



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

SB3613

Introduced 2/9/2024, by Sen. Robert F. Martwick

#### SYNOPSIS AS INTRODUCED:

5 ILCS 140/2  
5 ILCS 140/7  
5 ILCS 140/9.5

from Ch. 116, par. 202

Amends the Freedom of Information Act. Provides that, for purposes of the Act, "public body" includes the judicial branch and components of the judicial branch of the State. Exempts records that pertain to the preparation of judicial opinions and orders. Excludes denials of requests of records from the judicial branch or components of the judicial branch from the jurisdiction of the Public Access Counselor.

LRB103 39195 AWJ 69342 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 2, 7, and 9.5 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 judicial branch, components of the judicial branch,  
10 administrative, or advisory bodies of the State, state  
11 universities and colleges, counties, townships, cities,  
12 villages, incorporated towns, school districts and all other  
13 municipal corporations, boards, bureaus, committees, or  
14 commissions of this State, any subsidiary bodies of any of the  
15 foregoing including but not limited to committees and  
16 subcommittees thereof, and a School Finance Authority created  
17 under Article 1E of the School Code. "Public body" does not  
18 include a child death review team or the Illinois Child Death  
19 Review Teams Executive Council established under the Child  
20 Death Review Team Act, or a regional youth advisory board or  
21 the Statewide Youth Advisory Board established under the  
22 Department of Children and Family Services Statewide Youth  
23 Advisory Board Act.

1 (b) "Person" means any individual, corporation,  
2 partnership, firm, organization or association, acting  
3 individually or as a group.

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

13 (c-5) "Private information" means unique identifiers,  
14 including a person's social security number, driver's license  
15 number, employee identification number, biometric identifiers,  
16 personal financial information, passwords or other access  
17 codes, medical records, home or personal telephone numbers,  
18 and personal email addresses. Private information also  
19 includes home address and personal license plates, except as  
20 otherwise provided by law or when compiled without possibility  
21 of attribution to any person. For a public body that is a  
22 HIPAA-covered entity, "private information" includes  
23 electronic medical records and all information, including  
24 demographic information, contained within or extracted from an  
25 electronic medical records system operated or maintained by  
26 the public body in compliance with State and federal medical

1 privacy laws and regulations, including, but not limited to,  
2 the Health Insurance Portability and Accountability Act and  
3 its regulations, 45 CFR Parts 160 and 164. As used in this  
4 subsection, "HIPAA-covered entity" has the meaning given to  
5 the term "covered entity" in 45 CFR 160.103.

6 (c-10) "Commercial purpose" means the use of any part of a  
7 public record or records, or information derived from public  
8 records, in any form for sale, resale, or solicitation or  
9 advertisement for sales or services. For purposes of this  
10 definition, requests made by news media and non-profit,  
11 scientific, or academic organizations shall not be considered  
12 to be made for a "commercial purpose" when the principal  
13 purpose of the request is (i) to access and disseminate  
14 information concerning news and current or passing events,  
15 (ii) for articles of opinion or features of interest to the  
16 public, or (iii) for the purpose of academic, scientific, or  
17 public research or education.

18 (d) "Copying" means the reproduction of any public record  
19 by means of any photographic, electronic, mechanical or other  
20 process, device or means now known or hereafter developed and  
21 available to the public body.

22 (e) "Head of the public body" means the president, mayor,  
23 chairman, presiding officer, director, superintendent,  
24 manager, supervisor or individual otherwise holding primary  
25 executive and administrative authority for the public body, or  
26 such person's duly authorized designee.

1 (f) "News media" means a newspaper or other periodical  
2 issued at regular intervals whether in print or electronic  
3 format, a news service whether in print or electronic format,  
4 a radio station, a television station, a television network, a  
5 community antenna television service, or a person or  
6 corporation engaged in making news reels or other motion  
7 picture news for public showing.

