

**98TH GENERAL ASSEMBLY****State of Illinois****2013 and 2014****SB3273**

Introduced 2/14/2014, by Sen. Linda Holmes

**SYNOPSIS AS INTRODUCED:**

See Index

Amends the Freedom of Information Act. Changes the definition of "commercial purpose" to mean the purpose or intent to use (rather than "the use of") any part of a public record or records, or information derived from public records, in any form for sale, resale, or solicitation or advertisement for sales or services or to otherwise further a commercial, trade, or profit interest or enterprise, as those terms are commonly understood. Provides that a public body may make its records available through any publicly accessible electronic means and may respond to a request by notifying the requester that the record is available through its Internet website or other publicly accessible electronic means. Provides procedures in the event that the requester is unwilling or unable to access the record electronically. Provides that a public body is not required to respond to a request for records to be used for a commercial purpose and makes corresponding changes. Provides that a person who knowingly obtains a public record for a commercial purpose without disclosing that it is for a commercial purpose after being requested to do so by the public body is liable to the public body for a civil penalty equal to 3 times the cost of time, materials, equipment, and personnel expended by the public body in copying or producing the record and for any attorney's fees and other costs incurred by the public body in collecting the penalty. Exempts from disclosure under the Act records relating to all employee performance reviews and personnel evaluations and records and all complaints and investigatory material relating to a public body's adjudication of employee grievances or disciplinary cases. Exempts from disclosure records relating to litigation of a civil or criminal nature to which the public body is or may be a party or to which an officer or employee of the public, as a consequence of the person's office or employment, is or may be a party. Provides that the Attorney General must make available on the website of the Office of the Attorney General a copy of each binding opinion, each advisory opinion, and, for any instance in which the Attorney General resolves a request for review by mediation or by means other than the issuance of a binding opinion, each nonbinding opinion or other correspondence or document that constitutes the final decision by the Attorney General in resolving that request for review.

LRB098 19876 HEP 55095 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, 3, 3.1, 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 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 the fee provisions of Section 6 of this Act,  
3 each public body shall promptly provide, to any person who  
4 submits a request, a copy of any public record required to be  
5 disclosed by subsection (a) of this Section and shall certify  
6 such copy if so requested. The public body may make its records  
7 available through any publicly accessible electronic means.  
8 The public body may respond to a request by notifying the  
9 requester that the record is available through its Internet  
10 website or other publicly accessible electronic means. If the  
11 requester is unwilling or unable to access the record  
12 electronically, the requester may, within 30 days following  
13 receipt of the public body notification, submit a written  
14 request to the public body to have the record converted to  
15 paper. The public body shall provide access to the record in  
16 printed form within 5 days of the receipt of the written  
17 request for conversion of the electronic version to paper.

18 (c) Requests for inspection or copies shall be made in  
19 writing and directed to the public body. Written requests may  
20 be submitted to a public body via personal delivery, mail,  
21 telefax, or other means available to the public body. A public  
22 body may honor oral requests for inspection or copying. A  
23 public body may not require that a request be submitted on a  
24 standard form or require the requester to specify the purpose  
25 for a request, except to determine whether the records are  
26 requested for a commercial purpose or whether to grant a

1 request for a fee waiver. All requests for inspection and  
2 copying received by a public body shall immediately be  
3 forwarded to its Freedom of Information officer or designee.

4 (d) Each public body shall, promptly, either comply with or  
5 deny a request for public records within 5 business days after  
6 its receipt of the request, unless the time for response is  
7 properly extended under subsection (e) of this Section. Denial  
8 shall be in writing as provided in Section 9 of this Act.  
9 Failure to comply with a written request, extend the time for  
10 response, or deny a request within 5 business days after its  
11 receipt shall be considered a denial of the request. A public  
12 body that fails to respond to a request within the requisite  
13 periods in this Section but thereafter provides the requester  
14 with copies of the requested public records may not impose a  
15 fee for such copies. A public body that fails to respond to a  
16 request received may not treat the request as unduly burdensome  
17 under subsection (g).

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

21 (i) the requested records are stored in whole or in  
22 part at other locations than the office having charge of  
23 the requested records;

24 (ii) the request requires the collection of a  
25 substantial number of specified records;

26 (iii) the request is couched in categorical terms and

1 requires an extensive search for the records responsive to  
2 it;

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

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

11 (vi) the request for records cannot be complied with by  
12 the public body within the time limits prescribed by  
13 paragraph (c) of this Section without unduly burdening or  
14 interfering with the operations of the public body;

15 (vii) there is a need for consultation, which shall be  
16 conducted with all practicable speed, with another public  
17 body or among two or more components of a public body  
18 having a substantial interest in the determination or in  
19 the subject matter of the request.

