

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 and by adding Section 11.6 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 (a-5) In accordance with Section 11.6 of this Act, a
11 requester may file an action to enforce a binding opinion
12 issued under Section 9.5 of this Act.

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

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

21 (d) The circuit court shall have the jurisdiction to enjoin
22 the public body from withholding public records and to order
23 the production of any public records improperly withheld from

1 the person seeking access. If the public body can show that
2 exceptional circumstances exist, and that the body is
3 exercising due diligence in responding to the request, the
4 court may retain jurisdiction and allow the agency additional
5 time to complete its review of the records.

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

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

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

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

1 (g) In the event of noncompliance with an order of the
2 court to disclose, the court may enforce its order against any
3 public official or employee so ordered or primarily responsible
4 for such noncompliance through the court's contempt powers.

5 (h) Except as to causes the court considers to be of
6 greater importance, proceedings arising under this Section
7 shall take precedence on the docket over all other causes and
8 be assigned for hearing and trial at the earliest practicable
9 date and expedited in every way.

10 (i) If a person seeking the right to inspect or receive a
11 copy of a public record prevails in a proceeding under this
12 Section, the court shall award such person reasonable
13 attorney's ~~attorneys'~~ fees and costs. In determining what
14 amount of attorney's fees is reasonable, the court shall
15 consider the degree to which the relief obtained relates to the
16 relief sought. The changes contained in this subsection apply
17 to an action filed on or after January 1, 2010 (the effective
18 date of Public Act 96-542) ~~this amendatory Act of the 96th~~
19 ~~General Assembly.~~

20 (j) If the court determines that a public body willfully
21 and intentionally failed to comply with this Act, or otherwise
22 acted in bad faith, the court shall also impose upon the public
23 body a civil penalty of not less than \$2,500 nor more than
24 \$5,000 for each occurrence. In assessing the civil penalty, the
25 court shall consider in aggravation or mitigation the budget of
26 the public body and whether the public body has previously been

1 assessed penalties for violations of this Act. The court may
2 impose an additional penalty of up to \$1,000 for each day the
3 violation continues if:

4 (1) the public body fails to comply with the court's
5 order after 30 days;

6 (2) the court's order is not on appeal or stayed; and

7 (3) the court does not grant the public body additional
8 time to comply with the court's order to disclose public
9 records.

10 The changes contained in this subsection made by Public Act
11 96-542 apply to an action filed on or after January 1, 2010
12 (the effective date of Public Act 96-542) ~~this amendatory Act~~
13 ~~of the 96th General Assembly.~~

14 (k) The changes to this Section made by this amendatory Act
15 of the 99th General Assembly apply to actions filed on or after
16 the effective date of this amendatory Act of the 99th General
17 Assembly.

18 (Source: P.A. 96-542, eff. 1-1-10; 97-813, eff. 7-13-12;
19 revised 10-14-15.)

20 (5 ILCS 140/11.6 new)

21 Sec. 11.6. Noncompliance with binding opinion.

22 (a) The requester may file an action under Section 11 and
23 there shall be a rebuttable presumption that the public body
24 willfully and intentionally failed to comply with this Act for
25 purposes of subsection (j) of Section 11 if:

1 (1) the Attorney General issues a binding opinion
2 pursuant to Section 9.5;

3 (2) the public body does not file for administrative
4 review of the binding opinion within 35 days after the
5 binding opinion is served on the public body; and

6 (3) the public body does not comply with the binding
7 opinion within 35 days after the binding opinion is served
8 on the public body.

9 For purposes of this subsection (a), service of the binding
10 opinion shall be by personal delivery or by depositing the
11 opinion in the United States mail as provided in Section 3-103
12 of the Code of Civil Procedure.

13 (b) The presumption in subsection (a) may be rebutted by
14 the public body showing that it is making a good faith effort
15 to comply with the binding opinion, but compliance was not
16 possible within the 35-day time frame.

17 (c) This Section applies to binding opinions of the
18 Attorney General requested or issued on or after the effective
19 date of this amendatory Act of the 99th General Assembly.