



Sen. Don Harmon

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1 AMENDMENT TO HOUSE BILL 1716

2 AMENDMENT NO. _____. Amend House Bill 1716 by replacing
3 everything after the enacting clause with the following:

4 "Section 3. The Freedom of Information Act is amended by
5 changing Sections 2, 6, and 9.5 and by adding Section 3.2 as
6 follows:

7 (5 ILCS 140/2) (from Ch. 116, par. 202)

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

9 (a) "Public body" means all legislative, executive,
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

1 under Article 1E of the School Code. "Public body" does not
2 include a child death review team or the Illinois Child Death
3 Review Teams Executive Council established under the Child
4 Death Review Team Act.

5 (b) "Person" means any individual, corporation,
6 partnership, firm, organization or association, acting
7 individually or as a group.

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

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

26 (c-10) "Commercial purpose" means the use of any part of a

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

12 (d) "Copying" means the reproduction of any public record
13 by means of any photographic, electronic, mechanical or other
14 process, device or means now known or hereafter developed and
15 available to the public body.

16 (e) "Head of the public body" means the president, mayor,
17 chairman, presiding officer, director, superintendent,
18 manager, supervisor or individual otherwise holding primary
19 executive and administrative authority for the public body, or
20 such person's duly authorized designee.

21 (f) "News media" means a newspaper or other periodical
22 issued at regular intervals whether in print or electronic
23 format, a news service whether in print or electronic format, a
24 radio station, a television station, a television network, a
25 community antenna television service, or a person or
26 corporation engaged in making news reels or other motion

1 picture news for public showing.

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

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

23 (Source: P.A. 96-261, eff. 1-1-10; 96-542, eff. 1-1-10;
24 96-1000, eff. 7-2-10.)

25 (5 ILCS 140/3.2 new)

1 Sec. 3.2. Recurrent requesters.

2 (a) Notwithstanding any provision of this Act to the
3 contrary, a public body shall respond to a request from a
4 recurrent requester, as defined in subsection (g) of Section 2,
5 within 21 business days after receipt. The response shall (i)
6 provide to the requester an estimate of the time required by
7 the public body to provide the records requested and an
8 estimate of the fees to be charged, which the public body may
9 require the person to pay in full before copying the requested
10 documents, (ii) deny the request pursuant to one or more of the
11 exemptions set out in this Act, (iii) notify the requester that
12 the request is unduly burdensome and extend an opportunity to
13 the requester to attempt to reduce the request to manageable
14 proportions, or (iv) provide the records requested.

15 (b) Within 5 business days after receiving a request from a
16 recurrent requester, as defined in subsection (g) of Section 2,
17 the public body shall notify the requester (i) that the public
18 body is treating the request as a request under subsection (g)
19 of Section 2, (ii) of the reasons why the public body is
20 treating the request as a request under subsection (g) of
21 Section 2, and (iii) that the public body will send an initial
22 response within 21 business days after receipt in accordance
23 with subsection (a) of this Section. The public body shall also
24 notify the requester of the proposed responses that can be
25 asserted pursuant to subsection (a) of this Section.

26 (c) Unless the records are exempt from disclosure, a public

1 body shall comply with a request within a reasonable period
2 considering the size and complexity of the request.

3 (5 ILCS 140/6) (from Ch. 116, par. 206)

4 Sec. 6. Authority to charge fees.

5 (a) When a person requests a copy of a record maintained in
6 an electronic format, the public body shall furnish it in the
7 electronic format specified by the requester, if feasible. If
8 it is not feasible to furnish the public records in the
9 specified electronic format, then the public body shall furnish
10 it in the format in which it is maintained by the public body,
11 or in paper format at the option of the requester. A public
12 body may charge the requester for the actual cost of purchasing
13 the recording medium, whether disc, diskette, tape, or other
14 medium. A public body may not charge the requester for the
15 costs of any search for and review of the records or other
16 personnel costs associated with reproducing the records,
17 except for commercial requests as provided in subsection (f) of
18 this Section. Except to the extent that the General Assembly
19 expressly provides, statutory fees applicable to copies of
20 public records when furnished in a paper format shall not be
21 applicable to those records when furnished in an electronic
22 format.

23 (b) Except when a fee is otherwise fixed by statute, each
24 public body may charge fees reasonably calculated to reimburse
25 its actual cost for reproducing and certifying public records

1 and for the use, by any person, of the equipment of the public
2 body to copy records. No fees shall be charged for the first 50
3 pages of black and white, letter or legal sized copies
4 requested by a requester. The fee for black and white, letter
5 or legal sized copies shall not exceed 15 cents per page. If a
6 public body provides copies in color or in a size other than
7 letter or legal, the public body may not charge more than its
8 actual cost for reproducing the records. In calculating its
9 actual cost for reproducing records or for the use of the
10 equipment of the public body to reproduce records, a public
11 body shall not include the costs of any search for and review
12 of the records or other personnel costs associated with
13 reproducing the records, except for commercial requests as
14 provided in subsection (f) of this Section. Such fees shall be
15 imposed according to a standard scale of fees, established and
16 made public by the body imposing them. The cost for certifying
17 a record shall not exceed \$1.