20 The person making a request and the public body may agree  
21 in writing to extend the time for compliance for a period to be  
22 determined by the parties. If the requester and the public body  
23 agree to extend the period for compliance, a failure by the  
24 public body to comply with any previous deadlines shall not be  
25 treated as a denial of the request for the records.

26 (f) When additional time is required for any of the above



1 reasons, the public body shall, within 5 business days after  
2 receipt of the request, notify the person making the request of  
3 the reasons for the extension and the date by which the  
4 response will be forthcoming. Failure to respond within the  
5 time permitted for extension shall be considered a denial of  
6 the request. A public body that fails to respond to a request  
7 within the time permitted for extension but thereafter provides  
8 the requester with copies of the requested public records may  
9 not impose a fee for those copies. A public body that requests  
10 an extension and subsequently fails to respond to the request  
11 may not treat the request as unduly burdensome under subsection  
12 (g).

13 (g) Requests calling for all records falling within a  
14 category shall be complied with unless compliance with the  
15 request would be unduly burdensome for the complying public  
16 body and there is no way to narrow the request and the burden  
17 on the public body outweighs the public interest in the  
18 information. Before invoking this exemption, the public body  
19 shall extend to the person making the request an opportunity to  
20 confer with it in an attempt to reduce the request to  
21 manageable proportions. If any body responds to a categorical  
22 request by stating that compliance would unduly burden its  
23 operation and the conditions described above are met, it shall  
24 do so in writing, specifying the reasons why it would be unduly  
25 burdensome and the extent to which compliance will so burden  
26 the operations of the public body. Such a response shall be

1 treated as a denial of the request for information.

2 Repeated requests from the same person for the same records  
3 that are unchanged or identical to records previously provided  
4 or properly denied under this Act shall be deemed unduly  
5 burdensome under this provision.

6 (h) Each public body may promulgate rules and regulations  
7 in conformity with the provisions of this Section pertaining to  
8 the availability of records and procedures to be followed,  
9 including:

10 (i) the times and places where such records will be  
11 made available, and

12 (ii) the persons from whom such records may be  
13 obtained.

14 (i) (Blank). ~~The time periods for compliance or denial of a~~  
15 ~~request to inspect or copy records set out in this Section~~  
16 ~~shall not apply to requests for records made for a commercial~~  
17 ~~purpose. Such requests shall be subject to the provisions of~~  
18 ~~Section 3.1 of this Act.~~

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

20 (5 ILCS 140/3.1)

21 Sec. 3.1. Requests for commercial purposes.

22 (a) A public body is not required to ~~shall~~ respond to a  
23 request for records to be used for a commercial purpose ~~within~~  
24 ~~21 working days after receipt. The response shall (i) provide~~  
25 ~~to the requester an estimate of the time required by the public~~

1 ~~body to provide the records requested and an estimate of the~~  
2 ~~fees to be charged, which the public body may require the~~  
3 ~~person to pay in full before copying the requested documents,~~  
4 ~~(ii) deny the request pursuant to one or more of the exemptions~~  
5 ~~set out in this Act, (iii) notify the requester that the~~  
6 ~~request is unduly burdensome and extend an opportunity to the~~  
7 ~~requester to attempt to reduce the request to manageable~~  
8 ~~proportions, or (iv) provide the records requested.~~

9 (b) (Blank). ~~Unless the records are exempt from disclosure,~~  
10 ~~a public body shall comply with a request within a reasonable~~  
11 ~~period considering the size and complexity of the request, and~~  
12 ~~giving priority to records requested for non-commercial~~  
13 ~~purposes.~~

14 (c) It is a violation of this Act for a person to knowingly  
15 obtain a public record for a commercial purpose without  
16 disclosing that it is for a commercial purpose, if requested to  
17 do so by the public body. A person who violates this subsection  
18 (c) is liable to the public body for a civil penalty equal to 3  
19 times the cost of time, materials, equipment, and personnel  
20 expended by the public body in copying or producing the record  
21 and for any attorney's fees and other costs incurred by the  
22 public body in collecting the penalty.

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

24 (5 ILCS 140/7) (from Ch. 116, par. 207)

25 Sec. 7. Exemptions.

1           (1) When a request is made to inspect or copy a public  
2 record that contains information that is exempt from disclosure  
3 under this Section, but also contains information that is not  
4 exempt from disclosure, the public body may elect to redact the  
5 information that is exempt. The public body shall make the  
6 remaining information available for inspection and copying.  
7 Subject to this requirement, the following shall be exempt from  
8 inspection and copying:

9           (a) Information specifically prohibited from  
10 disclosure by federal or State law or rules and regulations  
11 implementing federal or State law.

