



Sen. Christine Radogno

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09900HB4715sam002

LRB099 17902 HEP 48817 a

1 AMENDMENT TO HOUSE BILL 4715

2 AMENDMENT NO. _____. Amend House Bill 4715, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Freedom of Information Act is amended by
6 changing Section 11 and by adding Section 11.6 as follows:

7 (5 ILCS 140/11) (from Ch. 116, par. 211)

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

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

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

1 access resides.

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

6 (d) The circuit court shall have the jurisdiction to enjoin
7 the public body from withholding public records and to order
8 the production of any public records improperly withheld from
9 the person seeking access. If the public body can show that
10 exceptional circumstances exist, and that the body is
11 exercising due diligence in responding to the request, the
12 court may retain jurisdiction and allow the agency additional
13 time to complete its review of the records.

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

18 (i) A description of the nature or contents of each
19 document withheld, or each deletion from a released
20 document, provided, however, that the public body shall not
21 be required to disclose the information which it asserts is
22 exempt; and

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

25 (f) In any action considered by the court, the court shall
26 consider the matter de novo, and shall conduct such in camera

1 examination of the requested records as it finds appropriate to
2 determine if such records or any part thereof may be withheld
3 under any provision of this Act. The burden shall be on the
4 public body to establish that its refusal to permit public
5 inspection or copying is in accordance with the provisions of
6 this Act. Any public body that asserts that a record is exempt
7 from disclosure has the burden of proving that it is exempt by
8 clear and convincing evidence.

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

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

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

1 ~~General Assembly.~~

2 (j) If the court determines that a public body willfully
3 and intentionally failed to comply with this Act, or otherwise
4 acted in bad faith, the court shall also impose upon the public
5 body a civil penalty of not less than \$2,500 nor more than
6 \$5,000 for each occurrence. In assessing the civil penalty, the
7 court shall consider in aggravation or mitigation the budget of
8 the public body and whether the public body has previously been
9 assessed penalties for violations of this Act. The court may
10 impose an additional penalty of up to \$1,000 for each day the
11 violation continues if:

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

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

15 (3) the court does not grant the public body additional
16 time to comply with the court's order to disclose public
17 records.

18 The changes contained in this subsection made by Public Act
19 96-542 apply to an action filed on or after January 1, 2010
20 (the effective date of Public Act 96-542) ~~this amendatory Act~~
21 ~~of the 96th General Assembly.~~

22 (k) The changes to this Section made by this amendatory Act
23 of the 99th General Assembly apply to actions filed on or after
24 the effective date of this amendatory Act of the 99th General
25 Assembly.

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

1 revised 10-14-15.)

2 (5 ILCS 140/11.6 new)

3 Sec. 11.6. Noncompliance with binding opinion.

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

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

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

13 (3) the public body does not comply with the binding
14 opinion within 35 days after the binding opinion is served
15 on the public body.

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

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

24 (c) This Section applies to binding opinions of the
25 Attorney General requested or issued on or after the effective

1 date of this amendatory Act of the 99th General Assembly.".