



## 102ND GENERAL ASSEMBLY

### State of Illinois

### 2021 and 2022

### HB3624

Introduced 2/22/2021, by Rep. Blaine Wilhour

#### SYNOPSIS AS INTRODUCED:

5 ILCS 140/2	from Ch. 116, par. 202
5 ILCS 140/7	from Ch. 116, par. 207
5 ILCS 140/9	from Ch. 116, par. 209
5 ILCS 140/9.5	
5 ILCS 140/11	from Ch. 116, par. 211

Amends the Freedom of Information Act. Changes the definition of "recurrent requester" to exclude requests made by members of the General Assembly and requests made to access and disseminate information pertaining to public policy and the administration of State government. Exempts from disclosure under the Act certain records in which opinions of a public body or its agents are expressed. Provides that the exemption does not apply if the records were produced in connection with the preparation of a report that is required to be publicly produced by an agency of the executive branch. Provides that the public body shall include with each denial of a request for public records an index that includes specified information. Provides that except in the case of a recurrent requester, a public body denying a request for public records shall place in an interest-bearing escrow account or other segregated account of the public body the sum of \$7,500 for each request denied. Provides that the deposited funds shall remain in the account for a period of 60 days after the date of the public body's final denial of a request, or, if a requester has sought review of the denial or challenged the denial in court, until the review process has been completed or a final order has been entered. Provides that if a determination is made that the public body improperly denied a request to inspect or copy a public record, the deposited funds shall be awarded to the requester in addition to or as part of any other award. Makes other changes.

LRB102 10989 HEP 16321 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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 2, 7, 9, 9.5, and 11 as follows:

6 (5 ILCS 140/2) (from Ch. 116, par. 202)

7 Sec. 2. Definitions. As used in this Act:

8 (a) "Public body" means all legislative, executive,  
9 administrative, or advisory bodies of the State, state  
10 universities and colleges, counties, townships, cities,  
11 villages, incorporated towns, school districts and all other  
12 municipal corporations, boards, bureaus, committees, or  
13 commissions of this State, any subsidiary bodies of any of the  
14 foregoing including but not limited to committees and  
15 subcommittees thereof, and a School Finance Authority created  
16 under Article 1E of the School Code. "Public body" does not  
17 include a child death review team or the Illinois Child Death  
18 Review Teams Executive Council established under the Child  
19 Death Review Team Act, or a regional youth advisory board or  
20 the Statewide Youth Advisory Board established under the  
21 Department of Children and Family Services Statewide Youth  
22 Advisory Board Act.

23 (b) "Person" means any individual, corporation,

1 partnership, firm, organization or association, acting  
2 individually or as a group.

3 (c) "Public records" means all records, reports, forms,  
4 writings, letters, memoranda, books, papers, maps,  
5 photographs, microfilms, cards, tapes, recordings, electronic  
6 data processing records, electronic communications, recorded  
7 information and all other documentary materials pertaining to  
8 the transaction of public business, regardless of physical  
9 form or characteristics, having been prepared by or for, or  
10 having been or being used by, received by, in the possession  
11 of, or under the control of any public body.

12 (c-5) "Private information" means unique identifiers,  
13 including a person's social security number, driver's license  
14 number, employee identification number, biometric identifiers,  
15 personal financial information, passwords or other access  
16 codes, medical records, home or personal telephone numbers,  
17 and personal email addresses. Private information also  
18 includes home address and personal license plates, except as  
19 otherwise provided by law or when compiled without possibility  
20 of attribution to any person.

21 (c-10) "Commercial purpose" means the use of any part of a  
22 public record or records, or information derived from public  
23 records, in any form for sale, resale, or solicitation or  
24 advertisement for sales or services. For purposes of this  
25 definition, requests made by news media and non-profit,  
26 scientific, or academic organizations shall not be considered

1 to be made for a "commercial purpose" when the principal  
2 purpose of the request is (i) to access and disseminate  
3 information concerning news and current or passing events,  
4 (ii) for articles of opinion or features of interest to the  
5 public, or (iii) for the purpose of academic, scientific, or  
6 public research or education.

7 (d) "Copying" means the reproduction of any public record  
8 by means of any photographic, electronic, mechanical or other  
9 process, device or means now known or hereafter developed and  
10 available to the public body.

11 (e) "Head of the public body" means the president, mayor,  
12 chairman, presiding officer, director, superintendent,  
13 manager, supervisor or individual otherwise holding primary  
14 executive and administrative authority for the public body, or  
15 such person's duly authorized designee.

