

# A Reference Guide to the Illinois Freedom of Information Act



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Prepared by: O'Halloran Kosoff Geitner & Cook,  
LLC for the ICRMT

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## **Purpose of the Freedom of Information Act**

The Illinois Freedom of Information Act (FOIA) (5 ILCS 140/1) provides the people of the State of Illinois with the right to access “full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees.” 5 ILCS 140/1. According to FOIA, public bodies must give citizens access to inspect and copy public records in their custody or possession for the purpose of promoting transparency and accountability among public bodies at all levels of government. There are exceptions to the public’s right to access public records as delineated in the statute (Section 7), but the presumption under FOIA is that public records are open.

## **Records are Presumed to be Open**

“All records in the custody or possession of a public body are presumed to be open to inspection or copying.” 5 ILCS 140/1.2. The burden is on the public body to prove that a record is exempt from disclosure.

## **What is a Public Record?**

FOIA defines a “public record” as “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.” 5 ILCS 140/2(c). The definition is generally all-encompassing of all types of public records a public body would have in its custody or possession.

However, FOIA does *not* require a public body to copy a public record that is published on the public body’s website. Instead, the public body must notify the requester that the public record is available online and direct the requester to the website where the record can reasonably be accessed. 5 ILCS 140/8.5.

Additionally, FOIA does not create an obligation for any public body to maintain or prepare any public record which was not maintained or prepared by the public body at the time when FOIA became effective (Jan. 1, 2010), except as required by local, state, or federal law. 5 ILCS 140/1.

### Interpretive Court Decisions

To qualify as a public record under FOIA, a record must pertain to public business rather than private affairs; the record also must have been either (1) prepared by a public body, (2) prepared for a public body, (3) used by a public body, (4) received by a public body, (5) possessed by a public body, or (6) controlled by a public body. *Better Government Ass’n v. City of Chicago*, 2020 IL App (1st) 190038.

Communications sent and received from public officials’ personal e-mail accounts may be “public records.” *Better Government Ass’n v. City of Chicago*, 2020 IL App (1st) 190038. However, to qualify as a “public record” under FOIA, the communication must (1) pertain to the transaction of public business and must have either been prepared by, prepared for, used by, received by, possessed by, or

controlled by the public body; thus, if the communication, which pertains to the transaction of public body, was sent or received during the time a city council meeting was in session, then the communication is a public record and is subject to FOIA. *City of Champaign v. Madigan*, 2013 IL App (4th) 120662.

A public body's obligation under FOIA to provide access to public records is not limited to those public records that it has *present* possession or control of, as the obligation continues even if such records are transferred to a nonpublic body. *Chicago Tribune v. College of DuPage*, 2017 IL App (2d) 160274.

FOIA is not designed to compel the compilation of data the governmental body does not ordinarily keep, and does not compel the agency to provide answers to questions posed by the inquirer. *Chicago Tribune v. Department of Financial and Professional Regulation*, 2014 IL App (4th) 130427.

A communication to an individual city council member's publicly issued electronic device is subject to FOIA because the device is under the control of a public body. Similarly, if the individual city council member received a message from a constituent on a personal device but forwarded the message to his publicly issued device, that message would also be subject to FOIA as it would then be under the control of the public body. *City of Champaign v. Madigan*, 2013 IL App (4th) 120662.

### Interpretive Attorney General Opinions

Electronic records relating to the transaction of public business are "public records" subject to disclosure under FOIA notwithstanding that they are generated on public officials' private

equipment and/or maintained on personal electronic accounts. 2011 *Op. Att’y. Gen. No. 11-006*.

Because the Governor’s calendar was prepared and is maintained by the Governor’s Office and pertains to public business, it is a public record of the Governor’s Office for purposes of FOIA. 2015 *Op. Att’y. Gen. No. 15-008*.

The amount of compensation paid to each public employee is considered public record subject to disclosure. 2016 *Op. Att’y. Gen. No. 16-012*.

A home rule unit of government does not have the authority to supersede FOIA and pass an ordinance to avoid disclosing certain public records to the public. 2015 *Op. Att’y. Gen. No. 15-002*.

### **Public Bodies Subject to FOIA**

The FOIA defines “public body” as “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.” 5 ILCS 140/2(a).



