1-10.)

15 (5 ILCS 140/11) (from Ch. 116, par. 211)

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

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

22 (b) Where the denial is from a public body of the State,

1 suit may be filed in the circuit court for the county where the
2 public body has its principal office or where the person denied
3 access resides.

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

8 (d) The circuit court shall have the jurisdiction to enjoin
9 the public body from withholding public records and to order
10 the production of any public records improperly withheld from
11 the person seeking access. If the public body can show that
12 exceptional circumstances exist, and that the body is
13 exercising due diligence in responding to the request, the
14 court may retain jurisdiction and allow the agency additional
15 time to complete its review of the records.

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

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

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

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

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

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

20 (i) If a person seeking the right to inspect or receive a
21 copy of a public record prevails in a proceeding under this
22 Section, the court shall award such person reasonable
23 attorney's fees and costs. In determining what amount of
24 attorney's fees is reasonable, the court shall consider the
25 degree to which the relief obtained relates to the relief
26 sought. The changes contained in this subsection apply to an

1 action filed on or after January 1, 2010 (the effective date of
2 Public Act 96-542).

3 (j) If the court determines that a public body ~~willfully~~
4 ~~and intentionally~~ failed to comply with this Act, ~~or otherwise~~
5 ~~acted in bad faith~~, the court shall also impose upon the public
6 body a civil penalty of not less than \$2,500 nor more than
7 \$5,000 for each occurrence. In assessing the civil penalty, the
8 court shall consider in aggravation or mitigation the budget of
9 the public body, ~~and~~ whether the public body has previously
10 been assessed penalties for violations of this Act, whether the
11 public body acted in bad faith, and the extent to which the
12 public body delayed the resolution of the request or lawsuit.
13 The court shall ~~may~~ impose an additional penalty of up to
14 \$1,000 for each day the violation continues if:

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

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

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

21 The changes contained in this subsection made by Public Act
22 96-542 apply to an action filed on or after January 1, 2010
23 (the effective date of Public Act 96-542).

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

1 Assembly.

2 (Source: P.A. 99-586, eff. 1-1-17; 99-642, eff. 7-28-16.)