16 (f) "News media" means a newspaper or other periodical  
17 issued at regular intervals whether in print or electronic  
18 format, a news service whether in print or electronic format,  
19 a radio station, a television station, a television network, a  
20 community antenna television service, or a person or  
21 corporation engaged in making news reels or other motion  
22 picture news for public showing.

23 (g) "Recurrent requester", as used in Section 3.2 of this  
24 Act, means a person that, in the 12 months immediately  
25 preceding the request, has submitted to the same public body  
26 (i) a minimum of 50 requests for records, (ii) a minimum of 15

1 requests for records within a 30-day period, or (iii) a  
2 minimum of 7 requests for records within a 7-day period. For  
3 purposes of this definition, requests made by news media, ~~and~~  
4 non-profit, scientific, or academic organizations, and members  
5 of the General Assembly shall not be considered in calculating  
6 the number of requests made in the time periods in this  
7 definition when the principal purpose of the requests is (i)  
8 to access and disseminate information concerning news and  
9 current or passing events, (ii) for articles of opinion or  
10 features of interest to the public, ~~or~~ (iii) for the purpose of  
11 academic, scientific, or public research or education, or (iv)  
12 to access and disseminate information pertaining to public  
13 policy and the administration of State government.

14 For the purposes of this subsection (g), "request" means a  
15 written document (or oral request, if the public body chooses  
16 to honor oral requests) that is submitted to a public body via  
17 personal delivery, mail, telefax, electronic mail, or other  
18 means available to the public body and that identifies the  
19 particular public record the requester seeks. One request may  
20 identify multiple records to be inspected or copied.

21 (h) "Voluminous request" means a request that: (i)  
22 includes more than 5 individual requests for more than 5  
23 different categories of records or a combination of individual  
24 requests that total requests for more than 5 different  
25 categories of records in a period of 20 business days; or (ii)  
26 requires the compilation of more than 500 letter or

1 legal-sized pages of public records unless a single requested  
2 record exceeds 500 pages. "Single requested record" may  
3 include, but is not limited to, one report, form, e-mail,  
4 letter, memorandum, book, map, microfilm, tape, or recording.

5 "Voluminous request" does not include a request made by  
6 news media and non-profit, scientific, or academic  
7 organizations if the principal purpose of the request is: (1)  
8 to access and disseminate information concerning news and  
9 current or passing events; (2) for articles of opinion or  
10 features of interest to the public; or (3) for the purpose of  
11 academic, scientific, or public research or education.

12 For the purposes of this subsection (h), "request" means a  
13 written document, or oral request, if the public body chooses  
14 to honor oral requests, that is submitted to a public body via  
15 personal delivery, mail, telefax, electronic mail, or other  
16 means available to the public body and that identifies the  
17 particular public record or records the requester seeks. One  
18 request may identify multiple individual records to be  
19 inspected or copied.

20 (i) "Severance agreement" means a mutual agreement between  
21 any public body and its employee for the employee's  
22 resignation in exchange for payment by the public body.

23 (Source: P.A. 98-806, eff. 1-1-15; 98-1129, eff. 12-3-14;  
24 99-78, eff. 7-20-15; 99-478, eff. 6-1-16.)

25 (5 ILCS 140/7) (from Ch. 116, par. 207)

1           Sec. 7. Exemptions.

2           (1) When a request is made to inspect or copy a public  
3 record that contains information that is exempt from  
4 disclosure under this Section, but also contains information  
5 that is not exempt from disclosure, the public body may elect  
6 to redact the information that is exempt. The public body  
7 shall make the remaining information available for inspection  
8 and copying. Subject to this requirement, the following shall  
9 be exempt from inspection and copying:

10           (a) Information specifically prohibited from  
11 disclosure by federal or State law or rules and  
12 regulations implementing federal or State law.

13           (b) Private information, unless disclosure is required  
14 by another provision of this Act, a State or federal law or  
15 a court order.

16           (b-5) Files, documents, and other data or databases  
17 maintained by one or more law enforcement agencies and  
18 specifically designed to provide information to one or  
19 more law enforcement agencies regarding the physical or  
20 mental status of one or more individual subjects.

21           (c) Personal information contained within public  
22 records, the disclosure of which would constitute a  
23 clearly unwarranted invasion of personal privacy, unless  
24 the disclosure is consented to in writing by the  
25 individual subjects of the information. "Unwarranted  
26 invasion of personal privacy" means the disclosure of

1 information that is highly personal or objectionable to a  
2 reasonable person and in which the subject's right to  
3 privacy outweighs any legitimate public interest in  
4 obtaining the information. The disclosure of information  
5 that bears on the public duties of public employees and  
6 officials shall not be considered an invasion of personal  
7 privacy.