## Interpretive Court Decisions

FOIA's mere use of the term "public body" does not exclude parties who contract to perform governmental functions on behalf of a public body. *Rushton v. Dept. of Corrections*, 2019 WL 6907324.

Office of the state's attorney for county was an executive body of the state, and thus, was a "public body" under FOIA. *Nelson v. Kendall County*, 2014 IL 116303.

City police department is a "public body" for purposes of FOIA. *Dumke v. City of Chicago*, 2013 IL App (1<sup>st</sup>) 121668.

An individual alderman is not subject to FOIA. *City of Champaign v. Madigan*, 2013 IL App (4<sup>th</sup>) 120662.

Individual departments of city are "public bodies" under FOIA and are each individually subject to FOIA's mandates. *Duncan Pub., Inc. v. City of Chicago*, 304 Ill. App. 3d 778 (1st Dist. 1999).

## Interpretive Attorney General Opinions

The governing body of a charter school is a public body and thus, subject to the same disclosure requirements under FOIA as other government entities in Illinois. 2013 *Op. Att'y. Gen.* No. 13-012.

Hospital districts are units of local government and public bodies under FOIA. 2015 *Op. Att'y. Gen.* No. 15-006.

## **Duties and Obligations of FOIA Officers**

Each public body shall designate one or more officials or employees to act as its FOIA officer(s). 5 ILCS 140/3.5(a). It is important for a public body to have more than one designated FOIA officer because of the short deadline in which to respond and the time-consuming nature of locating and reviewing responsive records, and often a public body is responding to more than one FOIA request at any given time. When a public body designates a new or additional FOIA officers, that person must successfully complete an electronic training curriculum developed by the Public Access Counselor under the Office of the Illinois Attorney General within 30 days after that designation. Thereafter, FOIA officers must successfully complete the electronic training on an annual basis. 5 ILCS 140/3.5(b).

## **Additional Obligations for Public Bodies under FOIA**

In addition to the record access obligations for public bodies under FOIA, the statute also mandates that each public body display at each of its offices and make available for inspection and copying:

- (a) A brief description of itself, including but not limited to, a short summary of its purpose, a block diagram of its functional subdivisions, the total amount of its operating budget, the number and location of all of its separate offices, the approximate number of employees (both part- and full-time), 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; and

- (b) A brief description of the methods for requesting information and public records, a directory designating the FOIA officer(s), the address where requests may be directed, and any fees allowable under FOIA.

If the public body maintains a website, this required information must also be available there. 5 ILCS 140/4.

### **Receiving and Responding to FOIA Requests**

Requests for inspection or copies must be made by requesters *in writing* and directed to the public body. A public body may, at their choice, honor oral requests. However, a public body may not require requesters to submit requests on a standard form or specify the purpose of the request, except to determine whether the records are requested for a commercial purpose. All requests for inspection and copying received by a public body must be immediately forwarded to its FOIA officer. 5 ILCS 140/3(c).

Within 5 business days after receipt of a request, a public body shall, promptly, either comply with or deny the request for public records, *unless* the time for response is properly extended under Section 3(e) (*see* p. 11). A denial of the request must be in writing.

Failure to comply with a written request, extend the time for response, or deny a request within 5 business days after its receipt will be considered a denial of the request. A public body that fails to respond to a request within the requisite periods but later provides the requester with copies of the requested public records

cannot impose a fee for such copies. Further, a public body that fails to respond to a request cannot treat the request as “unduly burdensome” under Section 3(g) (*see* p. 14) 5 ILCS 140/3(d).

### **Extending the Time for Response:**

The time for a public body to respond 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:

- (1) The requested records are stored in whole or in part at other locations than the office having charge of the requested records;
- (2) The request requires the collection of a substantial number of specified records;
- (3) The request is couched in categorical terms and requires an extensive search for the records responsive to it;
- (4) The requested records have not been located in the course of routine search and additional efforts are being made to locate them;
- (5) The requested records require examination and evaluation by personnel to determine if they are exempt from disclosure under Section 7 of FOIA;
- (6) The request for records cannot be complied with by the public body within the time limits prescribed without unduly burdening or interfering with the operations of the public body;
- (7) There is a need for consultation, which shall be conducted with all practicable speed, with another public body having a substantial interest in the determination or in the subject matter of the request.

