

OFFICE OF THE GOVERNOR



GUIDELINES FOR RESPONDING TO FOIA REQUESTS

April 2009

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I. APPLICABILITY & PURPOSE OF GUIDELINES

These guidelines are intended to assist State agencies in implementing the Governor's directives that agencies strictly comply with the letter and spirit of the Freedom of Information Act ("FOIA" or "Act"), apply a "presumption of disclosure" to FOIA requests, and narrowly construe FOIA exemptions. Good faith adherence to these guidelines will ensure appropriate consistency in FOIA responses across agencies and promote transparency, accountability, and public trust in State government.

While these guidelines, which apply to all agencies under the Governor's authority,¹ address particular recurring issues in FOIA compliance, they do not address the full range of issues that arise with respect to FOIA requests. As such, FOIA officers and other persons with FOIA-related responsibilities are expected not only to know and follow these guidelines, but also to possess a sound understanding of the statute, relevant case authority, best practices drawn from other agencies, and all other sources of guidance.

Questions regarding FOIA compliance should be directed first to the appropriate FOIA officer and then, if further guidance is needed, to the Governor's Office's FOIA officer. These guidelines will be revised to reflect experience, developments in the law, and any additional policy directives, always in keeping with the public's right to open and honest government.

These guidelines do not create, and are not intended to create, any right or benefit, substantive or procedural, enforceable by any party in any manner.

¹ State agencies not under the Governor's direct authority are encouraged also to apply these guidelines.

II. FOIA COMPLIANCE: PERSONNEL

Each state agency shall designate an employee (“FOIA Compliance Officer”) who is principally responsible for ensuring the agency’s compliance with FOIA consistent with the Act and these guidelines. For purposes of FOIA compliance, and in addition to any other reporting obligation s/he may have, an agency’s FOIA Compliance Officer shall report to the Governor’s Office’s FOIA Compliance Officer.

Each state agency shall make every effort to achieve FOIA compliance as described herein and otherwise to support the Governor’s transparency initiatives. In particular, each state agency shall, among other things, devote sufficient personnel and technological resources to enable substantial FOIA compliance on an ongoing basis.

III. PRINCIPLES GOVERNING FOIA COMPLIANCE

All agencies and other public bodies subject to these guidelines shall comply with the letter and spirit of FOIA, recognizing that the Act is intended to allow “all persons full and complete information regarding the affairs of government.” 5 ILCS 140/1.

Specifically, as set forth in the Governor’s directive of February 24, 2009, the following principles shall be adopted and applied:

- a) FOIA requests shall be considered and responded to with a presumption of disclosure;
- b) No decision to withhold should be made in order to avoid embarrassment or for speculative or improper purposes;
- c) Exemptions should be interpreted narrowly;
- d) While certain requests may be unduly burdensome or otherwise properly subject to denial, good faith efforts must nevertheless be made to comply to the extent practicable (e.g., make contact with requester promptly – before deadline – in an attempt to reach a mutually acceptable accommodation).

IV. FOIA PROCESS REQUIREMENTS

A. Posting Agency & FOIA Information

Every agency shall comply with section 4 of the Act, which requires each public body to display and make available, if requested:

- (a) A brief description of itself, which will include, but not be limited to, a short summary of its purpose, a block diagram giving its functional subdivisions, the total amount of its operating budget, the number and location of all of its separate offices, the approximate number of full and part-time employees, and the identification and membership of any board, commission, committee, or council which operates in an advisory capacity relative to the operation of the public body, or which exercises control over its policies or procedures, or to which the public body is required to report and be answerable for its operations; and
- (b) A brief description of the methods whereby the public may request information and public records, a directory designating by titles and addresses those employees to whom requests for public records should be directed, and any fees allowable under Section 6 of this Act.

5 ILCS 140/4.

Each agency shall post this information online and update the information as necessary. The public should be able to easily find this information on each agency's website.

B. Retention of Notices of Denial

Each agency shall comply with section 9 of the Act, which requires that "copies of all notices of denial shall be retained by each public body in a single central office file that is open to the public and indexed according to the type of exemption asserted, and, to the extent feasible, according to the types of records requested." 5 ILCS 140/9(b). Each agency shall update this file on a regular basis and shall allow, if requested, public access thereto.

C. Preparation & Posting of Quarterly FOIA Compliance Reports

Each agency shall prepare quarterly reports that set forth the number of FOIA requests received, the source of the request by category (e.g., media, attorney, public interest group), and the number and type of exemptions claimed.² The quarterly reports shall be posted on each agency's website in manner that is easily accessible to the public.

D. Form & Manner of FOIA Requests

A FOIA request may be submitted via facsimile, mail or in electronic form (email). As noted above, each agency shall designate a FOIA Compliance Officer to whom requests shall be addressed. This designation shall appear on the agency's website in such a way as to clearly indicate the FOIA Compliance Officer's name and contact information. In addition, each agency shall take all necessary steps to ensure that requests for information initially directed to other agency personnel are timely routed to the FOIA Compliance Officer. Please note that the failure of a requestor to direct a request for records to the FOIA Compliance Officer is not grounds for denial of the request.

A request for public records need not expressly invoke the Act to be treated as a FOIA request. Instead, agencies shall treat a records request as a FOIA request if it is made (a) in writing and (b) can be reasonably interpreted as requesting documents under FOIA.

For ease of administration, agencies may post a form online that requestors may use in order to make FOIA requests. However, agencies may not require the use of any FOIA request form as a condition to the agencies' response. A request form should be

² Please see attached report. The first quarterly report shall be generated and posted by July 1, 2009 and shall include every FOIA requests received from April 15, 2009, through June 30, 2009.

seen as a means to help the requestor gain access to the records s/he is seeking and not as a means to restrict such access.

