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Public Act 098-1129

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Public Act 098-1129

HB3796 Enrolled

LRB098 15774 OMW 50806 b

AN ACT concerning government.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Freedom of Information Act is amended by changing Sections 2, 3, 6, and 9.5 and by adding Sections 3.6 and 8.5 as follows:

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

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

(a) "Public body" means all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees thereof, and a School Finance Authority created under Article 1E of the School Code. "Public body" does not include a child death review team or the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act.

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

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

(c-5) "Private information" means unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access

codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

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

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

(e) "Head of the public body" means 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.

(f) "News media" means a newspaper or other periodical issued at regular intervals whether in print or electronic format, a news service whether in print or electronic format, a radio station, a television station, a television network, a community antenna television service, or a person or corporation engaged in making news reels or other motion picture news for public showing.

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

For the purposes of this subsection (g), "request" means a written document (or oral request, if the public body chooses to honor oral requests) that is submitted to a public body via personal delivery, mail, telefax, electronic mail, or other means available to the public body and that identifies the particular public record the requester seeks. One request may identify multiple records to be inspected or copied.

(h) "Voluminous request" means a request that: (i) includes more than 5 individual requests for more than 5 different categories of records or a combination of individual requests that total requests for more than 5 different categories of records in a period of 20 business days; or (ii) requires the

compilation of more than 500 letter or legal-sized pages of public records unless a single requested record exceeds 500 pages. "Single requested record" may include, but is not limited to, one report, form, e-mail, letter, memorandum, book, map, microfilm, tape, or recording.

"Voluminous request" does not include a request made by news media and non-profit, scientific, or academic organizations if the principal purpose of the request is: (1) to access and disseminate information concerning news and current or passing events; (2) for articles of opinion or features of interest to the public; or (3) for the purpose of academic, scientific, or public research or education.

For the purposes of this subsection (h), "request" means a written document, or oral request, if the public body chooses to honor oral requests, that is submitted to a public body via personal delivery, mail, telefax, electronic mail, or other means available to the public body and that identifies the particular public record or records the requester seeks. One request may identify multiple individual records to be inspected or copied.

(Source: P.A. 96-261, eff. 1-1-10; 96-542, eff. 1-1-10; 96-1000, eff. 7-2-10; 97-579, eff. 8-26-11.)

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

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

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

(c) Requests for inspection or copies shall be made in writing and directed to the public body. Written requests may be submitted to a public body via personal delivery, mail, telefax, or other means available to the public body. A public body may honor oral requests for inspection or copying. A public body may not require that a request be submitted on a standard form or require the requester to specify the purpose for a request, except to determine whether the records are requested for a commercial purpose or whether to grant a request for a fee waiver. All requests for inspection and copying received by a public body shall immediately be forwarded to its Freedom of Information officer or designee.

(d) Each public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is properly extended under subsection (e) of this Section. Denial shall be in writing as provided in Section 9 of this Act. Failure to comply with a written request, extend the time for response, or deny a request within 5 business days after its receipt shall be considered a denial of the request. A public body that fails to respond to a request within the requisite periods in this Section but thereafter provides the requester with copies of the requested public records may not impose a

fee for such copies. A public body that fails to respond to a request received may not treat the request as unduly burdensome under subsection (g).

(e) The time for response under this Section may be extended by the public body for not more than 5 business days from the original due date for any of the following reasons:

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

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

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

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

(v) the requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure under Section 7 of this Act or should be revealed only with appropriate deletions;

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

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

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

(f) When additional time is required for any of the above reasons, the public body shall, within 5 business days after receipt of the request, notify the person making the request of the reasons for the extension and the date by which the response will be forthcoming. Failure to respond within the time permitted for extension shall be considered a denial of the request. A public body that fails to respond to a request within the time permitted for extension but thereafter provides the requester with copies of the requested public records may not impose a fee for those copies. A public body that requests an extension and subsequently fails to respond to the request may not treat the request as unduly burdensome under subsection (g).

(g) Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any public body responds to a

categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body. Such a response shall be treated as a denial of the request for information.

Repeated requests from the same person for the same records that are unchanged or identical to records previously provided or properly denied under this Act shall be deemed unduly burdensome under this provision.

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

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

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

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

(Source: P.A. 96-542, eff. 1-1-10.)

(5 ILCS 140/3.6 new)

Sec. 3.6. Voluminous requests.

