



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3310

by Rep. Dwight Kay

SYNOPSIS AS INTRODUCED:

5 ILCS 140/2	from Ch. 116, par. 202
5 ILCS 140/3	from Ch. 116, par. 203
5 ILCS 140/9.5	

Amends the Freedom of Information Act. Expresses legislative intent. Provides that each executive, administrative, or advisory body of this State shall either comply with or deny a request of a member of the General Assembly for public records within 3 business days after its receipt of the request and makes corresponding changes. Provides that "voluminous request" does not include a request made by a member of the General Assembly, among other entities, if the principal purpose of the request is for carrying out the duties of the member of the General Assembly. Provides that if the Public Access Counselor determines that an alleged violation with respect to a requester who is a member of the General Assembly is not unfounded, the Public Access Counselor shall forward a copy of the request for review to the public body within 5 (instead of 7) business days and the public body shall furnish the records or otherwise comply with the instructions of the Public Access Counselor within 5 (instead of 7) business days. Provides that if the requester is a member of the General Assembly, the Public Access Counselor shall issue a binding opinion within 30 (instead of 60) days and can extend the time for issuance of a binding opinion by no more than 15 (instead of 30) business days.

LRB099 09596 HEP 29805 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. Legislative intent. The General Assembly is
5 tasked annually with drafting legislation and crafting the
6 State's budget, which requires a comprehensive and timely flow
7 of information from State agencies to the General Assembly.
8 This amendatory Act of the 99th General Assembly is necessary
9 to ensure that members of the General Assembly are able to
10 access information from various State agencies so that
11 legislators may competently and properly carry out their
12 duties.

13 Section 10. The Freedom of Information Act is amended by
14 changing Sections 2, 3, and 9.5 as follows:

15 (5 ILCS 140/2) (from Ch. 116, par. 202)

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

17 (a) "Public body" means all legislative, executive,
18 administrative, or advisory bodies of the State, state
19 universities and colleges, counties, townships, cities,
20 villages, incorporated towns, school districts and all other
21 municipal corporations, boards, bureaus, committees, or
22 commissions of this State, any subsidiary bodies of any of the

1 forego including but not limited to committees and
2 subcommittees thereof, and a School Finance Authority created
3 under Article 1E of the School Code. "Public body" does not
4 include a child death review team or the Illinois Child Death
5 Review Teams Executive Council established under the Child
6 Death Review Team Act, or a regional youth advisory board or
7 the Statewide Youth Advisory Board established under the
8 Department of Children and Family Services Statewide Youth
9 Advisory Board Act.

10 (b) "Person" means any individual, corporation,
11 partnership, firm, organization or association, acting
12 individually or as a group.

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

22 (c-5) "Private information" means unique identifiers,
23 including a person's social security number, driver's license
24 number, employee identification number, biometric identifiers,
25 personal financial information, passwords or other access
26 codes, medical records, home or personal telephone numbers, and

1 personal email addresses. Private information also includes
2 home address and personal license plates, except as otherwise
3 provided by law or when compiled without possibility of
4 attribution to any person.

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

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

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

26 (f) "News media" means a newspaper or other periodical

1 issued at regular intervals whether in print or electronic
2 format, a news service whether in print or electronic format, a
3 radio station, a television station, a television network, a
4 community antenna television service, or a person or
5 corporation engaged in making news reels or other motion
6 picture news for public showing.

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

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

1 identify multiple records to be inspected or copied.

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

12 "Voluminous request" does not include a request made by
13 members of the General Assembly, news media and non-profit,
14 scientific, or academic organizations if the principal purpose
15 of the request is: (1) to access and disseminate information
16 concerning news and current or passing events; (2) for articles
17 of opinion or features of interest to the public; ~~or~~ (3) for
18 the purpose of academic, scientific, or public research or
19 education; or (4) for carrying out the duties of a member of
20 the General Assembly.

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

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

3 (Source: P.A. 97-579, eff. 8-26-11; 98-806, eff. 1-1-15;
4 98-1129, eff. 12-3-14; revised 12-19-14.)

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

6 Sec. 3. (a) Each public body shall make available to any
7 person for inspection or copying all public records, except as
8 otherwise provided in Sections 7 and 8.5 of this Act.
9 Notwithstanding any other law, a public body may not grant to
10 any person or entity, whether by contract, license, or
11 otherwise, the exclusive right to access and disseminate any
12 public record as defined in this Act.

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

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

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

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

19 (d-5) Each executive, administrative, or advisory body of
20 this State shall either comply with or deny a request of a
21 member of the General Assembly for public records within 3
22 business days after its receipt of the request, unless the time
23 for response is properly extended under subsection (e) of this
24 Section. Denial shall be in writing as provided in Section 9 of
25 this Act. Failure to comply with a written request, extend the
26 time for response, or deny a request within 3 business days

1 after its receipt shall be considered a denial of the request.
2 An executive, administrative, or advisory body of this State
3 that fails to respond to a request within the requisite periods
4 in this Section but thereafter provides the requester with
5 copies of the requested public records may not impose a fee for
6 such copies. A public body that fails to respond to a request
7 received may not treat the request as unduly burdensome under
8 subsection (g).