8 (g) "Recurrent requester", as used in Section 3.2 of this  
9 Act, means a person that, in the 12 months immediately  
10 preceding the request, has submitted to the same public body  
11 (i) a minimum of 50 requests for records, (ii) a minimum of 15  
12 requests for records within a 30-day period, or (iii) a  
13 minimum of 7 requests for records within a 7-day period. For  
14 purposes of this definition, requests made by news media and  
15 non-profit, scientific, or academic organizations shall not be  
16 considered in calculating the number of requests made in the  
17 time periods in this definition when the principal purpose of  
18 the requests is (i) to access and disseminate information  
19 concerning news and current or passing events, (ii) for  
20 articles of opinion or features of interest to the public, or  
21 (iii) for the purpose of academic, scientific, or public  
22 research or education.

23 For the purposes of this subsection (g), "request" means a  
24 written document (or oral request, if the public body chooses  
25 to honor oral requests) that is submitted to a public body via  
26 personal delivery, mail, telefax, electronic mail, or other

1 means available to the public body and that identifies the  
2 particular public record the requester seeks. One request may  
3 identify multiple records to be inspected or copied.

4 (h) "Voluminous request" means a request that: (i)  
5 includes more than 5 individual requests for more than 5  
6 different categories of records or a combination of individual  
7 requests that total requests for more than 5 different  
8 categories of records in a period of 20 business days; or (ii)  
9 requires the compilation of more than 500 letter or  
10 legal-sized pages of public records unless a single requested  
11 record exceeds 500 pages. "Single requested record" may  
12 include, but is not limited to, one report, form, e-mail,  
13 letter, memorandum, book, map, microfilm, tape, or recording.

14 "Voluminous request" does not include a request made by  
15 news media and non-profit, scientific, or academic  
16 organizations if the principal purpose of the request is: (1)  
17 to access and disseminate information concerning news and  
18 current or passing events; (2) for articles of opinion or  
19 features of interest to the public; or (3) for the purpose of  
20 academic, scientific, or public research or education.

21 For the purposes of this subsection (h), "request" means a  
22 written document, or oral request, if the public body chooses  
23 to honor oral requests, that is submitted to a public body via  
24 personal delivery, mail, telefax, electronic mail, or other  
25 means available to the public body and that identifies the  
26 particular public record or records the requester seeks. One

1 request may identify multiple individual records to be  
2 inspected or copied.

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

6 (Source: P.A. 103-554, eff. 1-1-24.)

7 (5 ILCS 140/7)

8 Sec. 7. Exemptions.

9 (1) When a request is made to inspect or copy a public  
10 record that contains information that is exempt from  
11 disclosure under this Section, but also contains information  
12 that is not exempt from disclosure, the public body may elect  
13 to redact the information that is exempt. The public body  
14 shall make the remaining information available for inspection  
15 and copying. Subject to this requirement, the following shall  
16 be exempt from inspection and copying:

17 (a) Information specifically prohibited from  
18 disclosure by federal or State law or rules and  
19 regulations implementing federal or State law.

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

23 (b-5) Files, documents, and other data or databases  
24 maintained by one or more law enforcement agencies and  
25 specifically designed to provide information to one or

1 more law enforcement agencies regarding the physical or  
2 mental status of one or more individual subjects.

3 (c) Personal information contained within public  
4 records, the disclosure of which would constitute a  
5 clearly unwarranted invasion of personal privacy, unless  
6 the disclosure is consented to in writing by the  
7 individual subjects of the information. "Unwarranted  
8 invasion of personal privacy" means the disclosure of  
9 information that is highly personal or objectionable to a  
10 reasonable person and in which the subject's right to  
11 privacy outweighs any legitimate public interest in  
12 obtaining the information. The disclosure of information  
13 that bears on the public duties of public employees and  
14 officials shall not be considered an invasion of personal  
15 privacy.

