

Freedom of Information Act

The general rule contained in the FOIA remains that all “public records” in the possession of “public bodies” are subject to disclosure, unless covered by one of 44 exemptions.

Some Changes Affecting Public Bodies

Each public body must now have one or more employees designated to act as a FOIA officer and receive training and develop a list of documents or categories of records that are immediately disclosable. 5 ILCS 140/3.5 (new).

A public body now has five business days (previously seven) to respond to a request for public records unless the time is properly extended for another five business days, reasons contained in 5 ILCS 140/3(e).

A public body may now honor oral requests for inspection and copying. 5 ILCS 140/3(c).

Requests for information may still be denied by claiming compliance with the request would be “unduly burdensome” and there is no way to narrow the request, and repeated requests from the same person fall under this category. 5 ILCS 140/3(g).

A public body may elect to redact exempted information from a document that is not otherwise exempt, but does not have to. 5 ILCS 140/7(1).

The first 50 pages must be provided at no charge to the requester, thereafter the fee for standard black and white copies shall not exceed 15 cents per page. 5 ILCS 140/6.

Exemptions

Sections 7 and 7.5 of the FOIA contain 44 separate exemptions. New Section 7.5 “Statutory Exemptions” contains 19 distinct and independent statutes exempting information from disclosure under FOIA in order to protect the privacy and confidentiality of specific types of information. Section 7 contains 25 exemptions including “private information,” “personal information” (any information where personal privacy outweighs the public interest in disclosure), records created in the course of administrative enforcement proceedings, and “preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated,” among others.

Appeals and the Public Access Counselor

New Section 9.5 now gives an individual denied a request by a public body the right to file a request for review with the Public Access Counselor (PAC) in the Office of Attorney General. This section then sets out the process for review by the PAC. Any public body intending to deny a request based on the “unwarranted invasion of personal privacy” or “preliminary drafts, notes, recommendations, memoranda and other records in which opinions expressed” exemptions must provide written notice to both the requestor and the PAC of its intent to deny the request in whole or in part. A requestor has 60 days after the date of final denial to file a request for review with PAC. Requestors denied access may also file an appeal in court. If they prevail, they now recover attorneys’ fees and costs. Public bodies found to have willfully and intentionally failed to comply with the FOIA are now liable for a civil penalty between \$2,500 and \$5,000 for each violation.

Updates to the New Law

Since the law went into effect in January, numerous bills have already been proposed to update and amend the law. Specifically a bill to amend the Personnel Record Review Act to exempt performance evaluations for all public employees from disclosure (currently these are disclosable) and a bill to prohibit disclosure of “files and personal information” regarding people who receive educational, vocational and other services from public

agencies and “personal information” collected by any public body from any applicant for a professional license or licensee facing discipline, among others. These bills are still pending.

Request May Be Submitted To: The Village Clerk’s Office

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