8 (d) Records in the possession of any public body  
9 created in the course of administrative enforcement  
10 proceedings, and any law enforcement or correctional  
11 agency for law enforcement purposes, but only to the  
12 extent that disclosure would:

13 (i) interfere with pending or actually and  
14 reasonably contemplated law enforcement proceedings  
15 conducted by any law enforcement or correctional  
16 agency that is the recipient of the request;

17 (ii) interfere with active administrative  
18 enforcement proceedings conducted by the public body  
19 that is the recipient of the request;

20 (iii) create a substantial likelihood that a  
21 person will be deprived of a fair trial or an impartial  
22 hearing;

23 (iv) unavoidably disclose the identity of a  
24 confidential source, confidential information  
25 furnished only by the confidential source, or persons  
26 who file complaints with or provide information to



1 administrative, investigative, law enforcement, or  
2 penal agencies; except that the identities of  
3 witnesses to traffic accidents, traffic accident  
4 reports, and rescue reports shall be provided by  
5 agencies of local government, except when disclosure  
6 would interfere with an active criminal investigation  
7 conducted by the agency that is the recipient of the  
8 request;

9 (v) disclose unique or specialized investigative  
10 techniques other than those generally used and known  
11 or disclose internal documents of correctional  
12 agencies related to detection, observation or  
13 investigation of incidents of crime or misconduct, and  
14 disclosure would result in demonstrable harm to the  
15 agency or public body that is the recipient of the  
16 request;

17 (vi) endanger the life or physical safety of law  
18 enforcement personnel or any other person; or

19 (vii) obstruct an ongoing criminal investigation  
20 by the agency that is the recipient of the request.

21 (d-5) A law enforcement record created for law  
22 enforcement purposes and contained in a shared electronic  
23 record management system if the law enforcement agency  
24 that is the recipient of the request did not create the  
25 record, did not participate in or have a role in any of the  
26 events which are the subject of the record, and only has

1 access to the record through the shared electronic record  
2 management system.

3 (e) Records that relate to or affect the security of  
4 correctional institutions and detention facilities.

5 (e-5) Records requested by persons committed to the  
6 Department of Corrections, Department of Human Services  
7 Division of Mental Health, or a county jail if those  
8 materials are available in the library of the correctional  
9 institution or facility or jail where the inmate is  
10 confined.

11 (e-6) Records requested by persons committed to the  
12 Department of Corrections, Department of Human Services  
13 Division of Mental Health, or a county jail if those  
14 materials include records from staff members' personnel  
15 files, staff rosters, or other staffing assignment  
16 information.

17 (e-7) Records requested by persons committed to the  
18 Department of Corrections or Department of Human Services  
19 Division of Mental Health if those materials are available  
20 through an administrative request to the Department of  
21 Corrections or Department of Human Services Division of  
22 Mental Health.

23 (e-8) Records requested by a person committed to the  
24 Department of Corrections, Department of Human Services  
25 Division of Mental Health, or a county jail, the  
26 disclosure of which would result in the risk of harm to any

1 person or the risk of an escape from a jail or correctional  
2 institution or facility.

3 (e-9) Records requested by a person in a county jail  
4 or committed to the Department of Corrections or  
5 Department of Human Services Division of Mental Health,  
6 containing personal information pertaining to the person's  
7 victim or the victim's family, including, but not limited  
8 to, a victim's home address, home telephone number, work  
9 or school address, work telephone number, social security  
10 number, or any other identifying information, except as  
11 may be relevant to a requester's current or potential case  
12 or claim.

13 (e-10) Law enforcement records of other persons  
14 requested by a person committed to the Department of  
15 Corrections, Department of Human Services Division of  
16 Mental Health, or a county jail, including, but not  
17 limited to, arrest and booking records, mug shots, and  
18 crime scene photographs, except as these records may be  
19 relevant to the requester's current or potential case or  
20 claim.

21 (f) Preliminary drafts, notes, recommendations,  
22 memoranda and other records in which opinions of the  
23 public body or its agents are expressed, or policies or  
24 actions are formulated, except that a specific record or  
25 relevant portion of a record shall not be exempt when the  
26 record is publicly cited and identified by the head of the

1 public body. The exemption provided in this paragraph (f)  
2 extends to all those records of officers and agencies of  
3 the General Assembly that pertain to the preparation of  
4 legislative documents. The exemption provided in this  
5 paragraph (f) does not apply to preliminary drafts, notes,  
6 recommendations, memoranda, and other records in which  
7 opinions are expressed if the records were produced in  
8 connection with the preparation of a report that is  
9 required to be publicly produced by an agency of the  
10 executive branch.