16 (d) Records in the possession of any public body  
17 created in the course of administrative enforcement  
18 proceedings, and any law enforcement or correctional  
19 agency for law enforcement purposes, but only to the  
20 extent that disclosure would:

21 (i) interfere with pending or actually and  
22 reasonably contemplated law enforcement proceedings  
23 conducted by any law enforcement or correctional  
24 agency that is the recipient of the request;

25 (ii) interfere with active administrative  
26 enforcement proceedings conducted by the public body



1           that is the recipient of the request;

2           (iii) create a substantial likelihood that a  
3 person will be deprived of a fair trial or an impartial  
4 hearing;

5           (iv) unavoidably disclose the identity of a  
6 confidential source, confidential information  
7 furnished only by the confidential source, or persons  
8 who file complaints with or provide information to  
9 administrative, investigative, law enforcement, or  
10 penal agencies; except that the identities of  
11 witnesses to traffic crashes, traffic crash reports,  
12 and rescue reports shall be provided by agencies of  
13 local government, except when disclosure would  
14 interfere with an active criminal investigation  
15 conducted by the agency that is the recipient of the  
16 request;

17           (v) disclose unique or specialized investigative  
18 techniques other than those generally used and known  
19 or disclose internal documents of correctional  
20 agencies related to detection, observation, or  
21 investigation of incidents of crime or misconduct, and  
22 disclosure would result in demonstrable harm to the  
23 agency or public body that is the recipient of the  
24 request;

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

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

3           (d-5) A law enforcement record created for law  
4           enforcement purposes and contained in a shared electronic  
5           record management system if the law enforcement agency  
6           that is the recipient of the request did not create the  
7           record, did not participate in or have a role in any of the  
8           events which are the subject of the record, and only has  
9           access to the record through the shared electronic record  
10          management system.

11          (d-6) Records contained in the Officer Professional  
12          Conduct Database under Section 9.2 of the Illinois Police  
13          Training Act, except to the extent authorized under that  
14          Section. This includes the documents supplied to the  
15          Illinois Law Enforcement Training Standards Board from the  
16          Illinois State Police and Illinois State Police Merit  
17          Board.

18          (d-7) Information gathered or records created from the  
19          use of automatic license plate readers in connection with  
20          Section 2-130 of the Illinois Vehicle Code.

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

23          (e-5) Records requested by persons committed to the  
24          Department of Corrections, Department of Human Services  
25          Division of Mental Health, or a county jail if those  
26          materials are available in the library of the correctional

1 institution or facility or jail where the inmate is  
2 confined.

3 (e-6) Records requested by persons committed to the  
4 Department of Corrections, Department of Human Services  
5 Division of Mental Health, or a county jail if those  
6 materials include records from staff members' personnel  
7 files, staff rosters, or other staffing assignment  
8 information.

9 (e-7) Records requested by persons committed to the  
10 Department of Corrections or Department of Human Services  
11 Division of Mental Health if those materials are available  
12 through an administrative request to the Department of  
13 Corrections or Department of Human Services Division of  
14 Mental Health.

15 (e-8) Records requested by a person committed to the  
16 Department of Corrections, Department of Human Services  
17 Division of Mental Health, or a county jail, the  
18 disclosure of which would result in the risk of harm to any  
19 person or the risk of an escape from a jail or correctional  
20 institution or facility.

21 (e-9) Records requested by a person in a county jail  
22 or committed to the Department of Corrections or  
23 Department of Human Services Division of Mental Health,  
24 containing personal information pertaining to the person's  
25 victim or the victim's family, including, but not limited  
26 to, a victim's home address, home telephone number, work

1 or school address, work telephone number, social security  
2 number, or any other identifying information, except as  
3 may be relevant to a requester's current or potential case  
4 or claim.

