



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

**HB2444**

Introduced 2/15/2023, by Rep. Daniel Didech

#### SYNOPSIS AS INTRODUCED:

5 ILCS 140/9.5

Amends the Freedom of Information Act. Deletes language providing that, to the extent that records or documents produced by a public body contain information that is claimed to be exempt from disclosure, the Public Access Counselor shall not further disclose that information. Provides instead that records or documents obtained by the Public Access Counselor from a public body for the purpose of addressing a request for review may not be disclosed to the public, including the requester, by the Public Access Counselor. Provides that such records, while in the possession of the Public Access Counselor, are exempt under the Act from disclosure by the Public Access Counselor.

LRB103 29778 AWJ 56185 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 Section 9.5 as follows:

6 (5 ILCS 140/9.5)

7 Sec. 9.5. Public Access Counselor; opinions.

8 (a) A person whose request to inspect or copy a public  
9 record is denied by a public body, except the General Assembly  
10 and committees, commissions, and agencies thereof, may file a  
11 request for review with the Public Access Counselor  
12 established in the Office of the Attorney General not later  
13 than 60 days after the date of the final denial. The request  
14 for review must be in writing, signed by the requester, and  
15 include (i) a copy of the request for access to records and  
16 (ii) any responses from the public body.

17 (b) A person whose request to inspect or copy a public  
18 record is made for a commercial purpose as defined in  
19 subsection (c-10) of Section 2 of this Act may not file a  
20 request for review with the Public Access Counselor. A person  
21 whose request to inspect or copy a public record was treated by  
22 the public body as a request for a commercial purpose under  
23 Section 3.1 of this Act may file a request for review with the

1 Public Access Counselor for the limited purpose of reviewing  
2 whether the public body properly determined that the request  
3 was made for a commercial purpose.

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

11 (c) Upon receipt of a request for review, the Public  
12 Access Counselor shall determine whether further action is  
13 warranted. If the Public Access Counselor determines that the  
14 alleged violation is unfounded, he or she shall so advise the  
15 requester and the public body and no further action shall be  
16 undertaken. In all other cases, the Public Access Counselor  
17 shall forward a copy of the request for review to the public  
18 body within 7 business days after receipt and shall specify  
19 the records or other documents that the public body shall  
20 furnish to facilitate the review. Within 7 business days after  
21 receipt of the request for review, the public body shall  
22 provide copies of records requested and shall otherwise fully  
23 cooperate with the Public Access Counselor. If a public body  
24 fails to furnish specified records pursuant to this Section,  
25 or if otherwise necessary, the Attorney General may issue a  
26 subpoena to any person or public body having knowledge of or

1 records pertaining to a request for review of a denial of  
2 access to records under the Act. Records or documents obtained  
3 by the Public Access Counselor from a public body for the  
4 purpose of addressing a request for review under this Section  
5 may not be disclosed to the public, including the requester,  
6 by the Public Access Counselor. These records, while in the  
7 possession of the Public Access Counselor, are exempt under  
8 this Act from disclosure by the Public Access Counselor. ~~To~~  
9 ~~the extent that records or documents produced by a public body~~  
10 ~~contain information that is claimed to be exempt from~~  
11 ~~disclosure under Section 7 of this Act, the Public Access~~  
12 ~~Counselor shall not further disclose that information.~~

13 (d) Within 7 business days after it receives a copy of a  
14 request for review and request for production of records from  
15 the Public Access Counselor, the public body may, but is not  
16 required to, answer the allegations of the request for review.  
17 The answer may take the form of a letter, brief, or memorandum.  
18 The Public Access Counselor shall forward a copy of the answer  
19 to the person submitting the request for review, with any  
20 alleged confidential information to which the request pertains  
21 redacted from the copy. The requester may, but is not required  
22 to, respond in writing to the answer within 7 business days and  
23 shall provide a copy of the response to the public body.

24 (e) In addition to the request for review, and the answer  
25 and the response thereto, if any, a requester or a public body  
26 may furnish affidavits or records concerning any matter

1 germane to the review.

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

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

19 Upon receipt of a binding opinion concluding that a  
20 violation of this Act has occurred, the public body shall  
21 either take necessary action immediately to comply with the  
22 directive of the opinion or shall initiate administrative  
23 review under Section 11.5. If the opinion concludes that no  
24 violation of the Act has occurred, the requester may initiate  
25 administrative review under Section 11.5.

26 A public body that discloses records in accordance with an

1 opinion of the Attorney General is immune from all liabilities  
2 by reason thereof and shall not be liable for penalties under  
3 this Act.

4 (g) If the requester files suit under Section 11 with  
5 respect to the same denial that is the subject of a pending  
6 request for review, the requester shall notify the Public  
7 Access Counselor, and the Public Access Counselor shall take  
8 no further action with respect to the request for review and  
9 shall so notify the public body.

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

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