11 (g) Trade secrets and commercial or financial  
12 information obtained from a person or business where the  
13 trade secrets or commercial or financial information are  
14 furnished under a claim that they are proprietary,  
15 privileged, or confidential, and that disclosure of the  
16 trade secrets or commercial or financial information would  
17 cause competitive harm to the person or business, and only  
18 insofar as the claim directly applies to the records  
19 requested.

20 The information included under this exemption includes  
21 all trade secrets and commercial or financial information  
22 obtained by a public body, including a public pension  
23 fund, from a private equity fund or a privately held  
24 company within the investment portfolio of a private  
25 equity fund as a result of either investing or evaluating  
26 a potential investment of public funds in a private equity

1 fund. The exemption contained in this item does not apply  
2 to the aggregate financial performance information of a  
3 private equity fund, nor to the identity of the fund's  
4 managers or general partners. The exemption contained in  
5 this item does not apply to the identity of a privately  
6 held company within the investment portfolio of a private  
7 equity fund, unless the disclosure of the identity of a  
8 privately held company may cause competitive harm.

9 Nothing contained in this paragraph (g) shall be  
10 construed to prevent a person or business from consenting  
11 to disclosure.

12 (h) Proposals and bids for any contract, grant, or  
13 agreement, including information which if it were  
14 disclosed would frustrate procurement or give an advantage  
15 to any person proposing to enter into a contractor  
16 agreement with the body, until an award or final selection  
17 is made. Information prepared by or for the body in  
18 preparation of a bid solicitation shall be exempt until an  
19 award or final selection is made.

20 (i) Valuable formulae, computer geographic systems,  
21 designs, drawings and research data obtained or produced  
22 by any public body when disclosure could reasonably be  
23 expected to produce private gain or public loss. The  
24 exemption for "computer geographic systems" provided in  
25 this paragraph (i) does not extend to requests made by  
26 news media as defined in Section 2 of this Act when the

1 requested information is not otherwise exempt and the only  
2 purpose of the request is to access and disseminate  
3 information regarding the health, safety, welfare, or  
4 legal rights of the general public.

5 (j) The following information pertaining to  
6 educational matters:

7 (i) test questions, scoring keys and other  
8 examination data used to administer an academic  
9 examination;

10 (ii) information received by a primary or  
11 secondary school, college, or university under its  
12 procedures for the evaluation of faculty members by  
13 their academic peers;

14 (iii) information concerning a school or  
15 university's adjudication of student disciplinary  
16 cases, but only to the extent that disclosure would  
17 unavoidably reveal the identity of the student; and

18 (iv) course materials or research materials used  
19 by faculty members.

20 (k) Architects' plans, engineers' technical  
21 submissions, and other construction related technical  
22 documents for projects not constructed or developed in  
23 whole or in part with public funds and the same for  
24 projects constructed or developed with public funds,  
25 including, but not limited to, power generating and  
26 distribution stations and other transmission and

1 distribution facilities, water treatment facilities,  
2 airport facilities, sport stadiums, convention centers,  
3 and all government owned, operated, or occupied buildings,  
4 but only to the extent that disclosure would compromise  
5 security.

6 (l) Minutes of meetings of public bodies closed to the  
7 public as provided in the Open Meetings Act until the  
8 public body makes the minutes available to the public  
9 under Section 2.06 of the Open Meetings Act.

10 (m) Communications between a public body and an  
11 attorney or auditor representing the public body that  
12 would not be subject to discovery in litigation, and  
13 materials prepared or compiled by or for a public body in  
14 anticipation of a criminal, civil, or administrative  
15 proceeding upon the request of an attorney advising the  
16 public body, and materials prepared or compiled with  
17 respect to internal audits of public bodies.

18 (n) Records relating to a public body's adjudication  
19 of employee grievances or disciplinary cases; however,  
20 this exemption shall not extend to the final outcome of  
21 cases in which discipline is imposed.

22 (o) Administrative or technical information associated  
23 with automated data processing operations, including, but  
24 not limited to, software, operating protocols, computer  
25 program abstracts, file layouts, source listings, object  
26 modules, load modules, user guides, documentation

1       pertaining to all logical and physical design of  
2       computerized systems, employee manuals, and any other  
3       information that, if disclosed, would jeopardize the  
4       security of the system or its data or the security of  
5       materials exempt under this Section.