E. Form and Manner of FOIA Responses

1. Requests for Extensions of Time

FOIA requests shall be complied with as expeditiously as available resources and other work-flow considerations permit. In fact, the seven working days allowed for a response under the Act shall not be used unless it is necessary to do so. If upon receiving a FOIA request, an agency determines that it will need extra time in which to respond, the agency shall send an extension letter to the requester as soon as possible (i.e., without waiting until the seventh day to do so).

2. Creating Documents in Response to Requests

The Act specifically states that no public body has an obligation to create documents in response to requests for information. Nevertheless, in the spirit of openness and transparency, each agency is encouraged to create documents in response to FOIA requests, if doing so would save time and otherwise conserve resources. In such a circumstance, the agency shall explain to the requestor that creation of a document is possible and allow the requestor the opportunity to receive the created document or the underlying responsive documents.

3. Redacting Responsive Documents

Section 8 of the Act states that “if any public record that is exempt from disclosure under Section 7 of this Act contains any material which is not exempt, the public body shall delete the information which is exempt and make the remaining information available for inspection and copying.” 5 ILCS 140/8. Each agency shall, to

the extent possible, redact information from a responsive document rather than withholding the document in full.

Draft

V. FOIA COMPLIANCE ISSUES

This section provides guidance on certain regularly recurring FOIA compliance issues.

A. Definition of “Public Record”

A public record means

all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, recorded information and all other documentary materials, regardless of physical form or characteristics, having been prepared, or having been or being used, received, possessed or under the control of any public body.

5 ILCS 140/2(c).

Note that public records include all electronic records, including email correspondence and attachments to emails.

B. Definition of “Unduly Burdensome”

The analysis of whether a particular FOIA request is unduly burdensome so as to relieve the agency at issue of the obligation to respond thereto is dependent upon the specific agency and circumstances involved. In particular, this exemption is to be invoked only if the agency’s available FOIA compliance resources are demonstrably insufficient to conduct the functions of records search, retrieval, review, and production. Prior to invoking this exemption, however, agencies should (1) exhaust all good faith efforts to reallocate resources to enable compliance without undermining other core functions, and (2) offer the requestor an opportunity to narrow his/her request.

C. Section 7(1)(b) – “Personal Privacy” Exemption

Section 7(1)(b) of the Act exempts from disclosure “information, that if disclosed, would constitute a clearly unwarranted invasion of personal privacy...” 5 ILCS

140/7(1)(b). Although the Act specifically enumerates six privacy-related exemptions, these shall not be construed as *per se* exemptions under 7(1)(b). Rather, the question is whether the disclosure of records would clearly constitute an unwarranted invasion of personal privacy, and this is a determination that balances four factors: (1) the plaintiff's interest in disclosure; (2) the public interest in disclosure; (3) the degree of invasion of personal privacy; and (4) the availability of alternative means of obtaining the requested information. If, on balance, these factors militate in favor of disclosure, and in the absence of any other applicable exemptions, the agency shall proceed to make the disclosure (perhaps with appropriate redactions to avoid the disclosure of personal identifying information or information otherwise protected by law from disclosure, e.g., HIPPA).

D. Section 7(1) (f) – Drafts & Deliberative Process Records

The Act exempts from disclosure “preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated.” 5 ILCS 140/7(1)(f). This exemption recognizes that the formulation of governmental policies and actions is typically an iterative and deliberative process, and that this process benefits from the candid, pre-decisional recording and sharing of opinions. In this regard, a rule generally requiring the disclosure of all pre-decisional records would threaten to chill the free flow of ideas and thereby potentially limit the information upon which particular policies and actions are based. To prevent such a chilling effect, in cases in which this exemption may be implicated, agencies must balance the interests served by the disclosure of government records with those served by the important policy considerations underlying the exemption. More specifically, and

notwithstanding any other guidance described herein, agencies may appropriately invoke this exemption if each of the following circumstances are present:

1. Inter- or Intra-Agency Record

The record in question must be an inter-agency or intra-agency record. Thus, communications with outside parties typically do not fall under this exemption.³

2. Predecisional Nature of Record

The record in question must be predecisional. Agencies shall find a record predecisional only if it is/was prepared in order to assist an agency decision maker in arriving at his/her decision. Internal email correspondence is not necessarily predecisional in nature; each record shall be considered individually to determine if it is indeed predecisional.

3. Deliberative Nature of Record

The record in question must reflect agency deliberation. A record is deliberative if it is indicative of the agency's thought processes. This exemption does not apply to factual material, unless the material is so connected to deliberative material that disclosure of the factual material would reveal the agency's decision making processes.

³ An exception to this general rule may arise where the outside party is a paid consultant who "played essentially the same part in an agency's process of deliberation as documents prepared by agency personnel might have done." *Harwood v. McDonough*, 799 N.E.2d 859 (Ill. App. Ct. 2003), citing *Department of the Interior v. Klamath Water Users Protective Ass'n.*, 532 U.S. 1, 10 (2001). A key fact in each case in which the exemption has been extended to consultants' documents is that "the consultant does not represent an interest of its own, or the interest of any other client, when it advises the agency that hires it." *Id.*

VI. HYPOTHETICALS

A FOIA request is made for "any and all communications from any employee of your agency to anyone associated or affiliated with Paysen Bros. Construction from 2003 to the present." Most employees in your agency have ongoing communications with Paysen Bros. Construction. How do you proceed?

The FOIA Compliance Officer should immediately contact the requestor in order to allow him/her the opportunity to narrow the request. The FOIA Compliance Officer should explain to the requestor the complexity involved in gathering the documents, so that the requestor can fully understand how he/she could narrow the request. Again, once a narrowed request is agreed upon, the FOIA Compliance Office should send written confirmation of the newly tailored request.