5 (e-10) Law enforcement records of other persons  
6 requested by a person committed to the Department of  
7 Corrections, Department of Human Services Division of  
8 Mental Health, or a county jail, including, but not  
9 limited to, arrest and booking records, mug shots, and  
10 crime scene photographs, except as these records may be  
11 relevant to the requester's current or potential case or  
12 claim.

13 (f) Preliminary drafts, notes, recommendations,  
14 memoranda, and other records in which opinions are  
15 expressed, or policies or actions are formulated, except  
16 that a specific record or relevant portion of a record  
17 shall not be exempt when the record is publicly cited and  
18 identified by the head of the public body. The exemption  
19 provided in this paragraph (f) extends to all those  
20 records of officers and agencies of the General Assembly  
21 that pertain to the preparation of legislative documents  
22 and to all those records that pertain to the preparation  
23 of judicial opinions and orders.

24 (g) Trade secrets and commercial or financial  
25 information obtained from a person or business where the  
26 trade secrets or commercial or financial information are

1 furnished under a claim that they are proprietary,  
2 privileged, or confidential, and that disclosure of the  
3 trade secrets or commercial or financial information would  
4 cause competitive harm to the person or business, and only  
5 insofar as the claim directly applies to the records  
6 requested.

7 The information included under this exemption includes  
8 all trade secrets and commercial or financial information  
9 obtained by a public body, including a public pension  
10 fund, from a private equity fund or a privately held  
11 company within the investment portfolio of a private  
12 equity fund as a result of either investing or evaluating  
13 a potential investment of public funds in a private equity  
14 fund. The exemption contained in this item does not apply  
15 to the aggregate financial performance information of a  
16 private equity fund, nor to the identity of the fund's  
17 managers or general partners. The exemption contained in  
18 this item does not apply to the identity of a privately  
19 held company within the investment portfolio of a private  
20 equity fund, unless the disclosure of the identity of a  
21 privately held company may cause competitive harm.

22 Nothing contained in this paragraph (g) shall be  
23 construed to prevent a person or business from consenting  
24 to disclosure.

25 (h) Proposals and bids for any contract, grant, or  
26 agreement, including information which if it were

1 disclosed would frustrate procurement or give an advantage  
2 to any person proposing to enter into a contractor  
3 agreement with the body, until an award or final selection  
4 is made. Information prepared by or for the body in  
5 preparation of a bid solicitation shall be exempt until an  
6 award or final selection is made.

7 (i) Valuable formulae, computer geographic systems,  
8 designs, drawings, and research data obtained or produced  
9 by any public body when disclosure could reasonably be  
10 expected to produce private gain or public loss. The  
11 exemption for "computer geographic systems" provided in  
12 this paragraph (i) does not extend to requests made by  
13 news media as defined in Section 2 of this Act when the  
14 requested information is not otherwise exempt and the only  
15 purpose of the request is to access and disseminate  
16 information regarding the health, safety, welfare, or  
17 legal rights of the general public.

18 (j) The following information pertaining to  
19 educational matters:

20 (i) test questions, scoring keys, and other  
21 examination data used to administer an academic  
22 examination;

23 (ii) information received by a primary or  
24 secondary school, college, or university under its  
25 procedures for the evaluation of faculty members by  
26 their academic peers;

1 (iii) information concerning a school or  
2 university's adjudication of student disciplinary  
3 cases, but only to the extent that disclosure would  
4 unavoidably reveal the identity of the student; and

5 (iv) course materials or research materials used  
6 by faculty members.

7 (k) Architects' plans, engineers' technical  
8 submissions, and other construction related technical  
9 documents for projects not constructed or developed in  
10 whole or in part with public funds and the same for  
11 projects constructed or developed with public funds,  
12 including, but not limited to, power generating and  
13 distribution stations and other transmission and  
14 distribution facilities, water treatment facilities,  
15 airport facilities, sport stadiums, convention centers,  
16 and all government owned, operated, or occupied buildings,  
17 but only to the extent that disclosure would compromise  
18 security.