18 (c) Documents shall be furnished without charge or at a
19 reduced charge, as determined by the public body, if the person
20 requesting the documents states the specific purpose for the
21 request and indicates that a waiver or reduction of the fee is
22 in the public interest. Waiver or reduction of the fee is in
23 the public interest if the principal purpose of the request is
24 to access and disseminate information regarding the health,
25 safety and welfare or the legal rights of the general public
26 and is not for the principal purpose of personal or commercial

1 benefit. For purposes of this subsection, "commercial benefit"
2 shall not apply to requests made by news media when the
3 principal purpose of the request is to access and disseminate
4 information regarding the health, safety, and welfare or the
5 legal rights of the general public. In setting the amount of
6 the waiver or reduction, the public body may take into
7 consideration the amount of materials requested and the cost of
8 copying them.

9 (d) The imposition of a fee not consistent with subsections
10 (6) (a) and (b) of this Act constitutes a denial of access to
11 public records for the purposes of judicial review.

12 (e) The fee for each abstract of a driver's record shall be
13 as provided in Section 6-118 of "The Illinois Vehicle Code",
14 approved September 29, 1969, as amended, whether furnished as a
15 paper copy or as an electronic copy.

16 (f) A public body may charge up to \$10 for each hour spent
17 by personnel in searching for and retrieving a requested
18 record. No fees shall be charged for the first 8 hours spent by
19 personnel in searching for or retrieving a requested record. A
20 public body may charge the actual cost of retrieving and
21 transporting public records from an off-site storage facility
22 when the public records are maintained by a third-party storage
23 company under contract with the public body. If a public body
24 imposes a fee pursuant to this subsection (f), it must provide
25 the requester with an accounting of all fees, costs, and
26 personnel hours in connection with the request for public

1 records. The provisions of this subsection (f) apply only to
2 commercial requests.

3 (Source: P.A. 96-542, eff. 1-1-10; 96-1000, eff. 7-2-10.)

4 (5 ILCS 140/9.5)

5 Sec. 9.5. Public Access Counselor; opinions.

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

15 (b) A person whose request to inspect or copy a public
16 record is made for a commercial purpose as defined in
17 subsection (c-10) of Section 2 of this Act may not file a
18 request for review with the Public Access Counselor. A person
19 whose request to inspect or copy a public record was treated by
20 the public body as a request for a commercial purpose under
21 Section 3.1 of this Act may file a request for review with the
22 Public Access Counselor for the limited purpose of reviewing
23 whether the public body properly determined that the request
24 was made for a commercial purpose. A public body that receives
25 a request for records, and asserts that the records are exempt

1 ~~under subsection (1) (c) or (1) (f) of Section 7 of this Act,~~
2 ~~shall, within the time periods provided for responding to a~~
3 ~~request, provide written notice to the requester and the Public~~
4 ~~Access Counselor of its intent to deny the request in whole or~~
5 ~~in part. The notice shall include: (i) a copy of the request~~
6 ~~for access to records; (ii) the proposed response from the~~
7 ~~public body; and (iii) a detailed summary of the public body's~~
8 ~~basis for asserting the exemption. Upon receipt of a notice of~~
9 ~~intent to deny from a public body, the Public Access Counselor~~
10 ~~shall determine whether further inquiry is warranted. Within 5~~
11 ~~working days after receipt of the notice of intent to deny, the~~
12 ~~Public Access Counselor shall notify the public body and the~~
13 ~~requester whether further inquiry is warranted. If the Public~~
14 ~~Access Counselor determines that further inquiry is warranted,~~
15 ~~the procedures set out in this Section regarding the review of~~
16 ~~denials, including the production of documents, shall also be~~
17 ~~applicable to the inquiry and resolution of a notice of intent~~
18 ~~to deny from a public body. Times for response or compliance by~~
19 ~~the public body under Section 3 of this Act shall be tolled~~
20 ~~until the Public Access Counselor concludes his or her inquiry.~~

21 (c) Upon receipt of a request for review, the Public Access
22 Counselor shall determine whether further action is warranted.
23 If the Public Access Counselor determines that the alleged
24 violation is unfounded, he or she shall so advise the requester
25 and the public body and no further action shall be undertaken.
26 In all other cases, the Public Access Counselor shall forward a

1 copy of the request for review to the public body within 7
2 business ~~working~~ days after receipt and shall specify the
3 records or other documents that the public body shall furnish
4 to facilitate the review. Within 7 business ~~working~~ days after
5 receipt of the request for review, the public body shall
6 provide copies of records requested and shall otherwise fully
7 cooperate with the Public Access Counselor. If a public body
8 fails to furnish specified records pursuant to this Section, or
9 if otherwise necessary, the Attorney General may issue a
10 subpoena to any person or public body having knowledge of or
11 records pertaining to a request for review of a denial of
12 access to records under the Act. To the extent that records or
13 documents produced by a public body contain information that is
14 claimed to be exempt from disclosure under Section 7 of this
15 Act, the Public Access Counselor shall not further disclose
16 that information.

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

1 ~~working~~ days and shall provide a copy of the response to the
2 public body.

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

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

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

24 Upon receipt of a binding opinion concluding that a
25 violation of this Act has occurred, the public body shall
26 either take necessary action immediately to comply with the

1 directive of the opinion or shall initiate administrative
2 review under Section 11.5. If the opinion concludes that no
3 violation of the Act has occurred, the requester may initiate
4 administrative review under Section 11.5.

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

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

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

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

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.".