

ILLINOIS OPEN MEETINGS ACT

In 1984, the Illinois General Assembly enacted the Illinois Freedom of Information Act (“the Act”). The Act states that “all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees.” 5 ILCS 140/1. Within specified limitations, the Act allows anyone to inspect and obtain copies of all public records prepared, possessed, used by, or in the control of any public body. This access to government information is fundamental to our system of open government, and to the rights of citizens to be informed about the actions of public bodies on matters of public concern. Anyone (including individuals, groups, associations, corporations, firms, partnerships or organizations) may obtain access to government-held information.

WHAT INFORMATION IS AVAILABLE?

Some examples of the records available under the Act are: orders, rules, policy statements, planning policies and decisions, reports or studies, public contracts, the names, titles and salaries of public employees, and the voting records of all public bodies.

WHO IS SUBJECT TO THE ACT?

Only public bodies are subject to the Act. Public bodies include any legislative, executive, administrative or advisory bodies of the State; state universities and colleges; counties and municipalities; school districts and all other municipal corporations, boards, bureaus, committees, or commissions of the State; and any subsidiary bodies (such as committees and subcommittees) that are supported by or expend tax revenue. The judiciary is not subject to this law, but court records and proceedings generally are open to the public.

HOW TO FIND INFORMATION

Under the Act, every public body must make their existing records available to the public. The Act does not require these bodies to answer specific questions, create new records, or keep a central library or index of all government records. Consequently, if you do not know which public body has the records that you seek, an informal, polite telephone call may be the best place to start. Speaking with those public bodies who have the names or responsibilities related to your topic might help you identify the appropriate body to which you should address your request.

Public bodies must maintain a list of the types or categories of records in their possession along with directions, in non-technical language, for accessing electronic data. They must also provide

directions for requesting a record and a directory of the employees assigned to process disclosure requests for that public body. If no one is available to answer your questions over the telephone, the directory should be on display in each administrative or regional office of the body. The list of records should be available to be copied, and can be requested through the mail.

HOW TO MAKE A REQUEST

• Put it in writing

An informal telephone call or visit may help you identify the type of records you want and the public body in possession of the records, but, to be official, your request for a public record must be made in writing. A written request will allow you to take advantage of the time limits and appeal mechanisms provided in the Act. You should date and keep a copy of your letter. Also, if you send your request by certified mail and request a return receipt, you will be able to prove the date on which your request was received – the date which triggers the time limits for the public body to respond.

Also, be sure to check with the public body from which you are seeking information to determine if there are specific requirements for filing a FOIA request. Some public bodies require certain forms to submit a request or require that requests be delivered in person.

• Be specific

Your letter must specify the records you want. If you request all records of a broad category, collecting the records might unduly burden the public body, which could justify a delay or refusal to release the records. If you want information on a certain topic, but know there are some kinds of material you do not want (e.g. newspaper clippings, or records created before or after a certain date), you can ask that these be omitted. You should also state your preferred format (e.g. paper copy or diskette). A specific request will avoid confusion and high copying fees.

• Request a fee waiver or reduction

If your disclosure request qualifies you may ask for a waiver or reduction of fees. The Act gives public bodies discretion to grant a fee waiver or reduction when disclosure is in the public interest.

SAMPLE REQUEST LETTER

Date

(If desired: Certified mail -- return receipt requested)

(name and title of official) (address of appropriate office of the public body)

Dear (name),

Pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., this is a request for a copy of the following record(s):

(Describe the subject or the documents containing the information that you want)

If any record or portion of a record responsive to this request is contained in a record or portion of a record deemed unresponsive to the request, I would like to inspect the entire document. Under the Freedom of Information Act, all non-exempt portions of any partially-exempt documents must be disclosed.

If any fee in excess of \$___ will be incurred in fulfilling this request, please obtain my approval before the fee is incurred.

[Or, if applicable, request a fee reduction or waiver: I request a waiver of any fees your office would ordinarily impose in responding to a request. I do not seek these records for commercial purposes and I intend to disseminate the information because disclosure is in the public interest in that it _____.]

If any records or portions of records are withheld, please state the exemption on which you rely, the basis on which the exemption is invoked, and the address to which an appeal should be addressed. Thank you for your prompt consideration of my request. If you have any questions, or if I can be of assistance, please contact me at _____.

Sincerely,

What It May Cost

• Reasonable copying costs

The Act allows public bodies to charge reasonable fees to pay for copying costs or for the use of their copying equipment, but they may not charge for the time and effort of a search for records. If an abstract of a driving record is requested, however, additional fees may apply. The list of fees charged by a public body must be available at its administrative or regional office(s). If the fees charged are unreasonable, the courts will consider the public body to have denied you access to the records.

• Fee waiver or reduction

Public bodies may waive or reduce the fees if disclosure is in the public interest. You might receive a waiver or reduction if (a) you are requesting information on the health, safety and welfare or the legal rights of the general public, (b) you plan to disseminate this information, or (c) you will not receive a personal or commercial benefit from the disclosure of the documents.

Ordinarily, you do not have to explain why you want access to a public record, but to qualify for a fee waiver or reduction, you should explain what you plan to do with the information.