19 (l) Minutes of meetings of public bodies closed to the  
20 public as provided in the Open Meetings Act until the  
21 public body makes the minutes available to the public  
22 under Section 2.06 of the Open Meetings Act.

23 (m) Communications between a public body and an  
24 attorney or auditor representing the public body that  
25 would not be subject to discovery in litigation, and  
26 materials prepared or compiled by or for a public body in

1 anticipation of a criminal, civil, or administrative  
2 proceeding upon the request of an attorney advising the  
3 public body, and materials prepared or compiled with  
4 respect to internal audits of public bodies.

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

9 (o) Administrative or technical information associated  
10 with automated data processing operations, including, but  
11 not limited to, software, operating protocols, computer  
12 program abstracts, file layouts, source listings, object  
13 modules, load modules, user guides, documentation  
14 pertaining to all logical and physical design of  
15 computerized systems, employee manuals, and any other  
16 information that, if disclosed, would jeopardize the  
17 security of the system or its data or the security of  
18 materials exempt under this Section.

19 (p) Records relating to collective negotiating matters  
20 between public bodies and their employees or  
21 representatives, except that any final contract or  
22 agreement shall be subject to inspection and copying.

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

26 (r) The records, documents, and information relating



1 to real estate purchase negotiations until those  
2 negotiations have been completed or otherwise terminated.  
3 With regard to a parcel involved in a pending or actually  
4 and reasonably contemplated eminent domain proceeding  
5 under the Eminent Domain Act, records, documents, and  
6 information relating to that parcel shall be exempt except  
7 as may be allowed under discovery rules adopted by the  
8 Illinois Supreme Court. The records, documents, and  
9 information relating to a real estate sale shall be exempt  
10 until a sale is consummated.

11 (s) Any and all proprietary information and records  
12 related to the operation of an intergovernmental risk  
13 management association or self-insurance pool or jointly  
14 self-administered health and accident cooperative or pool.  
15 Insurance or self-insurance (including any  
16 intergovernmental risk management association or  
17 self-insurance pool) claims, loss or risk management  
18 information, records, data, advice, or communications.

19 (t) Information contained in or related to  
20 examination, operating, or condition reports prepared by,  
21 on behalf of, or for the use of a public body responsible  
22 for the regulation or supervision of financial  
23 institutions, insurance companies, or pharmacy benefit  
24 managers, unless disclosure is otherwise required by State  
25 law.

26 (u) Information that would disclose or might lead to

1 the disclosure of secret or confidential information,  
2 codes, algorithms, programs, or private keys intended to  
3 be used to create electronic signatures under the Uniform  
4 Electronic Transactions Act.

5 (v) Vulnerability assessments, security measures, and  
6 response policies or plans that are designed to identify,  
7 prevent, or respond to potential attacks upon a  
8 community's population or systems, facilities, or  
9 installations, but only to the extent that disclosure  
10 could reasonably be expected to expose the vulnerability  
11 or jeopardize the effectiveness of the measures, policies,  
12 or plans, or the safety of the personnel who implement  
13 them or the public. Information exempt under this item may  
14 include such things as details pertaining to the  
15 mobilization or deployment of personnel or equipment, to  
16 the operation of communication systems or protocols, to  
17 cybersecurity vulnerabilities, or to tactical operations.

18 (w) (Blank).

19 (x) Maps and other records regarding the location or  
20 security of generation, transmission, distribution,  
21 storage, gathering, treatment, or switching facilities  
22 owned by a utility, by a power generator, or by the  
23 Illinois Power Agency.

24 (y) Information contained in or related to proposals,  
25 bids, or negotiations related to electric power  
26 procurement under Section 1-75 of the Illinois Power

1 Agency Act and Section 16-111.5 of the Public Utilities  
2 Act that is determined to be confidential and proprietary  
3 by the Illinois Power Agency or by the Illinois Commerce  
4 Commission.