A FOIA request is made for "documents showing employee payments, including raises and bonuses, for all merit compensated employees." The FOIA Compliance Officer has gathered all material, and it is apparent that a high-level employee received an incredibly high pay raise. How should the agency proceed?

The agency must not withhold any information in order to avoid embarrassment or speculation. It is imperative that each FOIA Compliance Officer is aware that at any time he/she can contact the General Counsel's office if he/she feels certain information is being withheld for inappropriate reasons.

VII. EXHIBITS

Freedom of Information Act statute, 5 ILCS 140

“Memorandum to Agency Directors and General Counsels Regarding Transparency in Government” from Governor Quinn (February 24, 2009)

Quarterly Report form

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GENERAL PROVISIONS

(5 ILCS 140/) Freedom of Information Act.

(5 ILCS 140/1) (from Ch. 116, par. 201)

Sec. 1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois 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 consistent with the terms of this Act. Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.

This Act is not intended to be used to violate individual privacy, nor for the purpose of furthering a commercial enterprise, or to disrupt the duly-undertaken work of any public body independent of the fulfillment of any of the fore-mentioned rights of the people to access to information.

This Act is not intended to create an obligation on the part of any public body to maintain or prepare any public record which was not maintained or prepared by such public body at the time when this Act becomes effective, except as otherwise required by applicable local, State or federal law.

These restraints on information access should be seen as limited exceptions to the general rule that the people have a right to know the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of any or all of the people. The provisions of this Act shall be construed to this end.

This Act shall be the exclusive State statute on freedom of information, except to the extent that other State statutes might create additional restrictions on disclosure of information or other laws in Illinois might create additional obligations for disclosure of information to the public.

(Source: P.A. 83-1013.)

(5 ILCS 140/1.1) (from Ch. 116, par. 201.1)

Sec. 1.1. This Act may be cited as the Freedom of Information Act.

(Source: P.A. 86-1475.)

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

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

(a) "Public body" means any 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 which are supported in whole or in part by tax revenue, or which expend tax revenue, 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, recorded information and all other documentary materials, regardless of physical form or characteristics, having been prepared, or having been or being used, received, possessed or under the control of any public body. "Public records" includes, but is expressly not limited to: (i) administrative manuals, procedural rules, and instructions to staff, unless exempted by Section 7(p) of this Act; (ii) final opinions and orders made in the adjudication of cases, except an educational institution's adjudication of student or employee grievance or disciplinary cases; (iii) substantive rules; (iv) statements and interpretations of policy which have been adopted by a public body; (v) final planning policies, recommendations, and decisions; (vi) factual reports, inspection reports, and studies whether prepared by or for the public body; (vii) all information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds of public bodies; (viii) the names, salaries, titles, and dates of employment of all employees and officers of public bodies; (ix) materials containing opinions concerning the rights of the state, the public, a subdivision of state or a local government, or of any private persons; (x) the name of every official and the final records of voting in all proceedings of public bodies; (xi) applications for any contract, permit, grant, or agreement except as exempted from disclosure by subsection (g) of Section 7 of this Act; (xii) each report, document, study, or publication prepared by independent consultants or other independent contractors for the public body; (xiii) all other information required by law to be made available for public inspection or copying; (xiv) information relating to any grant or contract made by or between a public body and another public body or private organization; (xv) waiver documents filed with the State Superintendent of Education or the president of the University of Illinois under Section 30-12.5 of the School Code, concerning nominees for General Assembly scholarships under Sections 30-9, 30-10, and 30-11 of the School Code; (xvi) complaints, results of complaints, and Department of Children and Family Services staff findings of licensing violations at day care facilities, provided that personal and identifying information is not released; and (xvii) records, reports, forms, writings, letters, memoranda, books, papers, and other documentary information, regardless of physical form or characteristics, having been prepared, or having been or being used, received, possessed, or under the control of the Illinois Sports Facilities Authority dealing with the receipt or expenditure of public funds or other funds of the Authority in connection with the reconstruction, renovation, remodeling, extension, or improvement of all or substantially all of an existing "facility" as that term is defined in the Illinois Sports Facilities Authority Act.

(d) "Copying" means the reproduction of any public record

by means of any photographic, electronic, mechanical or other process, device or means.

(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.

(Source: P.A. 91-935, eff. 6-1-01; 92-335, eff. 8-10-01; 92-468, eff. 8-22-01; 92-547, eff. 6-13-02; 92-651, eff. 7-11-02.)

(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 Section 7 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 written 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) Each public body shall, promptly, either comply with or deny a written request for public records within 7 working days after its receipt. Denial shall be by letter as provided in Section 9 of this Act. Failure to respond to a written request within 7 working days after its receipt shall be considered a denial of the request.

(d) The time limits prescribed in paragraph (c) of this Section may be extended in each case for not more than 7 additional working days 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.

(e) When additional time is required for any of the above reasons, the public body shall notify by letter the person making the written request within the time limits specified by paragraph (c) of this Section of the reasons for the delay and the date by which the records will be made available or denial will be forthcoming. In no instance, may the delay in processing last longer than 7 working days. A failure to render a decision within 7 working days shall be considered a denial of the request.

(f) 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 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 for the same public records by the same person shall be deemed unduly burdensome under this provision.

(g) 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.

(Source: P.A. 90-206, eff. 7-25-97.)

