

# HB5553



## 98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5553

by Rep. Brad E. Halbrook

### SYNOPSIS AS INTRODUCED:

5 ILCS 140/11

from Ch. 116, par. 211

Amends the Freedom of Information Act. Provides that an individual acting on behalf of a public body who willfully and intentionally fails to comply with the Act is guilty of a Class C misdemeanor. Effective immediately.

LRB098 18657 HEP 53800 b

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 Section 11 as follows:

6 (5 ILCS 140/11) (from Ch. 116, par. 211)

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

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

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

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

1 court may retain jurisdiction and allow the agency additional  
2 time to complete its review of the records.

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

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

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

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

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

1 for such noncompliance through the court's 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 attorneys' 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 the effective date of this amendatory  
15 Act of the 96th General Assembly.

16 (j) If the court determines that a public body willfully  
17 and intentionally failed to comply with this Act, or otherwise  
18 acted in bad faith, the court shall also impose upon the public  
19 body a civil penalty of not less than \$2,500 nor more than  
20 \$5,000 for each occurrence. In assessing the civil penalty, the  
21 court shall consider in aggravation or mitigation the budget of  
22 the public body and whether the public body has previously been  
23 assessed penalties for violations of this Act. The changes  
24 contained in this subsection apply to an action filed on or  
25 after the effective date of this amendatory Act of the 96th  
26 General Assembly.

1       (k) An individual acting on behalf of a public body who  
2       willfully and intentionally fails to comply with this Act is  
3       guilty of a Class C misdemeanor.

4       (Source: P.A. 96-542, eff. 1-1-10; 97-813, eff. 7-13-12.)

5       Section 99. Effective date. This Act takes effect upon  
6       becoming law.