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

15           (b-5) Files, documents, and other data or databases  
16 maintained by one or more law enforcement agencies and  
17 specifically designed to provide information to one or more  
18 law enforcement agencies regarding the physical or mental  
19 status of one or more individual subjects.

20           (c) Personal information contained within public  
21 records, the disclosure of which would constitute a clearly  
22 unwarranted invasion of personal privacy, unless the  
23 disclosure is consented to in writing by the individual  
24 subjects of the information. "Unwarranted invasion of  
25 personal privacy" means the disclosure of information that  
26 is highly personal or objectionable to a reasonable person

1 and in which the subject's right to privacy outweighs any  
2 legitimate public interest in obtaining the information.  
3 The disclosure of information that bears on the public  
4 duties of public employees and officials shall not be  
5 considered an invasion of personal privacy.

6 (d) Records in the possession of any public body  
7 created in the course of administrative enforcement  
8 proceedings, and any law enforcement or correctional  
9 agency for law enforcement purposes, but only to the extent  
10 that disclosure would:

11 (i) interfere with pending or actually and  
12 reasonably contemplated law enforcement proceedings  
13 conducted by any law enforcement or correctional  
14 agency that is the recipient of the request;

15 (ii) interfere with active administrative  
16 enforcement proceedings conducted by the public body  
17 that is the recipient of the request;

18 (iii) create a substantial likelihood that a  
19 person will be deprived of a fair trial or an impartial  
20 hearing;

21 (iv) unavoidably disclose the identity of a  
22 confidential source, confidential information  
23 furnished only by the confidential source, or persons  
24 who file complaints with or provide information to  
25 administrative, investigative, law enforcement, or  
26 penal agencies; except that the identities of

1 witnesses to traffic accidents, traffic accident  
2 reports, and rescue reports shall be provided by  
3 agencies of local government, except when disclosure  
4 would interfere with an active criminal investigation  
5 conducted by the agency that is the recipient of the  
6 request;

7 (v) disclose unique or specialized investigative  
8 techniques other than those generally used and known or  
9 disclose internal documents of correctional agencies  
10 related to detection, observation or investigation of  
11 incidents of crime or misconduct, and disclosure would  
12 result in demonstrable harm to the agency or public  
13 body that is the recipient of the request;

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

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

18 (d-5) A law enforcement record created for law  
19 enforcement purposes and contained in a shared electronic  
20 record management system if the law enforcement agency that  
21 is the recipient of the request did not create the record,  
22 did not participate in or have a role in any of the events  
23 which are the subject of the record, and only has access to  
24 the record through the shared electronic record management  
25 system.

26 (e) Records that relate to or affect the security of

1 correctional institutions and detention facilities.

2 (e-5) Records requested by persons committed to the  
3 Department of Corrections if those materials are available  
4 in the library of the correctional facility where the  
5 inmate is confined.

6 (e-6) Records requested by persons committed to the  
7 Department of Corrections if those materials include  
8 records from staff members' personnel files, staff  
9 rosters, or other staffing assignment information.

10 (e-7) Records requested by persons committed to the  
11 Department of Corrections if those materials are available  
12 through an administrative request to the Department of  
13 Corrections.

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

23 (g) Trade secrets and commercial or financial  
24 information obtained from a person or business where the  
25 trade secrets or commercial or financial information are  
26 furnished under a claim that they are proprietary,

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

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

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

24 (h) Proposals and bids for any contract, grant, or  
25 agreement, including information which if it were  
26 disclosed would frustrate procurement or give an advantage



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

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

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

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

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

26 (iii) information concerning a school or

1 university's adjudication of student disciplinary  
2 cases, but only to the extent that disclosure would  
3 unavoidably reveal the identity of the student; and

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

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

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

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

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

4 (n) Records relating to all employee performance  
5 reviews and personnel evaluations and records relating to a  
6 public body's adjudication of employee grievances or  
7 disciplinary cases; however, this exemption shall not  
8 extend to the final outcome of cases in which discipline is  
9 imposed, but includes all complaints and investigatory  
10 material.

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

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

25 (q) Test questions, scoring keys, and other  
26 examination data used to determine the qualifications of an

1 applicant for a license or employment.