(a) Notwithstanding any provision of this Act to the contrary, a public body shall respond to a voluminous request within 5 business days after receipt. The response shall notify the requester: (i) that the public body is treating the request as a voluminous request; (ii) the reasons why the public body is treating the request as a voluminous request; (iii) that the requester must respond to the public body within 10 business days after the public body's response was sent and specify whether the requester would like to amend the request in such a way that the public body will no longer treat the request as a voluminous request; (iv) that if the requester does not respond within 10 business days or if the request continues to be a voluminous request following the requester's response, the public body will respond to the request and assess any the public body charges pursuant to Section 6 of this Act; (v) that the public body has 5 business days after receipt of the requester's response or 5 business days from the last day for the requester to amend his or her request, whichever is sooner, to respond to the request; (vi) that the public body may request an additional 10 business days to comply with the request; (vii) of the requester's right to review of the public body's determination by the Public Access Counselor and provide the address and phone number for the Public Access Counselor; and (viii) that if the requester fails to accept or collect the responsive records, the public body may still charge the requester for its response pursuant to Section 6 of this Act and the requester's failure to pay will be considered a debt due and owing to the public body and may be collected in accordance with applicable law.

(b) A public body shall provide a person making a

voluminous request 10 business days from the date the public body's response pursuant to subsection (a) of this Section is sent to amend the request in such a way that the public body will no longer treat the request as a voluminous request.

(c) If a request continues to be a voluminous request following the requester's response under subsection (b) of this Section or the requester fails to respond, the public body shall respond within the earlier of 5 business days after it receives the response from the requester or 5 business days after the final day for the requester to respond to the public body's notification under this subsection. The response shall: (i) provide an estimate of the fees to be charged, which the public body may require the person to pay in full before copying the requested documents; (ii) deny the request pursuant to one or more of the exemptions set out in this Act; (iii) notify the requester that the request is unduly burdensome and extend an opportunity to the requester to attempt to reduce the request to manageable proportions; or (iv) provide the records requested.

(d) The time for response by the public body under subsection (c) of this Section may be extended by the public body for not more than 10 business days from the final day for the requester to respond to the public body's notification under subsection (c) of this Section for any of the reasons provided in subsection (e) of Section 3 of this Act.

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

(e) If a requester does not pay a fee charged pursuant to Section 6 of this Act for a voluminous request, the debt shall be considered a debt due and owing to the public body and may be collected in accordance with applicable law. This fee may be charged by the public body even if the requester fails to accept or collect records the public body has prepared in response to a voluminous request.

(5 ILCS 140/6) (from Ch. 116, par. 206)

Sec. 6. Authority to charge fees.

(a) When a person requests a copy of a record maintained in an electronic format, the public body shall furnish it in the electronic format specified by the requester, if feasible. If it is not feasible to furnish the public records in the specified electronic format, then the public body shall furnish it in the format in which it is maintained by the public body, or in paper format at the option of the requester. A public body may charge the requester for the actual cost of purchasing the recording medium, whether disc, diskette, tape, or other medium. ~~If a request is not a request for a commercial purpose or a voluminous request, a~~ A public body may not charge the requester for the costs of any search for and review of the records or other personnel costs associated with reproducing the records, ~~except for commercial requests as provided in subsection (f) of this Section.~~ Except to the extent that the General Assembly expressly provides, statutory fees applicable to copies of public records when furnished in a paper format shall not be applicable to those records when furnished in an

electronic format.

(a-5) If a voluminous request is for electronic records and those records are not in a portable document format (PDF), the public body may charge up to \$20 for not more than 2 megabytes of data, up to \$40 for more than 2 but not more than 4 megabytes of data, and up to \$100 for more than 4 megabytes of data. If a voluminous request is for electronic records and those records are in a portable document format, the public body may charge up to \$20 for not more than 80 megabytes of data, up to \$40 for more than 80 megabytes but not more than 160 megabytes of data, and up to \$100 for more than 160 megabytes of data. If the responsive electronic records are in both a portable document format and not in a portable document format, the public body may separate the fees and charge the requester under both fee scales.

If a public body imposes a fee pursuant to this subsection (a-5), it must provide the requester with an accounting of all fees, costs, and personnel hours in connection with the request for public records.

(b) Except when a fee is otherwise fixed by statute, each public body may charge fees reasonably calculated to reimburse its actual cost for reproducing and certifying public records and for the use, by any person, of the equipment of the public body to copy records. No fees shall be charged for the first 50 pages of black and white, letter or legal sized copies requested by a requester. The fee for black and white, letter or legal sized copies shall not exceed 15 cents per page. If a public body provides copies in color or in a size other than letter or legal, the public body may not charge more than its actual cost for reproducing the records. In calculating its actual cost for reproducing records or for the use of the equipment of the public body to reproduce records, a public body shall not include the costs of any search for and review of the records or other personnel costs associated with reproducing the records, except for commercial requests as provided in subsection (f) of this Section. Such fees shall be imposed according to a standard scale of fees, established and made public by the body imposing them. The cost for certifying a record shall not exceed \$1.