5 (z) Information about students exempted from  
6 disclosure under Section 10-20.38 or 34-18.29 of the  
7 School Code, and information about undergraduate students  
8 enrolled at an institution of higher education exempted  
9 from disclosure under Section 25 of the Illinois Credit  
10 Card Marketing Act of 2009.

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

13 (bb) Records and information provided to a mortality  
14 review team and records maintained by a mortality review  
15 team appointed under the Department of Juvenile Justice  
16 Mortality Review Team Act.

17 (cc) Information regarding interments, entombments, or  
18 inurnments of human remains that are submitted to the  
19 Cemetery Oversight Database under the Cemetery Care Act or  
20 the Cemetery Oversight Act, whichever is applicable.

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

25 (ee) The names, addresses, or other personal  
26 information of persons who are minors and are also

1 participants and registrants in programs of park  
2 districts, forest preserve districts, conservation  
3 districts, recreation agencies, and special recreation  
4 associations.

5 (ff) The names, addresses, or other personal  
6 information of participants and registrants in programs of  
7 park districts, forest preserve districts, conservation  
8 districts, recreation agencies, and special recreation  
9 associations where such programs are targeted primarily to  
10 minors.

11 (gg) Confidential information described in Section  
12 1-100 of the Illinois Independent Tax Tribunal Act of  
13 2012.

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

18 (ii) Records requested by persons committed to or  
19 detained by the Department of Human Services under the  
20 Sexually Violent Persons Commitment Act or committed to  
21 the Department of Corrections under the Sexually Dangerous  
22 Persons Act if those materials: (i) are available in the  
23 library of the facility where the individual is confined;  
24 (ii) include records from staff members' personnel files,  
25 staff rosters, or other staffing assignment information;  
26 or (iii) are available through an administrative request

1 to the Department of Human Services or the Department of  
2 Corrections.

3 (jj) Confidential information described in Section  
4 5-535 of the Civil Administrative Code of Illinois.

5 (kk) The public body's credit card numbers, debit card  
6 numbers, bank account numbers, Federal Employer  
7 Identification Number, security code numbers, passwords,  
8 and similar account information, the disclosure of which  
9 could result in identity theft or impersonation or defrauding  
10 of a governmental entity or a person.

11 (ll) Records concerning the work of the threat  
12 assessment team of a school district, including, but not  
13 limited to, any threat assessment procedure under the  
14 School Safety Drill Act and any information contained in  
15 the procedure.

16 (mm) Information prohibited from being disclosed under  
17 subsections (a) and (b) of Section 15 of the Student  
18 Confidential Reporting Act.

19 (nn) Proprietary information submitted to the  
20 Environmental Protection Agency under the Drug Take-Back  
21 Act.

22 (oo) Records described in subsection (f) of Section  
23 3-5-1 of the Unified Code of Corrections.

24 (pp) Any and all information regarding burials,  
25 interments, or entombments of human remains as required to  
26 be reported to the Department of Natural Resources

1           pursuant either to the Archaeological and Paleontological  
2           Resources Protection Act or the Human Remains Protection  
3           Act.

4           (qq) ~~(pp)~~ Reports described in subsection (e) of  
5           Section 16-15 of the Abortion Care Clinical Training  
6           Program Act.

7           (rr) ~~(pp)~~ Information obtained by a certified local  
8           health department under the Access to Public Health Data  
9           Act.

10          (ss) ~~(pp)~~ For a request directed to a public body that  
11          is also a HIPAA-covered entity, all information that is  
12          protected health information, including demographic  
13          information, that may be contained within or extracted  
14          from any record held by the public body in compliance with  
15          State and federal medical privacy laws and regulations,  
16          including, but not limited to, the Health Insurance  
17          Portability and Accountability Act and its regulations, 45  
18          CFR Parts 160 and 164. As used in this paragraph,  
19          "HIPAA-covered entity" has the meaning given to the term  
20          "covered entity" in 45 CFR 160.103 and "protected health  
21          information" has the meaning given to that term in 45 CFR  
22          160.103.

