



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

HB2326

by Rep. Linda Chapa LaVia

#### SYNOPSIS AS INTRODUCED:

See Index

Amends the Freedom of Information Act. Requires a person who requests to inspect or copy public records for a commercial purpose to provide a statement setting forth the commercial purpose. Provides that, within 21 days after being furnished such a statement, the public body must notify the requester of the estimated time required to provide the records requested and the estimated fees to be charged. Authorizes public bodies to charge a fee for the cost of materials, equipment, and personnel used to copy or produce a record in response to a request made for a commercial purpose. Also authorizes a public body to require a person making such a request to pay all charges before the requested documents are copied. Authorizes the collection of damages if a person (i) knowingly obtains a public record for a commercial purpose without indicating the commercial purpose; (ii) knowingly obtains a public record for a noncommercial purpose and knowingly uses or knowingly allows the use of the public record for a commercial purpose; or (iii) knowingly obtains a public record from anyone other than the public body and uses it for a commercial purpose. Provides that when a person requests a copy of a record maintained in an electronic format, the public body shall furnish it in an electronic format. Specifies that if it is not feasible to furnish the records in an electronic format, then the public body shall furnish it in a paper format. Authorizes a public body to make its records available through a publicly accessible electronic means and to respond to a request by notifying the requester that the record is available through publicly accessible electronic means. Authorizes a fee to be charged for the first 50 pages of copies requested by a requester and for paper used to create an electronic record. Effective immediately.

LRB098 09550 JDS 39694 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, 3, 3.1, and 6 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.

20 (b) "Person" means any individual, corporation,  
21 partnership, firm, organization or association, acting  
22 individually or as a group.

23 (c) "Public records" means all records, reports, forms,

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

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

18 (c-10) "Commercial purpose" means the purpose or intent to  
19 use of any part of a public record or records, or information  
20 derived from public records, in any form for sale, resale, or  
21 solicitation or advertisement for sales or services or to  
22 otherwise further a commercial, trade, or profit interest or  
23 enterprise, as those terms are commonly understood. For  
24 purposes of this definition, requests made by news media and  
25 non-profit, scientific, or academic organizations shall not be  
26 considered to be made for a "commercial purpose" when the

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

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

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

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

22 (g) "Recurrent requester", as used in Section 3.2 of this  
23 Act, means a person that, in the 12 months immediately  
24 preceding the request, has submitted to the same public body  
25 (i) a minimum of 50 requests for records, (ii) a minimum of 15  
26 requests for records within a 30-day period, or (iii) a minimum

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

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

17 (Source: P.A. 96-261, eff. 1-1-10; 96-542, eff. 1-1-10;  
18 96-1000, eff. 7-2-10; 97-579, eff. 8-26-11.)

19 (5 ILCS 140/3) (from Ch. 116, par. 203)

20 Sec. 3. (a) Each public body shall make available to any  
21 person for inspection or copying all public records, except as  
22 otherwise provided in Section 7 of this Act. Notwithstanding  
23 any other law, a public body may not grant to any person or  
24 entity, whether by contract, license, or otherwise, the  
25 exclusive right to access and disseminate any public record as

1 defined in this Act.

2 (b) Subject to Section 3.1 and to the fee provisions of  
3 Section 6 of this Act, each public body shall promptly provide,  
4 to any person who submits a request, a copy of any public  
5 record required to be disclosed by subsection (a) of this  
6 Section and shall certify such copy if so requested.

7 (c) Requests for inspection or copies shall be made in  
8 writing and directed to the public body. Written requests may  
9 be submitted to a public body via personal delivery, mail,  
10 telefax, or other means available to the public body. A public  
11 body may honor oral requests for inspection or copying. A  
12 public body may not require that a request be submitted on a  
13 standard form or require the requester to specify the purpose  
14 for a request, except to determine whether the records are  
15 requested for a commercial purpose or whether to grant a  
16 request for a fee waiver. All requests for inspection and  
17 copying received by a public body shall immediately be  
18 forwarded to its Freedom of Information officer or designee.

19 (d) Each public body shall, promptly, either comply with or  
20 deny a request for public records within 5 business days after  
21 its receipt of the request, unless the time for response is  
22 properly extended under subsection (e) of this Section. Denial  
23 shall be in writing as provided in Section 9 of this Act.  
24 Failure to comply with a written request, extend the time for  
25 response, or deny a request within 5 business days after its  
26 receipt shall be considered a denial of the request. A public

1 body that fails to respond to a request within the requisite  
2 periods in this Section but thereafter provides the requester  
3 with copies of the requested public records may not impose a  
4 fee for such copies. A public body that fails to respond to a  
5 request received may not treat the request as unduly burdensome  
6 under subsection (g).