6       (p) Records relating to collective negotiating matters  
7       between public bodies and their employees or  
8       representatives, except that any final contract or  
9       agreement shall be subject to inspection and copying.

10       (q) Test questions, scoring keys, and other  
11       examination data used to determine the qualifications of  
12       an applicant for a license or employment.

13       (r) The records, documents, and information relating  
14       to real estate purchase negotiations until those  
15       negotiations have been completed or otherwise terminated.  
16       With regard to a parcel involved in a pending or actually  
17       and reasonably contemplated eminent domain proceeding  
18       under the Eminent Domain Act, records, documents, and  
19       information relating to that parcel shall be exempt except  
20       as may be allowed under discovery rules adopted by the  
21       Illinois Supreme Court. The records, documents, and  
22       information relating to a real estate sale shall be exempt  
23       until a sale is consummated.

24       (s) Any and all proprietary information and records  
25       related to the operation of an intergovernmental risk  
26       management association or self-insurance pool or jointly



1 self-administered health and accident cooperative or pool.  
2 Insurance or self insurance (including any  
3 intergovernmental risk management association or self  
4 insurance pool) claims, loss or risk management  
5 information, records, data, advice or communications.

6 (t) Information contained in or related to  
7 examination, operating, or condition reports prepared by,  
8 on behalf of, or for the use of a public body responsible  
9 for the regulation or supervision of financial  
10 institutions, insurance companies, or pharmacy benefit  
11 managers, unless disclosure is otherwise required by State  
12 law.

13 (u) Information that would disclose or might lead to  
14 the disclosure of secret or confidential information,  
15 codes, algorithms, programs, or private keys intended to  
16 be used to create electronic or digital signatures under  
17 the Electronic Commerce Security Act.

18 (v) Vulnerability assessments, security measures, and  
19 response policies or plans that are designed to identify,  
20 prevent, or respond to potential attacks upon a  
21 community's population or systems, facilities, or  
22 installations, the destruction or contamination of which  
23 would constitute a clear and present danger to the health  
24 or safety of the community, but only to the extent that  
25 disclosure could reasonably be expected to jeopardize the  
26 effectiveness of the measures or the safety of the

1 personnel who implement them or the public. Information  
2 exempt under this item may include such things as details  
3 pertaining to the mobilization or deployment of personnel  
4 or equipment, to the operation of communication systems or  
5 protocols, or to tactical operations.

6 (w) (Blank).

7 (x) Maps and other records regarding the location or  
8 security of generation, transmission, distribution,  
9 storage, gathering, treatment, or switching facilities  
10 owned by a utility, by a power generator, or by the  
11 Illinois Power Agency.

12 (y) Information contained in or related to proposals,  
13 bids, or negotiations related to electric power  
14 procurement under Section 1-75 of the Illinois Power  
15 Agency Act and Section 16-111.5 of the Public Utilities  
16 Act that is determined to be confidential and proprietary  
17 by the Illinois Power Agency or by the Illinois Commerce  
18 Commission.

19 (z) Information about students exempted from  
20 disclosure under Sections 10-20.38 or 34-18.29 of the  
21 School Code, and information about undergraduate students  
22 enrolled at an institution of higher education exempted  
23 from disclosure under Section 25 of the Illinois Credit  
24 Card Marketing Act of 2009.

25 (aa) Information the disclosure of which is exempted  
26 under the Viatical Settlements Act of 2009.

1 (bb) Records and information provided to a mortality  
2 review team and records maintained by a mortality review  
3 team appointed under the Department of Juvenile Justice  
4 Mortality Review Team Act.

5 (cc) Information regarding interments, entombments, or  
6 inurnments of human remains that are submitted to the  
7 Cemetery Oversight Database under the Cemetery Care Act or  
8 the Cemetery Oversight Act, whichever is applicable.

9 (dd) Correspondence and records (i) that may not be  
10 disclosed under Section 11-9 of the Illinois Public Aid  
11 Code or (ii) that pertain to appeals under Section 11-8 of  
12 the Illinois Public Aid Code.

13 (ee) The names, addresses, or other personal  
14 information of persons who are minors and are also  
15 participants and registrants in programs of park  
16 districts, forest preserve districts, conservation  
17 districts, recreation agencies, and special recreation  
18 associations.

19 (ff) The names, addresses, or other personal  
20 information of participants and registrants in programs of  
21 park districts, forest preserve districts, conservation  
22 districts, recreation agencies, and special recreation  
23 associations where such programs are targeted primarily to  
24 minors.