(5 ILCS 140/4) (from Ch. 116, par. 204)

Sec. 4. Each public body shall prominently display at each of its administrative or regional offices, make available for inspection and copying, and send through the mail if requested, each of the following:

(a) A brief description of itself, which will include, but not be limited to, a short summary of its purpose, a block diagram giving its functional subdivisions, the total amount of its operating budget, the number and location of all of its separate offices, the approximate number of full and part-time employees, and the identification and membership of any board, commission, committee, or council which operates in an advisory capacity relative to the operation of the public body, or which exercises control over its policies or procedures, or to which the public body is required to report and be answerable for its operations; and

(b) A brief description of the methods whereby the public

may request information and public records, a directory designating by titles and addresses those employees to whom requests for public records should be directed, and any fees allowable under Section 6 of this Act.

(Source: P.A. 83-1013.)

(5 ILCS 140/5) (from Ch. 116, par. 205)

Sec. 5. As to public records prepared or received after the effective date of this Act, each public body shall maintain and make available for inspection and copying a reasonably current list of all types or categories of records under its control. The list shall be reasonably detailed in order to aid persons in obtaining access to public records pursuant to this Act. Each public body shall furnish upon request a description of the manner in which public records stored by means of electronic data processing may be obtained in a form comprehensible to persons lacking knowledge of computer language or printout format.

(Source: P.A. 83-1013.)

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

Sec. 6. Authority to charge fees.

(a) 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. Such fees shall exclude the costs of any search for and review of the record, and shall not exceed the actual cost of reproduction and certification, unless otherwise provided by State statute. Such fees shall be imposed according to a standard scale of fees, established and made public by the body imposing them.

(b) 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.

(c) The purposeful imposition of a fee not consistent with subsections (6)(a) and (b) of this Act shall be considered a denial of access to public records for the purposes of judicial review.

(d) The fee for an 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.

(Source: P.A. 90-144, eff. 7-23-97.)

(5 ILCS 140/7) (from Ch. 116, par. 207)

(Text of Section from P.A. 95-941)

Sec. 7. Exemptions.

(1) The following shall be exempt from inspection and copying:

(a) Information specifically prohibited from disclosure by federal or State law or rules and regulations adopted under federal or State law.

(b) Information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy. Information exempted under this subsection (b) shall include but is not limited to:

(i) files and personal information maintained with respect to clients, patients, residents, students or other individuals receiving social, medical, educational, vocational, financial, supervisory or custodial care or services directly or indirectly from federal agencies or public bodies;

(ii) personnel files and personal information maintained with respect to employees, appointees or elected officials of any public body or applicants for those positions;

(iii) files and personal information maintained with respect to any applicant, registrant or licensee by any public body cooperating with or engaged in professional or occupational registration, licensure or discipline;

(iv) information required of any taxpayer in connection with the assessment or collection of any tax unless disclosure is otherwise required by State statute;

(v) information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies; provided, however, that identification of witnesses to traffic accidents, traffic accident reports, and rescue reports may be provided by agencies of local government, except in a case for which a criminal investigation is ongoing, without constituting a clearly unwarranted per se invasion of personal privacy under this subsection; and

(vi) the names, addresses, or other personal information of participants and registrants in park district, forest preserve district, and conservation district programs.

(c) Records compiled by any public body for administrative enforcement proceedings and any law enforcement or correctional agency for law enforcement purposes or for internal matters of a public body, but only to the extent that disclosure would:

(i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency;

(ii) interfere with pending administrative enforcement proceedings conducted by any public body;

(iii) deprive a person of a fair trial or an impartial hearing;

(iv) unavoidably disclose the identity of a confidential source or confidential information furnished only by the confidential source;

(v) disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct;

(vi) constitute an invasion of personal privacy under subsection (b) of this Section;

(vii) endanger the life or physical safety of law enforcement personnel or any other person; or

(viii) obstruct an ongoing criminal investigation.

(d) Criminal history record information maintained by State or local criminal justice agencies, except the following which shall be open for public inspection and copying:

(i) chronologically maintained arrest information, such as traditional arrest logs or blotters;

(ii) the name of a person in the custody of a law enforcement agency and the charges for which that person is being held;

(iii) court records that are public;

(iv) records that are otherwise available under State or local law; or

(v) records in which the requesting party is the individual identified, except as provided under part (vii) of paragraph (c) of subsection (1) of this Section.

"Criminal history record information" means data identifiable to an individual and consisting of descriptions or notations of arrests, detentions, indictments, informations, pre-trial proceedings, trials, or other formal events in the criminal justice system or descriptions or notations of criminal charges (including criminal violations of local municipal ordinances) and the nature of any disposition arising therefrom, including sentencing, court or correctional supervision, rehabilitation and release. The term does not apply to statistical records and reports in which individuals are not identified and from which their identities are not ascertainable, or to information that is for criminal investigative or intelligence purposes.

(e) Records that relate to or affect the security of correctional institutions and detention facilities.

(f) Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body. The exemption provided in this paragraph (f) extends to all those records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents.

(g) Trade secrets and commercial or financial information obtained from a person or business where the

trade secrets or information are proprietary, privileged or confidential, or where disclosure of the trade secrets or information may cause competitive harm, including:

(i) All information determined to be confidential under Section 4002 of the Technology Advancement and Development Act.

(ii) All trade secrets and commercial or financial information obtained by a public body, including a public pension fund, from a private equity fund or a privately held company within the investment portfolio of a private equity fund as a result of either investing or evaluating a potential investment of public funds in a private equity fund. The exemption contained in this item does not apply to the aggregate financial performance information of a private equity fund, nor to the identity of the fund's managers or general partners. The exemption contained in this item does not apply to the identity of a privately held company within the investment portfolio of a private equity fund, unless the disclosure of the identity of a privately held company may cause competitive harm.