7 (e) The time for response under this Section may be  
8 extended by the public body for not more than 5 business days  
9 from the original due date for any of the following reasons:

10 (i) the requested records are stored in whole or in  
11 part at other locations than the office having charge of  
12 the requested records;

13 (ii) the request requires the collection of a  
14 substantial number of specified records;

15 (iii) the request is couched in categorical terms and  
16 requires an extensive search for the records responsive to  
17 it;

18 (iv) the requested records have not been located in the  
19 course of routine search and additional efforts are being  
20 made to locate them;

21 (v) the requested records require examination and  
22 evaluation by personnel having the necessary competence  
23 and discretion to determine if they are exempt from  
24 disclosure under Section 7 of this Act or should be  
25 revealed only with appropriate deletions;

26 (vi) the request for records cannot be complied with by

1 the public body within the time limits prescribed by  
2 paragraph (c) of this Section without unduly burdening or  
3 interfering with the operations of the public body;

4 (vii) there is a need for consultation, which shall be  
5 conducted with all practicable speed, with another public  
6 body or among two or more components of a public body  
7 having a substantial interest in the determination or in  
8 the subject matter of the request.

9 The person making a request and the public body may agree  
10 in writing to extend the time for compliance for a period to be  
11 determined by the parties. If the requester and the public body  
12 agree to extend the period for compliance, a failure by the  
13 public body to comply with any previous deadlines shall not be  
14 treated as a denial of the request for the records.

15 (f) When additional time is required for any of the above  
16 reasons, the public body shall, within 5 business days after  
17 receipt of the request, notify the person making the request of  
18 the reasons for the extension and the date by which the  
19 response will be forthcoming. Failure to respond within the  
20 time permitted for extension shall be considered a denial of  
21 the request. A public body that fails to respond to a request  
22 within the time permitted for extension but thereafter provides  
23 the requester with copies of the requested public records may  
24 not impose a fee for those copies. A public body that requests  
25 an extension and subsequently fails to respond to the request  
26 may not treat the request as unduly burdensome under subsection



1 (g).

2 (g) Requests calling for all records falling within a  
3 category shall be complied with unless compliance with the  
4 request would be unduly burdensome for the complying public  
5 body and there is no way to narrow the request and the burden  
6 on the public body outweighs the public interest in the  
7 information. Before invoking this exemption, the public body  
8 shall extend to the person making the request an opportunity to  
9 confer with it in an attempt to reduce the request to  
10 manageable proportions. If any body responds to a categorical  
11 request by stating that compliance would unduly burden its  
12 operation and the conditions described above are met, it shall  
13 do so in writing, specifying the reasons why it would be unduly  
14 burdensome and the extent to which compliance will so burden  
15 the operations of the public body. Such a response shall be  
16 treated as a denial of the request for information.

17 Repeated requests from the same person for the same records  
18 that are unchanged or identical to records previously provided  
19 or properly denied under this Act shall be deemed unduly  
20 burdensome under this provision.

21 (h) Each public body may promulgate rules and regulations  
22 in conformity with the provisions of this Section pertaining to  
23 the availability of records and procedures to be followed,  
24 including:

25 (i) the times and places where such records will be  
26 made available, and

1 (ii) the persons from whom such records may be  
2 obtained.

3 (i) (Blank). ~~The time periods for compliance or denial of a~~  
4 ~~request to inspect or copy records set out in this Section~~  
5 ~~shall not apply to requests for records made for a commercial~~  
6 ~~purpose. Such requests shall be subject to the provisions of~~  
7 ~~Section 3.1 of this Act.~~

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

9 (5 ILCS 140/3.1)

10 Sec. 3.1. Requests for commercial purposes.

11 (a) If a person requests to inspect or copy public records  
12 for a commercial purpose, then that person must provide a  
13 statement setting forth the commercial purpose for which the  
14 public records will be used. The public body may request  
15 additional information concerning the nature of the request.

16 (b) Upon being furnished a statement under subsection (a),  
17 the public body may charge a fee that includes the cost of  
18 time, materials, equipment, and personnel in copying or  
19 producing the record. The public body may require the person to  
20 pay charges in full before copying the requested documents.

21 (c) The time limitations set forth under Section 3 do not  
22 apply to any request made for a commercial purpose. Within 21  
23 days after being furnished a statement under subsection (a),  
24 unless the records are exempt from disclosure, the public body  
25 must notify the requester of the estimated time required by the

1 public body to provide the records requested and the estimated  
2 fees to be charged.

3 (d) If a person knowingly obtains a public record for a  
4 commercial purpose without indicating the commercial purpose,  
5 if he or she knowingly obtains a public record for a  
6 noncommercial purpose and knowingly uses or knowingly allows  
7 the use of the public record for a commercial purpose, or if he  
8 or she knowingly obtains a public record from anyone other than  
9 the public body and uses it for a commercial purpose, then that  
10 person, in addition to any other penalty, is liable to the  
11 public body for damages in the amount of 3 times the amount  
12 that would have been charged for the public record had the  
13 commercial purpose been stated, plus costs and reasonable  
14 attorney's fees or, if it can be shown that the public record  
15 would not have been provided had the commercial purpose of  
16 actual use been stated at the time of obtaining the records, 3  
17 times the actual damages.