25 (gg) Confidential information described in Section  
26 1-100 of the Illinois Independent Tax Tribunal Act of

1 2012.

2 (hh) The report submitted to the State Board of  
3 Education by the School Security and Standards Task Force  
4 under item (8) of subsection (d) of Section 2-3.160 of the  
5 School Code and any information contained in that report.

6 (ii) Records requested by persons committed to or  
7 detained by the Department of Human Services under the  
8 Sexually Violent Persons Commitment Act or committed to  
9 the Department of Corrections under the Sexually Dangerous  
10 Persons Act if those materials: (i) are available in the  
11 library of the facility where the individual is confined;  
12 (ii) include records from staff members' personnel files,  
13 staff rosters, or other staffing assignment information;  
14 or (iii) are available through an administrative request  
15 to the Department of Human Services or the Department of  
16 Corrections.

17 (jj) Confidential information described in Section  
18 5-535 of the Civil Administrative Code of Illinois.

19 (kk) The public body's credit card numbers, debit card  
20 numbers, bank account numbers, Federal Employer  
21 Identification Number, security code numbers, passwords,  
22 and similar account information, the disclosure of which  
23 could result in identity theft or impression or defrauding  
24 of a governmental entity or a person.

25 (ll) ~~(kk)~~ Records concerning the work of the threat  
26 assessment team of a school district.

1           (1.5) Any information exempt from disclosure under the  
2 Judicial Privacy Act shall be redacted from public records  
3 prior to disclosure under this Act.

4           (2) A public record that is not in the possession of a  
5 public body but is in the possession of a party with whom the  
6 agency has contracted to perform a governmental function on  
7 behalf of the public body, and that directly relates to the  
8 governmental function and is not otherwise exempt under this  
9 Act, shall be considered a public record of the public body,  
10 for purposes of this Act.

11           (3) This Section does not authorize withholding of  
12 information or limit the availability of records to the  
13 public, except as stated in this Section or otherwise provided  
14 in this Act.

15           (Source: P.A. 100-26, eff. 8-4-17; 100-201, eff. 8-18-17;  
16 100-732, eff. 8-3-18; 101-434, eff. 1-1-20; 101-452, eff.  
17 1-1-20; 101-455, eff. 8-23-19; revised 9-27-19.)

18           (5 ILCS 140/9) (from Ch. 116, par. 209)

19           Sec. 9. (a) Each public body denying a request for public  
20 records shall notify the requester in writing of the decision  
21 to deny the request, the reasons for the denial, including a  
22 detailed factual basis for the application of any exemption  
23 claimed, and the names and titles or positions of each person  
24 responsible for the denial. Each notice of denial by a public  
25 body shall also inform such person of the right to review by

1 the Public Access Counselor and provide the address and phone  
2 number for the Public Access Counselor. Each notice of denial  
3 shall inform such person of his right to judicial review under  
4 Section 11 of this Act.

5 (b) When a request for public records is denied on the  
6 grounds that the records are exempt under Section 7 of this  
7 Act, the notice of denial shall specify the exemption claimed  
8 to authorize the denial and the specific reasons for the  
9 denial, including a detailed factual basis and a citation to  
10 supporting legal authority. Copies of all notices of denial  
11 shall be retained by each public body in a single central  
12 office file that is open to the public and indexed according to  
13 the type of exemption asserted and, to the extent feasible,  
14 according to the types of records requested.

15 (c) Any person making a request for public records shall  
16 be deemed to have exhausted his or her administrative remedies  
17 with respect to that request if the public body fails to act  
18 within the time periods provided in Section 3 of this Act.

19 (d) The public body shall include with each denial of a  
20 request for public records an index that includes:

21 (i) a description of the nature of the contents of  
22 each document withheld, or each deletion from a released  
23 document;

24 (ii) the date on which each document withheld was  
25 created;

26 (iii) each author and recipient of each document

1 withheld;

2 (iv) a statement of the exemption or exemptions  
3 claimed for each withheld document or each deletion in a  
4 released document.

5 (e) A public body denying a request for public records  
6 shall place in an interest-bearing escrow account or other  
7 segregated account of the public body the sum of \$7,500 for  
8 each request denied. The deposited funds shall remain in the  
9 account for a period of 60 days after the date of the public  
10 body's final denial of a request, or, if a requester has sought  
11 review under Section 9.5 of this Act or filed an action under  
12 Section 11 of this Act, until the review process has been  
13 completed or a final order has been entered. If a  
14 determination is made that the public body improperly denied a  
15 request to inspect or copy a public record, the deposited  
16 funds shall be awarded to the requester in addition to or as  
17 part of any other award. This paragraph (e) does not apply to  
18 requests made by a recurrent requester.