Nothing contained in this paragraph (g) shall be construed to prevent a person or business from consenting to disclosure.

(h) Proposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body, until an award or final selection is made. Information prepared by or for the body in preparation of a bid solicitation shall be exempt until an award or final selection is made.

(i) Valuable formulae, computer geographic systems, designs, drawings and research data obtained or produced by any public body when disclosure could reasonably be expected to produce private gain or public loss. The exemption for "computer geographic systems" provided in this paragraph (i) does not extend to requests made by news media as defined in Section 2 of this Act when the requested information is not otherwise exempt and the only purpose of the request is to access and disseminate information regarding the health, safety, welfare, or legal rights of the general public.

(j) Test questions, scoring keys and other examination data used to administer an academic examination or determined the qualifications of an applicant for a license or employment.

(k) Architects' plans, engineers' technical submissions, and other construction related technical documents for projects not constructed or developed in whole or in part with public funds and the same for projects constructed or developed with public funds, but only to the extent that disclosure would compromise security, including but not limited to water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings.

(l) Library circulation and order records identifying library users with specific materials.

(m) Minutes of meetings of public bodies closed to the public as provided in the Open Meetings Act until the public body makes the minutes available to the public under Section 2.06 of the Open Meetings Act.

(n) Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

(o) Information received by a primary or secondary school, college or university under its procedures for the evaluation of faculty members by their academic peers.

(p) Administrative or technical information associated with automated data processing operations, including but not limited to software, operating protocols, computer program abstracts, file layouts, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, would jeopardize the security of the system or its data or the security of materials exempt under this Section.

(q) Documents or materials relating to collective negotiating matters between public bodies and their employees or representatives, except that any final contract or agreement shall be subject to inspection and copying.

(r) Drafts, notes, recommendations and memoranda pertaining to the financing and marketing transactions of the public body. The records of ownership, registration, transfer, and exchange of municipal debt obligations, and of persons to whom payment with respect to these obligations is made.

(s) The records, documents and information relating to real estate purchase negotiations until those negotiations have been completed or otherwise terminated. With regard to a parcel involved in a pending or actually and reasonably contemplated eminent domain proceeding under the Eminent Domain Act, records, documents and information relating to that parcel shall be exempt except as may be allowed under discovery rules adopted by the Illinois Supreme Court. The records, documents and information relating to a real estate sale shall be exempt until a sale is consummated.

(t) Any and all proprietary information and records related to the operation of an intergovernmental risk management association or self-insurance pool or jointly self-administered health and accident cooperative or pool.

(u) Information concerning a university's adjudication of student or employee grievance or disciplinary cases, to the extent that disclosure would reveal the identity of the student or employee and information concerning any public body's adjudication of student or employee grievances or disciplinary cases, except for the final outcome of the cases.

(v) Course materials or research materials used by

faculty members.

(w) Information related solely to the internal personnel rules and practices of a public body.

(x) Information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a public body responsible for the regulation or supervision of financial institutions or insurance companies, unless disclosure is otherwise required by State law.

(y) Information the disclosure of which is restricted under Section 5-108 of the Public Utilities Act.

(z) Manuals or instruction to staff that relate to establishment or collection of liability for any State tax or that relate to investigations by a public body to determine violation of any criminal law.

(aa) Applications, related documents, and medical records received by the Experimental Organ Transplantation Procedures Board and any and all documents or other records prepared by the Experimental Organ Transplantation Procedures Board or its staff relating to applications it has received.

(bb) Insurance or self insurance (including any intergovernmental risk management association or self insurance pool) claims, loss or risk management information, records, data, advice or communications.

(cc) Information and records held by the Department of Public Health and its authorized representatives relating to known or suspected cases of sexually transmissible disease or any information the disclosure of which is restricted under the Illinois Sexually Transmissible Disease Control Act.

(dd) Information the disclosure of which is exempted under Section 30 of the Radon Industry Licensing Act.

(ee) Firm performance evaluations under Section 55 of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act.

(ff) Security portions of system safety program plans, investigation reports, surveys, schedules, lists, data, or information compiled, collected, or prepared by or for the Regional Transportation Authority under Section 2.11 of the Regional Transportation Authority Act or the St. Clair County Transit District under the Bi-State Transit Safety Act.

(gg) Information the disclosure of which is restricted and exempted under Section 50 of the Illinois Prepaid Tuition Act.

(hh) Information the disclosure of which is exempted under the State Officials and Employees Ethics Act.

(ii) Beginning July 1, 1999, information that would disclose or might lead to the disclosure of secret or confidential information, codes, algorithms, programs, or private keys intended to be used to create electronic or digital signatures under the Electronic Commerce Security Act.

(jj) Information contained in a local emergency energy plan submitted to a municipality in accordance with a local emergency energy plan ordinance that is adopted under Section 11-21.5-5 of the Illinois Municipal Code.

(kk) Information and data concerning the distribution

of surcharge moneys collected and remitted by wireless carriers under the Wireless Emergency Telephone Safety Act.

(ll) Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.

(mm) Maps and other records regarding the location or security of generation, transmission, distribution, storage, gathering, treatment, or switching facilities owned by a utility or by the Illinois Power Agency.

(nn) Law enforcement officer identification information or driver identification information compiled by a law enforcement agency or the Department of Transportation under Section 11-212 of the Illinois Vehicle Code.

(oo) Records and information provided to a residential health care facility resident sexual assault and death review team or the Executive Council under the Abuse Prevention Review Team Act.

(pp) Information provided to the predatory lending database created pursuant to Article 3 of the Residential Real Property Disclosure Act, except to the extent authorized under that Article.