18 ~~(a) A public body shall respond to a request for records to~~  
19 ~~be used for a commercial purpose within 21 working days after~~  
20 ~~receipt. The response shall (i) provide to the requester an~~  
21 ~~estimate of the time required by the public body to provide the~~  
22 ~~records requested and an estimate of the fees to be charged,~~  
23 ~~which the public body may require the person to pay in full~~  
24 ~~before copying the requested documents, (ii) deny the request~~  
25 ~~pursuant to one or more of the exemptions set out in this Act,~~  
26 ~~(iii) notify the requester that the request is unduly~~

1 ~~burdensome and extend an opportunity to the requester to~~  
2 ~~attempt to reduce the request to manageable proportions, or~~  
3 ~~(iv) provide the records requested.~~

4 ~~(b) Unless the records are exempt from disclosure, a public~~  
5 ~~body shall comply with a request within a reasonable period~~  
6 ~~considering the size and complexity of the request, and giving~~  
7 ~~priority to records requested for non-commercial purposes.~~

8 ~~(c) It is a violation of this Act for a person to knowingly~~  
9 ~~obtain a public record for a commercial purpose without~~  
10 ~~disclosing that it is for a commercial purpose, if requested to~~  
11 ~~do so by the public body.~~

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

13 (5 ILCS 140/6) (from Ch. 116, par. 206)

14 Sec. 6. Format of disclosures and authority ~~Authority~~ to  
15 charge fees.

16 (a) When a person requests a copy of a record maintained in  
17 an electronic format, the public body shall furnish it in an  
18 ~~the~~ electronic format that is generally available to the public  
19 ~~specified by the requester, if feasible~~. If it is not feasible  
20 to furnish the public records in an ~~the specified~~ electronic  
21 format that is generally available to the public, then the  
22 public body shall furnish it ~~in the format in which it is~~  
23 ~~maintained by the public body, or in paper format at the option~~  
24 ~~of the requester~~. The public body may make its records  
25 available through any publicly accessible electronic means.

1 The public body may respond to a request by notifying the  
2 requester that the record is available through publicly  
3 accessible electronic means. A public body may charge the  
4 requester for the actual cost of purchasing the recording  
5 medium, whether disc, diskette, tape, or other medium, and the  
6 public body may charge a fee under subsection (b) for any paper  
7 that was used in creating an electronic record. A public body  
8 may not charge the requester for the costs of any search for  
9 and review of the records or other personnel costs associated  
10 with reproducing the records, except for commercial requests as  
11 provided in subsection (f) of this Section. Except to the  
12 extent that the General Assembly expressly provides, statutory  
13 fees applicable to copies of public records when furnished in a  
14 paper format shall not be applicable to those records when  
15 furnished in an electronic format.

16 (b) Except when a fee is otherwise fixed by statute, each  
17 public body may charge fees reasonably calculated to reimburse  
18 its actual cost for reproducing and certifying public records  
19 and for the use, by any person, of the equipment of the public  
20 body to copy records. ~~No fees shall be charged for the first 50~~  
21 ~~pages of black and white, letter or legal sized copies~~  
22 ~~requested by a requester.~~ The fee for black and white, letter  
23 or legal sized copies shall not exceed 15 cents per page. If a  
24 public body provides copies in color or in a size other than  
25 letter or legal, the public body may not charge more than its  
26 actual cost for reproducing the records. In calculating its

1 actual cost for reproducing records or for the use of the  
2 equipment of the public body to reproduce records, a public  
3 body shall not include the costs of any search for and review  
4 of the records or other personnel costs associated with  
5 reproducing the records, except for commercial requests as  
6 provided in subsection (f) of this Section. Such fees shall be  
7 imposed according to a standard scale of fees, established and  
8 made public by the body imposing them. The cost for certifying  
9 a record shall not exceed \$1.

10 (c) Documents shall be furnished without charge or at a  
11 reduced charge, as determined by the public body, if the person  
12 requesting the documents states the specific purpose for the  
13 request and indicates that a waiver or reduction of the fee is  
14 in the public interest. Waiver or reduction of the fee is in  
15 the public interest if the principal purpose of the request is  
16 to access and disseminate information regarding the health,  
17 safety and welfare or the legal rights of the general public  
18 and is not for the principal purpose of personal or commercial  
19 benefit. For purposes of this subsection, "commercial benefit"  
20 shall not apply to requests made by news media when the  
21 principal purpose of the request is to access and disseminate  
22 information regarding the health, safety, and welfare or the  
23 legal rights of the general public. In setting the amount of  
24 the waiver or reduction, the public body may take into  
25 consideration the amount of materials requested and the cost of  
26 copying them.

1           (d) The imposition of a fee not consistent with subsections  
2 ~~(6)~~(a) and (b) of this Section ~~Act~~ constitutes a denial of  
3 access to public records for the purposes of judicial review.

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

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

21           (Source: P.A. 96-542, eff. 1-1-10; 96-1000, eff. 7-2-10;  
22 97-579, eff. 8-26-11.)

23           Section 99. Effective date. This Act takes effect upon  
24 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 5 ILCS 140/2 from Ch. 116, par. 202

4 5 ILCS 140/3 from Ch. 116, par. 203

5 5 ILCS 140/3.1

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