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

20 (5 ILCS 140/9.5)

21 Sec. 9.5. Public Access Counselor; opinions.

22 (a) A person whose request to inspect or copy a public  
23 record is denied by a public body, except the General Assembly  
24 and committees, commissions, and agencies thereof, may file a  
25 request for review with the Public Access Counselor

1 established in the Office of the Attorney General not later  
2 than 60 days after the date of the final denial. The request  
3 for review must be in writing, signed by the requester, and  
4 include (i) a copy of the request for access to records and  
5 (ii) any responses from the public body.

6 (b) A person whose request to inspect or copy a public  
7 record is made for a commercial purpose as defined in  
8 subsection (c-10) of Section 2 of this Act may not file a  
9 request for review with the Public Access Counselor. A person  
10 whose request to inspect or copy a public record was treated by  
11 the public body as a request for a commercial purpose under  
12 Section 3.1 of this Act may file a request for review with the  
13 Public Access Counselor for the limited purpose of reviewing  
14 whether the public body properly determined that the request  
15 was made for a commercial purpose.

16 (b-5) A person whose request to inspect or copy a public  
17 record was treated by a public body, except the General  
18 Assembly and committees, commissions, and agencies thereof, as  
19 a voluminous request under Section 3.6 of this Act may file a  
20 request for review with the Public Access Counselor for the  
21 purpose of reviewing whether the public body properly  
22 determined that the request was a voluminous request.

23 (c) Upon receipt of a request for review, the Public  
24 Access Counselor shall determine whether further action is  
25 warranted. If the Public Access Counselor determines that the  
26 alleged violation is unfounded, he or she shall so advise the



1 requester and the public body and no further action shall be  
2 undertaken. In all other cases, the Public Access Counselor  
3 shall forward a copy of the request for review to the public  
4 body within 7 business days after receipt and shall specify  
5 the records or other documents that the public body shall  
6 furnish to facilitate the review. Within 7 business days after  
7 receipt of the request for review, the public body shall  
8 provide copies of records requested and shall otherwise fully  
9 cooperate with the Public Access Counselor. If a public body  
10 fails to furnish specified records pursuant to this Section,  
11 or if otherwise necessary, the Attorney General may issue a  
12 subpoena to any person or public body having knowledge of or  
13 records pertaining to a request for review of a denial of  
14 access to records under the Act. To the extent that records or  
15 documents produced by a public body contain information that  
16 is claimed to be exempt from disclosure under Section 7 of this  
17 Act, the Public Access Counselor shall not further disclose  
18 that information.

19 (d) Within 7 business days after it receives a copy of a  
20 request for review and request for production of records from  
21 the Public Access Counselor, the public body may, but is not  
22 required to, answer the allegations of the request for review.  
23 The answer may take the form of a letter, brief, or memorandum.  
24 The Public Access Counselor shall forward a copy of the answer  
25 to the person submitting the request for review, with any  
26 alleged confidential information to which the request pertains

1 redacted from the copy. The requester may, but is not required  
2 to, respond in writing to the answer within 7 business days and  
3 shall provide a copy of the response to the public body.

4 (e) In addition to the request for review, and the answer  
5 and the response thereto, if any, a requester or a public body  
6 may furnish affidavits or records concerning any matter  
7 germane to the review.

8 (f) Unless the Public Access Counselor extends the time by  
9 no more than 30 business days by sending written notice to the  
10 requester and the public body that includes a statement of the  
11 reasons for the extension in the notice, or decides to address  
12 the matter without the issuance of a binding opinion, the  
13 Attorney General shall examine the issues and the records,  
14 shall make findings of fact and conclusions of law, and shall  
15 issue to the requester and the public body an opinion in  
16 response to the request for review within 60 days after its  
17 receipt. The opinion shall be binding upon both the requester  
18 and the public body, subject to administrative review under  
19 Section 11.5.

20 In responding to any request under this Section 9.5, the  
21 Attorney General may exercise his or her discretion and choose  
22 to resolve a request for review by mediation or by a means  
23 other than the issuance of a binding opinion. The decision not  
24 to issue a binding opinion shall not be reviewable.