(qq) Defense budgets and petitions for certification of compensation and expenses for court appointed trial counsel as provided under Sections 10 and 15 of the Capital Crimes Litigation Act. This subsection (qq) shall apply until the conclusion of the trial of the case, even if the prosecution chooses not to pursue the death penalty prior to trial or sentencing.

(rr) Information contained in or related to proposals, bids, or negotiations related to electric power procurement under Section 1-75 of the Illinois Power Agency Act and Section 16-111.5 of the Public Utilities Act that is determined to be confidential and proprietary by the Illinois Power Agency or by the Illinois Commerce Commission.

(ss) Information that is prohibited from being disclosed under Section 4 of the Illinois Health and Hazardous Substances Registry Act.

(2) This Section does not authorize withholding of information or limit the availability of records to the public, except as stated in this Section or otherwise provided in this Act.

(Source: P.A. 94-280, eff. 1-1-06; 94-508, eff. 1-1-06; 94-664, eff. 1-1-06; 94-931, eff. 6-26-06; 94-953, eff. 6-27-06; 94-1055, eff. 1-1-07; 95-331, eff. 8-21-07; 95-481,

eff. 8-28-07; 95-941, eff. 8-29-08.)

(Text of Section from P.A. 95-988)

Sec. 7. Exemptions.

(1) The following shall be exempt from inspection and copying:

(a) Information specifically prohibited from disclosure by federal or State law or rules and regulations adopted under federal or State law.

(b) Information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy. Information exempted under this subsection (b) shall include but is not limited to:

(i) files and personal information maintained with respect to clients, patients, residents, students or other individuals receiving social, medical, educational, vocational, financial, supervisory or custodial care or services directly or indirectly from federal agencies or public bodies;

(ii) personnel files and personal information maintained with respect to employees, appointees or elected officials of any public body or applicants for those positions;

(iii) files and personal information maintained with respect to any applicant, registrant or licensee by any public body cooperating with or engaged in professional or occupational registration, licensure or discipline;

(iv) information required of any taxpayer in connection with the assessment or collection of any tax unless disclosure is otherwise required by State statute;

(v) information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies; provided, however, that identification of witnesses to traffic accidents, traffic accident reports, and rescue reports may be provided by agencies of local government, except in a case for which a criminal investigation is ongoing, without constituting a clearly unwarranted per se invasion of personal privacy under this subsection;

(vi) the names, addresses, or other personal information of participants and registrants in park district, forest preserve district, and conservation district programs; and

(vii) the Notarial Record or other medium containing the thumbprint or fingerprint required by Section 3-102(c)(6) of the Illinois Notary Public Act.

(c) Records compiled by any public body for administrative enforcement proceedings and any law enforcement or correctional agency for law enforcement purposes or for internal matters of a public body, but only to the extent that disclosure would:

(i) interfere with pending or actually and

reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency;

(ii) interfere with pending administrative enforcement proceedings conducted by any public body;

(iii) deprive a person of a fair trial or an impartial hearing;

(iv) unavoidably disclose the identity of a confidential source or confidential information furnished only by the confidential source;

(v) disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct;

(vi) constitute an invasion of personal privacy under subsection (b) of this Section;

(vii) endanger the life or physical safety of law enforcement personnel or any other person; or

(viii) obstruct an ongoing criminal investigation.

(d) Criminal history record information maintained by State or local criminal justice agencies, except the following which shall be open for public inspection and copying:

(i) chronologically maintained arrest information, such as traditional arrest logs or blotters;

(ii) the name of a person in the custody of a law enforcement agency and the charges for which that person is being held;

(iii) court records that are public;

(iv) records that are otherwise available under State or local law; or

(v) records in which the requesting party is the individual identified, except as provided under part (vii) of paragraph (c) of subsection (1) of this Section.

"Criminal history record information" means data identifiable to an individual and consisting of descriptions or notations of arrests, detentions, indictments, informations, pre-trial proceedings, trials, or other formal events in the criminal justice system or descriptions or notations of criminal charges (including criminal violations of local municipal ordinances) and the nature of any disposition arising therefrom, including sentencing, court or correctional supervision, rehabilitation and release. The term does not apply to statistical records and reports in which individuals are not identified and from which their identities are not ascertainable, or to information that is for criminal investigative or intelligence purposes.

(e) Records that relate to or affect the security of correctional institutions and detention facilities.

(f) Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body. The exemption

provided in this paragraph (f) extends to all those records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents.

(g) Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or information are proprietary, privileged or confidential, or where disclosure of the trade secrets or information may cause competitive harm, including:

(i) All information determined to be confidential under Section 4002 of the Technology Advancement and Development Act.

(ii) All trade secrets and commercial or financial information obtained by a public body, including a public pension fund, from a private equity fund or a privately held company within the investment portfolio of a private equity fund as a result of either investing or evaluating a potential investment of public funds in a private equity fund. The exemption contained in this item does not apply to the aggregate financial performance information of a private equity fund, nor to the identity of the fund's managers or general partners. The exemption contained in this item does not apply to the identity of a privately held company within the investment portfolio of a private equity fund, unless the disclosure of the identity of a privately held company may cause competitive harm.

Nothing contained in this paragraph (g) shall be construed to prevent a person or business from consenting to disclosure.

(h) Proposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body, until an award or final selection is made. Information prepared by or for the body in preparation of a bid solicitation shall be exempt until an award or final selection is made.

(i) Valuable formulae, computer geographic systems, designs, drawings and research data obtained or produced by any public body when disclosure could reasonably be expected to produce private gain or public loss. The exemption for "computer geographic systems" provided in this paragraph (i) does not extend to requests made by news media as defined in Section 2 of this Act when the requested information is not otherwise exempt and the only purpose of the request is to access and disseminate information regarding the health, safety, welfare, or legal rights of the general public.