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

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

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

1           (u) Information that would disclose or might lead to  
2           the disclosure of secret or confidential information,  
3           codes, algorithms, programs, or private keys intended to be  
4           used to create electronic or digital signatures under the  
5           Electronic Commerce Security Act.

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

20          (w) (Blank).

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

26          (y) Information contained in or related to proposals,

1 bids, or negotiations related to electric power  
2 procurement under Section 1-75 of the Illinois Power Agency  
3 Act and Section 16-111.5 of the Public Utilities Act that  
4 is determined to be confidential and proprietary by the  
5 Illinois Power Agency or by the Illinois Commerce  
6 Commission.

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

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

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

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

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

1 (ee) The names, addresses, or other personal  
2 information of persons who are minors and are also  
3 participants and registrants in programs of park  
4 districts, forest preserve districts, conservation  
5 districts, recreation agencies, and special recreation  
6 associations.

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

13 (gg) Confidential information described in Section  
14 1-100 of the Illinois Independent Tax Tribunal Act of 2012.

15 (hh) The report submitted to the State Board of  
16 Education by the School Security and Standards Task Force  
17 under item (8) of subsection (d) of Section 2-3.157 of the  
18 School Code and any information contained in that report.

19 (ii) Records relating to litigation of a civil or  
20 criminal nature to which the public body is or may be a  
21 party or to which an officer or employee of the public, as  
22 a consequence of the person's office or employment, is or  
23 may be a party. For purposes of this exemption, the public  
24 body, officer, or employee is considered to be a party to  
25 litigation of a criminal nature until the applicable  
26 statute of limitations has expired or until the defendant

1       has exhausted all appellate and postconviction remedies in  
2       State and federal court.

3       (1.5) Any information exempt from disclosure under the  
4       Judicial Privacy Act shall be redacted from public records  
5       prior to disclosure under this Act.

6       (2) A public record that is not in the possession of a  
7       public body but is in the possession of a party with whom the  
8       agency has contracted to perform a governmental function on  
9       behalf of the public body, and that directly relates to the  
10      governmental function and is not otherwise exempt under this  
11      Act, shall be considered a public record of the public body,  
12      for purposes of this Act.

13      (3) This Section does not authorize withholding of  
14      information or limit the availability of records to the public,  
15      except as stated in this Section or otherwise provided in this  
16      Act.

17      (Source: P.A. 97-333, eff. 8-12-11; 97-385, eff. 8-15-11;  
18      97-452, eff. 8-19-11; 97-783, eff. 7-13-12; 97-813, eff.  
19      7-13-12; 97-847, eff. 9-22-12; 97-1065, eff. 8-24-12; 97-1129,  
20      eff. 8-28-12; 98-463, eff. 8-16-13; 98-578, eff. 8-27-13.)

21      (5 ILCS 140/9.5)

22      Sec. 9.5. Public Access Counselor; opinions.

23      (a) A person whose request to inspect or copy a public  
24      record is denied by a public body, except the General Assembly  
25      and committees, commissions, and agencies thereof, may file a



1 request for review with the Public Access Counselor established  
2 in the Office of the Attorney General not later than 60 days  
3 after the date of the final denial. The request for review must  
4 be in writing, signed by the requester, and include (i) a copy  
5 of the request for access to records and (ii) any responses  
6 from the public body.

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

17 (c) Upon receipt of a request for review, the Public Access  
18 Counselor shall determine whether further action is warranted.  
19 If the Public Access Counselor determines that the alleged  
20 violation is unfounded, he or she shall so advise the requester  
21 and the public body and no further action shall be undertaken.  
22 In all other cases, the Public Access Counselor shall forward a  
23 copy of the request for review to the public body within 7  
24 business days after receipt and shall specify the records or  
25 other documents that the public body shall furnish to  
26 facilitate the review. Within 7 business days after receipt of

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

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

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

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

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

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

25           A public body that discloses records in accordance with an  
26 opinion of the Attorney General is immune from all liabilities

1 by reason thereof and shall not be liable for penalties under  
2 this Act.

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

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

21 (i) The Attorney General must make available on the website  
22 of the Office of the Attorney General a copy of each binding  
23 opinion, each advisory opinion, and, for any instance in which  
24 the Attorney General resolves a request for review by mediation  
25 or by means other than the issuance of a binding opinion, each  
26 nonbinding opinion or other correspondence or document that

1 constitutes the final decision by the Attorney General in  
2 resolving that request for review.

3 (Source: P.A. 96-542, eff. 1-1-10; 97-579, eff. 8-26-11.)

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 140/7	from Ch. 116, par. 207
7	5 ILCS 140/9.5	