25 Upon receipt of a binding opinion concluding that a  
26 violation of this Act has occurred, the public body shall

1 either take necessary action immediately to comply with the  
2 directive of the opinion or shall initiate administrative  
3 review under Section 11.5. If the opinion concludes that no  
4 violation of the Act has occurred, the requester may initiate  
5 administrative review under Section 11.5.

6 Except as provided in subsection (e) of Section 9 of this  
7 Act, a ~~A~~ public body that discloses records in accordance with  
8 an opinion of the Attorney General is immune from all  
9 liabilities by reason thereof and shall not be liable for  
10 penalties under this Act.

11 (g) If the requester files suit under Section 11 with  
12 respect to the same denial that is the subject of a pending  
13 request for review, the requester shall notify the Public  
14 Access Counselor, and the Public Access Counselor shall take  
15 no further action with respect to the request for review and  
16 shall so notify the public body.

17 (h) The Attorney General may also issue advisory opinions  
18 to public bodies regarding compliance with this Act. A review  
19 may be initiated upon receipt of a written request from the  
20 head of the public body or its attorney, which shall contain  
21 sufficient accurate facts from which a determination can be  
22 made. The Public Access Counselor may request additional  
23 information from the public body in order to assist in the  
24 review. A public body that relies in good faith on an advisory  
25 opinion of the Attorney General in responding to a request is  
26 not liable for penalties under this Act, so long as the facts

1 upon which the opinion is based have been fully and fairly  
2 disclosed to the Public Access Counselor.

3 (Source: P.A. 97-579, eff. 8-26-11; 98-1129, eff. 12-3-14.)

4 (5 ILCS 140/11) (from Ch. 116, par. 211)

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

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

11 (b) Where the denial is from a public body of the State,  
12 suit may be filed in the circuit court for the county where the  
13 public body has its principal office or where the person  
14 denied access resides.

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

19 (d) The circuit court shall have the jurisdiction to  
20 enjoin the public body from withholding public records and to  
21 order the production of any public records improperly withheld  
22 from the person seeking access. If the public body can show  
23 that exceptional circumstances exist, and that the body is  
24 exercising due diligence in responding to the request, the  
25 court may retain jurisdiction and allow the agency additional

1 time to complete its review of the records.

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

6 (i) A description of the nature or contents of each  
7 document withheld, or each deletion from a released  
8 document, provided, however, that the public body shall  
9 not be required to disclose the information which it  
10 asserts is exempt; and

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

13 (f) In any action considered by the court, the court shall  
14 consider the matter de novo, and shall conduct such in camera  
15 examination of the requested records as it finds appropriate  
16 to determine if such records or any part thereof may be  
17 withheld under any provision of this Act. The burden shall be  
18 on the public body to establish that its refusal to permit  
19 public inspection or copying is in accordance with the  
20 provisions of this Act. Any public body that asserts that a  
21 record is exempt from disclosure has the burden of proving  
22 that it is exempt by clear and convincing evidence.

23 (g) In the event of noncompliance with an order of the  
24 court to disclose, the court may enforce its order against any  
25 public official or employee so ordered or primarily  
26 responsible for such noncompliance through the court's

1 contempt powers.

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

7 (i) If a person seeking the right to inspect or receive a  
8 copy of a public record prevails in a proceeding under this  
9 Section, the court shall award such person reasonable  
10 attorney's fees and costs. In determining what amount of  
11 attorney's fees is reasonable, the court shall consider the  
12 degree to which the relief obtained relates to the relief  
13 sought. The changes contained in this subsection apply to an  
14 action filed on or after January 1, 2010 (the effective date of  
15 Public Act 96-542).

16 (j) In accordance with the presumption set forth in  
17 Section 1.2 of this Act and good faith compliance with the Act,  
18 if ~~if~~ the court determines that a public body willfully and  
19 intentionally failed to comply with this Act, or otherwise  
20 acted in bad faith, the court shall also impose upon the public  
21 body a civil penalty of not less than \$2,500 nor more than  
22 \$5,000 for each occurrence. In assessing the civil penalty,  
23 the court shall consider in aggravation or mitigation the  
24 budget of the public body and whether the public body has  
25 previously been assessed penalties for violations of this Act.  
26 The court may impose an additional penalty of up to \$1,000 for

1 each day the violation continues if:

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

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

5 (3) the court does not grant the public body  
6 additional time to comply with the court's order to  
7 disclose public records.

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

11 (k) The changes to this Section made by this amendatory  
12 Act of the 99th General Assembly apply to actions filed on or  
13 after the effective date of this amendatory Act of the 99th  
14 General Assembly.

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