(j) Test questions, scoring keys and other examination data used to administer an academic examination or determined the qualifications of an applicant for a license or employment.

(k) Architects' plans, engineers' technical submissions, and other construction related technical documents for projects not constructed or developed in whole or in part with public funds and the same for projects constructed or developed with public funds, but only to the extent that disclosure would compromise security, including but not limited to water treatment

facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings.

(l) Library circulation and order records identifying library users with specific materials.

(m) Minutes of meetings of public bodies closed to the public as provided in the Open Meetings Act until the public body makes the minutes available to the public under Section 2.06 of the Open Meetings Act.

(n) Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

(o) Information received by a primary or secondary school, college or university under its procedures for the evaluation of faculty members by their academic peers.

(p) Administrative or technical information associated with automated data processing operations, including but not limited to software, operating protocols, computer program abstracts, file layouts, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, would jeopardize the security of the system or its data or the security of materials exempt under this Section.

(q) Documents or materials relating to collective negotiating matters between public bodies and their employees or representatives, except that any final contract or agreement shall be subject to inspection and copying.

(r) Drafts, notes, recommendations and memoranda pertaining to the financing and marketing transactions of the public body. The records of ownership, registration, transfer, and exchange of municipal debt obligations, and of persons to whom payment with respect to these obligations is made.

(s) The records, documents and information relating to real estate purchase negotiations until those negotiations have been completed or otherwise terminated. With regard to a parcel involved in a pending or actually and reasonably contemplated eminent domain proceeding under the Eminent Domain Act, records, documents and information relating to that parcel shall be exempt except as may be allowed under discovery rules adopted by the Illinois Supreme Court. The records, documents and information relating to a real estate sale shall be exempt until a sale is consummated.

(t) Any and all proprietary information and records related to the operation of an intergovernmental risk management association or self-insurance pool or jointly self-administered health and accident cooperative or pool.

(u) Information concerning a university's adjudication of student or employee grievance or disciplinary cases, to the extent that disclosure would

reveal the identity of the student or employee and information concerning any public body's adjudication of student or employee grievances or disciplinary cases, except for the final outcome of the cases.

(v) Course materials or research materials used by faculty members.

(w) Information related solely to the internal personnel rules and practices of a public body.

(x) Information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a public body responsible for the regulation or supervision of financial institutions or insurance companies, unless disclosure is otherwise required by State law.

(y) Information the disclosure of which is restricted under Section 5-108 of the Public Utilities Act.

(z) Manuals or instruction to staff that relate to establishment or collection of liability for any State tax or that relate to investigations by a public body to determine violation of any criminal law.

(aa) Applications, related documents, and medical records received by the Experimental Organ Transplantation Procedures Board and any and all documents or other records prepared by the Experimental Organ Transplantation Procedures Board or its staff relating to applications it has received.

(bb) Insurance or self insurance (including any intergovernmental risk management association or self insurance pool) claims, loss or risk management information, records, data, advice or communications.

(cc) Information and records held by the Department of Public Health and its authorized representatives relating to known or suspected cases of sexually transmissible disease or any information the disclosure of which is restricted under the Illinois Sexually Transmissible Disease Control Act.

(dd) Information the disclosure of which is exempted under Section 30 of the Radon Industry Licensing Act.

(ee) Firm performance evaluations under Section 55 of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act.

(ff) Security portions of system safety program plans, investigation reports, surveys, schedules, lists, data, or information compiled, collected, or prepared by or for the Regional Transportation Authority under Section 2.11 of the Regional Transportation Authority Act or the St. Clair County Transit District under the Bi-State Transit Safety Act.

(gg) Information the disclosure of which is restricted and exempted under Section 50 of the Illinois Prepaid Tuition Act.

(hh) Information the disclosure of which is exempted under the State Officials and Employees Ethics Act.

(ii) Beginning July 1, 1999, information that would disclose or might lead to the disclosure of secret or confidential information, codes, algorithms, programs, or private keys intended to be used to create electronic or digital signatures under the Electronic Commerce Security Act.

(jj) Information contained in a local emergency energy plan submitted to a municipality in accordance with a local emergency energy plan ordinance that is adopted under Section 11-21.5-5 of the Illinois Municipal Code.

(kk) Information and data concerning the distribution of surcharge moneys collected and remitted by wireless carriers under the Wireless Emergency Telephone Safety Act.

(ll) Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.

(mm) Maps and other records regarding the location or security of a utility's generation, transmission, distribution, storage, gathering, treatment, or switching facilities.

(nn) Law enforcement officer identification information or driver identification information compiled by a law enforcement agency or the Department of Transportation under Section 11-212 of the Illinois Vehicle Code.

(oo) Records and information provided to a residential health care facility resident sexual assault and death review team or the Executive Council under the Abuse Prevention Review Team Act.

(pp) Information provided to the predatory lending database created pursuant to Article 3 of the Residential Real Property Disclosure Act, except to the extent authorized under that Article.

(qq) Defense budgets and petitions for certification of compensation and expenses for court appointed trial counsel as provided under Sections 10 and 15 of the Capital Crimes Litigation Act. This subsection (qq) shall apply until the conclusion of the trial of the case, even if the prosecution chooses not to pursue the death penalty prior to trial or sentencing.

(2) This Section does not authorize withholding of information or limit the availability of records to the public, except as stated in this Section or otherwise provided in this Act.

(Source: P.A. 94-280, eff. 1-1-06; 94-508, eff. 1-1-06; 94-664, eff. 1-1-06; 94-931, eff. 6-26-06; 94-953, eff. 6-27-06; 94-1055, eff. 1-1-07; 95-988, eff. 6-1-09.)