23          (1.5) Any information exempt from disclosure under the  
24          Judicial Privacy Act shall be redacted from public records  
25          prior to disclosure under this Act.

26          (2) A public record that is not in the possession of a

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

7 (3) This Section does not authorize withholding of  
8 information or limit the availability of records to the  
9 public, except as stated in this Section or otherwise provided  
10 in this Act.

11 (Source: P.A. 102-38, eff. 6-25-21; 102-558, eff. 8-20-21;  
12 102-694, eff. 1-7-22; 102-752, eff. 5-6-22; 102-753, eff.  
13 1-1-23; 102-776, eff. 1-1-23; 102-791, eff. 5-13-22; 102-982,  
14 eff. 7-1-23; 102-1055, eff. 6-10-22; 103-154, eff. 6-30-23;  
15 103-423, eff. 1-1-24; 103-446, eff. 8-4-23; 103-462, eff.  
16 8-4-23; 103-540, eff. 1-1-24; 103-554, eff. 1-1-24; revised  
17 9-7-23.)

18 (5 ILCS 140/9.5)

19 Sec. 9.5. Public Access Counselor; opinions.

20 (a) A person whose request to inspect or copy a public  
21 record is denied by a public body, except the General Assembly  
22 and committees, commissions, and agencies thereof and the  
23 judicial branch and the components of the judicial branch, may  
24 file a request for review with the Public Access Counselor  
25 established in the Office of the Attorney General not later

1 than 60 days after the date of the final denial. The request  
2 for review must be in writing, signed by the requester, and  
3 include (i) a copy of the request for access to records and  
4 (ii) any responses from the public body.

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

15 (b-5) A person whose request to inspect or copy a public  
16 record was treated by a public body, except the General  
17 Assembly and committees, commissions, and agencies thereof and  
18 the judicial branch and the components of the judicial branch,  
19 as a voluminous request under Section 3.6 of this Act may file  
20 a 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. Records or documents obtained  
15 by the Public Access Counselor from a public body for the  
16 purpose of addressing a request for review under this Section  
17 may not be disclosed to the public, including the requester,  
18 by the Public Access Counselor. These records, while in the  
19 possession of the Public Access Counselor, are exempt under  
20 this Act from disclosure by the Public Access Counselor.

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

1 to the person submitting the request for review, with any  
2 alleged confidential information to which the request pertains  
3 redacted from the copy. The requester may, but is not required  
4 to, respond in writing to the answer within 7 business days and  
5 shall provide a copy of the response to the public body.

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

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

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

1           Upon receipt of a binding opinion concluding that a  
2 violation of this Act has occurred, the public body shall  
3 either take necessary action immediately to comply with the  
4 directive of the opinion or shall initiate administrative  
5 review under Section 11.5. If the opinion concludes that no  
6 violation of the Act has occurred, the requester may initiate  
7 administrative review under Section 11.5.

8           A public body that discloses records in accordance with an  
9 opinion of the Attorney General is immune from all liabilities  
10 by reason thereof and shall not be liable for penalties under  
11 this Act.

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

18           (h) The Attorney General may also issue advisory opinions  
19 to public bodies regarding compliance with this Act. A review  
20 may be initiated upon receipt of a written request from the  
21 head of the public body or its attorney, which shall contain  
22 sufficient accurate facts from which a determination can be  
23 made. The Public Access Counselor may request additional  
24 information from the public body in order to assist in the  
25 review. A public body that relies in good faith on an advisory  
26 opinion of the Attorney General in responding to a request is

1 not liable for penalties under this Act, so long as the facts  
2 upon which the opinion is based have been fully and fairly  
3 disclosed to the Public Access Counselor.

4 (Source: P.A. 103-69, eff. 1-1-24.)