THE AGENCY RESPONSE: 7 Days

A public body has seven working days to respond after it receives a written request for information under the Act. **There are three types of response: delay, disclosure and denial.**

• Delay

A public body may inform you in writing that it requires an additional 7 working days to respond to a request for any of the following reasons:

- the requested materials are stored at other locations;
- the request requires the collection of a substantial number of specified records;
- the request is couched in categorical terms and the response requires an extensive search;
- the requested records have not been located in the course of a routine search and additional efforts are being made to locate them;
- the requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure under the Act;
- the public body cannot comply with the request within the time limits without unduly burdening or interfering with the operation of the public body;
- before responding to the request, the public body must consult with other public bodies that have an interest in the records.

• Disclosure

The public body must disclose all records responsive to your request unless an exemption provided in the Act applies. It is their burden to show that the exemption applies.

• Denial

A denial must be made in writing, and must include the names and titles of everyone responsible for the denial. It must also give the reasons for the denial. If no response is received within the time limit, the FOIA request is considered denied. If the request is denied under one or more of the Act's exemptions (described below), the letter must specify which exemptions apply. The denial must also include notice of your right to appeal the denial. A body may also deny a request that is burdensome, but must first meet with the requester in an effort to reduce the burden. Repeated requests for the same document are generally considered burdensome.

HOW TO APPEAL

If a public body denies access to information requested under the Act, you may appeal to the head of the public body. The head of the public body is "the president, mayor, chairman, presiding officer, director, superintendent, manager, supervisor or individual otherwise holding primary executive and administrative authority for the public body, or such person's duly authorized designee." 5 ILCS 140/1.02(a). A letter to the head of the public body specifying which records were withheld and stating why the denial was incorrect will start the appeal process. Within 7 working days, the head of the body must review the appeal letter, the requested record(s), determine whether denial is proper under the Act and notify you of the determination.

Additionally, the position of Public Access Counselor has been created by the Illinois Attorney General's Office to respond to FOIA questions. While the Public Access Counselor has no enforcement power, he or she can investigate and issue an advisory opinion requesting that the public body disclose public information. The Public Access Counselor can be reached at:

Office of the Public Access Counselor
500 S. Second Street
Springfield, IL 62705
(217)524-1503

If the head of the public body also denies access, you may go to court for access to the records. To appeal the decision of a State body, you must file a complaint in the circuit court of the county where the public body has its principal office, or in your home county. To appeal the decision of some other public body, you must file in the county of the principal office of the body. These suits will take precedent over other cases and must be heard at the earliest possible date. In court, the burden is on the public body to prove that the material is exempt under the Act. The court will review the decision without any deference to the public body's prior decisions. In addition to granting access to the requested records, the court may award court costs and reasonable attorney fees to a party that substantially prevails in a FOIA lawsuit. 5 ILCS 140/11(i). If the body still refuses to disclose the information, they may be held in contempt of court.

SAMPLE APPEAL LETTER

Date

(If desired: Certified mail -- return receipt requested)

(Name and title of the head of public body) (Address of public body)

Dear *(name)*,

This is an appeal under the Illinois Freedom of Information Act. I am appealing the action of *(name of employee who denied the original request)*, dated _____, in response to my Freedom of Information request dated _____. I am enclosing copies of my request and the response.

My request was for information regarding *(describe original request)*. I was denied access to *(describe documents withheld)* on the grounds that *(give reasons cited by public body)*.

The denial of my request was unjustified under the Freedom of Information Act because *(assert your reasons for appealing)*. As you know, your office has seven working days to respond to this appeal. If you need to contact me, I can be reached at _____.

Sincerely,

EXEMPTED INFORMATION

The Illinois Freedom of Information Act exempts certain kinds of information from disclosure. If a requested record contains some exempt and some non-exempt information, the Act requires that the public body delete the exempt material and disclose the rest.

The types of information exempted from public disclosure under the Freedom of Information Act include:

- (a) Information specifically prohibited from disclosure by a federal or State law other than the FOIA. For example, the Appellate Court of Illinois, Second District, has held that an Election Code provision that required the sealing of election records made the release of such information exempt from FOIA. Kibort v. Westrom, 862 N.E.2d 609 (Ill. Ct. App. 2d Dist., 2007).
- (b) Information that would constitute an invasion of personal privacy if it were disclosed, including personal medical information, information revealing the identity of people who file complaints, criminal history not part of a public record, personal financial information, academic or professional examination or evaluation results, library circulation information, information concerning adjudication of student or employee grievance or disciplinary cases, and personal insurance records;
- (c) Information related to public safety and security, including information compiled by any law enforcement or correctional agency for law enforcement purposes, any information that could interfere with pending or actual law enforcement proceedings, information regarding the identity of a confidential source, information relating to the security of correctional facilities, user guides or employee manuals that would jeopardize an informational system or its data, vulnerability and security assessment plans or policies designed to respond to potential attacks, plans of architects and engineers when the plans would jeopardize security, and maps or other records regarding the location or security of utilities.

(d) Information regarding employment and disciplinary actions of a public body, including employee personnel files, job applicant information, and collective negotiating information (though the final contract is accessible).

(e) Information involving negotiations for the purchase of real property, which is exempt until the sale is completed;

(f) Information that could be considered valuable intellectual property of an individual or public body including trade secrets, valuable formulae, computer geographic systems, designs, drawings and research data created by any public body that could be expected to produce private gain or public loss, and course or research materials used by university faculty members; and

(g) Information that is protected by the attorney client privilege, including communications between a public body and its attorney regarding current or anticipated litigation, or materials prepared or compiled for internal audits or at the request of an advising attorney.