9 (e) The time for response under this Section may be
10 extended by the public body for not more than 5 business days,
11 or 3 business days if the request is by a member of the General
12 Assembly and from an executive, administrative, or advisory
13 body of the State, from the original due date for any of the
14 following reasons:

15 (i) the requested records are stored in whole or in
16 part at other locations than the office having charge of
17 the requested records;

18 (ii) the request requires the collection of a
19 substantial number of specified records;

20 (iii) the request is couched in categorical terms and
21 requires an extensive search for the records responsive to
22 it;

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

26 (v) the requested records require examination and

1 evaluation by personnel having the necessary competence
2 and discretion to determine if they are exempt from
3 disclosure under Section 7 of this Act or should be
4 revealed only with appropriate deletions;

5 (vi) the request for records cannot be complied with by
6 the public body within the time limits prescribed by
7 paragraph (c) of this Section without unduly burdening or
8 interfering with the operations of the public body;

9 (vii) there is a need for consultation, which shall be
10 conducted with all practicable speed, with another public
11 body or among two or more components of a public body
12 having a substantial interest in the determination or in
13 the subject matter of the request.

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

20 (f) When additional time is required for any of the above
21 reasons, the public body shall, within 5 business days after
22 receipt of the request or within 3 business days if the request
23 is by a member of the General Assembly and from an executive,
24 administrative, or advisory body of the State, notify the
25 person making the request of the reasons for the extension and
26 the date by which the response will be forthcoming. Failure to

1 respond within the time permitted for extension shall be
2 considered a denial of the request. A public body that fails to
3 respond to a request within the time permitted for extension
4 but thereafter provides the requester with copies of the
5 requested public records may not impose a fee for those copies.
6 A public body that requests an extension and subsequently fails
7 to respond to the request may not treat the request as unduly
8 burdensome under subsection (g).

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

25 Repeated requests from the same person for the same records
26 that are unchanged or identical to records previously provided

1 or properly denied under this Act shall be deemed unduly
2 burdensome under this provision.

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

7 (i) the times and places where such records will be
8 made available, and

9 (ii) the persons from whom such records may be
10 obtained.

11 (i) The time periods for compliance or denial of a request
12 to inspect or copy records set out in this Section shall not
13 apply to requests for records made for a commercial purpose,
14 requests by a recurrent requester, or voluminous requests. Such
15 requests shall be subject to the provisions of Sections 3.1,
16 3.2, and 3.6 of this Act, as applicable.

17 (Source: P.A. 98-1129, eff. 12-3-14.)

18 (5 ILCS 140/9.5)

19 Sec. 9.5. Public Access Counselor; opinions.

20 (a) A person whose request to inspect or copy a public
21 record is denied by a public body, except the General Assembly
22 and committees, commissions, and agencies thereof, may file a
23 request for review with the Public Access Counselor established
24 in the Office of the Attorney General not later than 60 days
25 after the date of the final denial. The request for review must

1 be in writing, signed by the requester, and include (i) a copy
2 of the request for access to records and (ii) any responses
3 from the public body.

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

14 (b-5) A person whose request to inspect or copy a public
15 record was treated by a public body, except the General
16 Assembly and committees, commissions, and agencies thereof, as
17 a voluminous request under Section 3.6 of this Act may file a
18 request for review with the Public Access Counselor for the
19 purpose of reviewing whether the public body properly
20 determined that the request was a voluminous request.

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

20 (d) Within 7 business days after it receives a copy of a
21 request for review and request for production of records from
22 the Public Access Counselor, or within 5 business days if the
23 request for review was made by a member of the General
24 Assembly, the public body may, but is not required to, answer
25 the allegations of the request for review. The answer may take
26 the form of a letter, brief, or memorandum. The Public Access

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

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

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

25 In responding to any request under this Section 9.5, the
26 Attorney General may exercise his or her discretion and choose

1 to resolve a request for review by mediation or by a means
2 other than the issuance of a binding opinion. The decision not
3 to issue a binding opinion shall not be reviewable.

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

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

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

21 (h) The Attorney General may also issue advisory opinions
22 to public bodies regarding compliance with this Act. A review
23 may be initiated upon receipt of a written request from the
24 head of the public body or its attorney, which shall contain
25 sufficient accurate facts from which a determination can be
26 made. The Public Access Counselor may request additional

1 information from the public body in order to assist in the
2 review. A public body that relies in good faith on an advisory
3 opinion of the Attorney General in responding to a request is
4 not liable for penalties under this Act, so long as the facts
5 upon which the opinion is based have been fully and fairly
6 disclosed to the Public Access Counselor.

7 (Source: P.A. 97-579, eff. 8-26-11; 98-1129, eff. 12-3-14.)