(5 ILCS 140/7.1) (from Ch. 116, par. 207.1)

Sec. 7.1. Nothing in this Act shall be construed to prohibit publication and dissemination by the Department of Healthcare and Family Services or the Department of Human

Services of the names and addresses of entities which have had receipt of benefits or payments under the Illinois Public Aid Code suspended or terminated or future receipt barred, pursuant to Section 11-26 of that Code.

(Source: P.A. 95-331, eff. 8-21-07.)

(5 ILCS 140/8) (from Ch. 116, par. 208)

Sec. 8. If any public record that is exempt from disclosure under Section 7 of this Act contains any material which is not exempt, the public body shall delete the information which is exempt and make the remaining information available for inspection and copying.

(Source: P.A. 85-1357.)

(5 ILCS 140/9) (from Ch. 116, par. 209)

Sec. 9. (a) Each public body or head of a public body denying a request for public records shall notify by letter the person making the request of the decision to deny such, the reasons for the denial, and the names and titles or positions of each person responsible for the denial. Each notice of denial by a public body shall also inform such person of his right to appeal to the head of the public body. Each notice of denial of an appeal by the head of a public body shall inform such person of his right to judicial review under Section 11 of this Act.

(b) When a request for public records is denied on the grounds that the records are exempt under Section 7 of this Act, the notice of denial shall specify the exemption claimed to authorize the denial. Copies of all notices of denial shall be retained by each public body in a single central office file that is open to the public and indexed according to the type of exemption asserted and, to the extent feasible, according to the types of records requested.

(Source: P.A. 83-1013.)

(5 ILCS 140/10) (from Ch. 116, par. 210)

Sec. 10. (a) Any person denied access to inspect or copy any public record may appeal the denial by sending a written notice of appeal to the head of the public body. Upon receipt of such notice the head of the public body shall promptly review the public record, determine whether under the provisions of this Act such record is open to inspection and copying, and notify the person making the appeal of such determination within 7 working days after the notice of appeal.

(b) Any person making a request for public records shall be deemed to have exhausted his administrative remedies with respect to such request if the head of the public body affirms the denial or fails to act within the time limit provided in subsection (a) of this Section.

(Source: P.A. 83-1013.)

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

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

(b) Where the denial is from the head of a public body of

the State, suit may be filed in the circuit court for the county where the public body has its principal office or where the person denied access resides.

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

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

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

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

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

(f) In any action considered by the court, the court shall consider the matter de novo, and shall conduct such in camera examination of the requested records as it finds appropriate to determine if such records or any part thereof may be withheld under any provision of this Act. The burden shall be on the public body to establish that its refusal to permit public inspection or copying is in accordance with the provisions of this Act.

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

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

(i) If a person seeking the right to inspect or receive a copy of a public record substantially prevails in a proceeding under this Section, the court may award such person reasonable attorneys' fees and costs. If, however, the court finds that the fundamental purpose of the request was to further the commercial interests of the requestor, the court may award reasonable attorneys' fees and costs if the court finds that the record or records in question were of clearly significant interest to the general public and that the public body lacked any reasonable basis in law for withholding the record.

(Source: P.A. 93-466, eff. 1-1-04.)

Pat Quinn
Governor of Illinois

February 24, 2009

**MEMORANDUM TO AGENCY DIRECTORS
AND GENERAL COUNSELS REGARDING
TRANSPARENCY IN GOVERNMENT**

The Right of the People to Transparency in Government. The People of Illinois have the unassailable right to an efficient, effective, and open state government run by officials and employees of the highest integrity, honesty, and ability who conduct themselves at all times with the public good in mind. A government that shrouds itself in secrecy and shuts out the sunshine of public scrutiny is one that will neither earn nor deserve the respect and trust of the People.

In order to ensure that state government is run for the benefit of the People, it is critical that transparency be a guiding principle and motivating force of government operations. As President Lincoln said, "Let the people know the facts, and the country will be safe."

FOIA as a Primary Tool for Transparency. One of the primary tools to promote openness and transparency in state government is the Illinois Freedom of Information Act ("FOIA"). The text of FOIA itself emphasizes the right of the People to demand and obtain information about and from their government: "[A]ll 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."

The Presumption of Disclosure. In order to honor the right of the People to transparency in government, FOIA requests shall be considered and responded to with a presumption in favor of disclosure. In particular, FOIA requests shall be complied with in full conformity with both the letter and spirit of FOIA, and no decision to withhold information sought in a FOIA request shall be made to avoid embarrassment or for any speculative or other improper purpose.

Exemptions to Be Interpreted Narrowly. Similarly, exemptions in FOIA shall be interpreted as narrowly as possible so as to appropriately balance the requirement to protect the legitimate interests and policies embodied in the exemptions while also respecting the public's right to know about the affairs of its government.

Reports from Agencies Regarding Posting of Electronic Data. Furthermore, all agencies are hereby directed to issue a report to the General Counsel of the Office of the Governor within 45 days describing what information the agencies can post electronically in a proactive fashion. These reports themselves will be made public.

The General Counsel will provide further guidance regarding FOIA compliance, and, in consultation with the Chief Information Officer, will also provide guidance pertaining to electronic posting of information.

This memorandum does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State of Illinois, its departments, agencies or entities, its officers, employees or agents, or any other person.

QUARTERLY REPORT

Total number of requests received during reporting period	
Union Requests	
Media Requests	
Public Interest Group Requests	
Attorney Requests	
Other	
Total Denials	
Partial Denial	
Full Denial	
Exempt - 7(1)(a)	
Exempt - 7(1)(b)	
Exempt - 7(1)(c)	
Exempt - 7(1)(f)	
Other	