(c) Documents shall be furnished without charge or at a reduced charge, as determined by the public body, if the person requesting the documents states the specific purpose for the request and indicates that a waiver or reduction of the fee is in the public interest. Waiver or reduction of the fee is in the public interest if the principal purpose of the request is to access and disseminate information regarding the health, safety and welfare or the legal rights of the general public and is not for the principal purpose of personal or commercial benefit. For purposes of this subsection, "commercial benefit" shall not apply to requests made by news media when the principal purpose of the request is to access and disseminate information regarding the health, safety, and welfare or the legal rights of the general public. In setting the amount of the waiver or reduction, the public body may take into consideration the amount of materials requested and the cost of copying them.

(d) The imposition of a fee not consistent with subsections (6)(a) and (b) of this Act constitutes a denial of access to public records for the purposes of judicial review.

(e) The fee for each abstract of a driver's record shall be as provided in Section 6-118 of "The Illinois Vehicle Code", approved September 29, 1969, as amended, whether furnished as a paper copy or as an electronic copy.

(f) A public body may charge up to \$10 for each hour spent by personnel in searching for and retrieving a requested record or examining the record for necessary redactions. No fees shall be charged for the first 8 hours spent by personnel in searching for or retrieving a requested record. A public body may charge the actual cost of retrieving and transporting public records from an off-site storage facility when the public records are maintained by a third-party storage company under contract with the public body. If a public body imposes a fee pursuant to this subsection (f), it must provide the requester with an accounting of all fees, costs, and personnel hours in connection with the request for public records. The provisions of this subsection (f) apply only to commercial requests.

(Source: P.A. 96-542, eff. 1-1-10; 96-1000, eff. 7-2-10; 97-579, eff. 8-26-11.)

(5 ILCS 140/8.5 new)

Sec. 8.5. Records maintained online.

(a) Notwithstanding any provision of this Act to the contrary, a public body is not required to copy a public record that is published on the public body's website. The public body shall notify the requester that the public record is available online and direct the requester to the website where the record can be reasonably accessed.

(b) If the person requesting the public record is unable to reasonably access the record online after being directed to the website pursuant to subsection (a) of this Section, the requester may re-submit his or her request for the record stating his or her inability to reasonably access the record online, and the public body shall make the requested record available for inspection or copying as provided in Section 3 of this Act.

(5 ILCS 140/9.5)

Sec. 9.5. Public Access Counselor; opinions.

(a) A person whose request to inspect or copy a public record is denied by a public body, except the General Assembly and committees, commissions, and agencies thereof, may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the date of the final denial. The request for review must be in writing, signed by the requester, and include (i) a copy of the request for access to records and (ii) any responses from the public body.

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

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

(c) Upon receipt of a request for review, the Public Access Counselor shall determine whether further action is warranted. If the Public Access Counselor determines that the alleged violation is unfounded, he or she shall so advise the requester and the public body and no further action shall be undertaken. In all other cases, the Public Access Counselor shall forward a copy of the request for review to the public body within 7 business days after receipt and shall specify the records or other documents that the public body shall furnish to facilitate the review. Within 7 business days after receipt of the request for review, the public body shall provide copies of records requested and shall otherwise fully cooperate with the Public Access Counselor. If a public body fails to furnish specified records pursuant to this Section, or if otherwise necessary, the Attorney General may issue a subpoena to any person or public body having knowledge of or records pertaining to a request for review of a denial of access to records under the Act. To the extent that records or documents produced by a public body contain information that is claimed to be exempt from disclosure under Section 7 of this Act, the Public Access Counselor shall not further disclose that information.

(d) Within 7 business days after it receives a copy of a request for review and request for production of records from the Public Access Counselor, the public body may, but is not required to, answer the allegations of the request for review. The answer may take the form of a letter, brief, or memorandum. The Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy. The requester may, but is not required to, respond in writing to the answer within 7 business days and shall provide a copy of the response to the public body.

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

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

In responding to any request under this Section 9.5, the Attorney General may exercise his or her discretion and choose to resolve a request for review by mediation or by a means other than the issuance of a binding opinion. The decision not

to issue a binding opinion shall not be reviewable.

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

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

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

(h) The Attorney General may also issue advisory opinions to public bodies regarding compliance with this Act. A review may be initiated upon receipt of a written request from the head of the public body or its attorney, which shall contain sufficient accurate facts from which a determination can be made. The Public Access Counselor may request additional information from the public body in order to assist in the review. A public body that relies in good faith on an advisory opinion of the Attorney General in responding to a request is not liable for penalties under this Act, so long as the facts upon which the opinion is based have been fully and fairly disclosed to the Public Access Counselor.

(Source: P.A. 96-542, eff. 1-1-10; 97-579, eff. 8-26-11.)

Section 99. Effective date. This Act takes effect upon becoming law.

Effective Date: 12/3/2014

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