5 ILCS 140/3(e).

When additional time is required for one 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 will be considered a denial of the request and the public body will not be able to treat the request as unduly burdensome under Section 3(g) (see p. 14). 5 ILCS 140/3(f).

### **Duty to Search for Responsive Records**

Under FOIA, a public body is required to conduct a “reasonable search tailored to the nature of a particular request.” *Campbell v. United States Dep’t of Justice*, 164 F. 3d 20, 28 (D.C. Cir. 1998). A public body’s search must be “reasonably calculated to uncover all relevant documents.” *Weisburg v. Dep’t of Justice*, 705 F. 2d 1344, 1351 (D.C. Cir. 1983). Although a public body is not required to “search ever record system[,]” it “cannot limit its search to only one record system if there are others that are likely to turn up the requested information.” *Oglesby v. United States Dep’t of the Army*, 920 F. 2d 57, 68 (C.A.D.C. 1990).

### **Interpretive Court Decisions**

FOIA gives a public body in receipt of a records request the unilateral ability to extend its own response deadline by 5 days. *Sargent Shriver Nat’l Center on Poverty Law, Inc. v. Bd. of Educ. of City of Chicago*, 2018 IL App (1st) 171846.

FOIA is not designed to compel public bodies to compile data not ordinarily kept by the public body or to generate new records in response to requests. *Hites v. Waubensee Community College*, 2016 IL App (2d) 150836 (citing *Kenyon v. Garrels*, 184 Ill. App. 3d 28 (4th Dist. 1989)).

### Interpretive Attorney General Opinions

The public body failed to issue a timely response where it did not, within 5 business days of receiving the request, comply with the request, deny it in writing, or provide notice it was extending its time for response. Moreover, Section 3(e) does not authorize a public body to unilaterally and indefinitely extend its time for responding to a FOIA response. 2015 *Op. Att'y. Gen. No. 15-012*.

Where the public body's response to a requester's FOIA request contained no indication that it conducted any search or made any effort to locate records responsive to the request, the PAC concluded that the public body had failed to demonstrate that it conducted a reasonable search for records. 2014 *Op. Att'y. Gen. No. 14-010*.

In its response to a FOIA request stating that no responsive records existed, a public body did not provide an explanation of the recordkeeping system that it searched or any other description of the extent of its efforts to locate responsive records. The PAC found that the public body violated FOIA by failing to demonstrate that it conducted an adequate search to locate responsive records. 2014 *Op. Att'y. Gen. No. 14-007*.

## “Unduly Burdensome” Requests

Requests that ask for all records falling within a category must be complied with *unless* compliance with the request would be unduly burdensome for the complying public body and (1) there is no way to narrow the request and (2) the burden on the public body outweighs the public interest in the information. 5 ILCS 140/3(g).

Before invoking the “unduly burdensome” exemption, the public body must give the requester an opportunity to confer and attempt to narrow the request to manageable proportions. If all the conditions are met, the public body must notify the requester in writing of the asserted exemption, specifying the reasons why, and to what extent, compliance would be unduly burdensome. 5 ILCS 140/3(g).

## Interpretive Court Decisions

A FOIA request that is overly broad and requires the public body to locate, review, redact and arrange for inspection of a vast quantity of material that is largely unnecessary to the requester’s purpose constitutes an undue burden. *Kelly v. Village of Kenilworth*, 2019 IL App (1st) 170780; *Shehadeh v. Madigan*, 2013 IL App (4th) 120742; *Nat’l Ass’n of Criminal Defense Lawyers v. Chicago Police Dept.*, 399 Ill. App. 3d 1 (1st Dist. 2010).

For the unduly burdensome exemption to apply, there must be no way for the requester to narrow the FOIA request and the burden on the public body must outweigh the public’s interest in the information. *Kelly v. Village of Kenilworth*, 2019 IL App (1st) 170780.

Response by the Attorney General's office to a records request that claimed undue burden given that office's search for records revealed over 9,000 responsive documents was sufficient to invoke the FOIA exemption from compliance. *Shehadeh v. Madigan*, 2013 IL App (4th) 120742.

Even though the public body failed to assert the "unduly burdensome" exemption and did not provide plaintiff with an opportunity to narrow their request, the court held that it was permissible to allow the public body to raise the exemption for the first time before the court because the public body had "reserved the right to raise additional exemptions." See *Kelly v. Village of Kenilworth*, 2019 IL App (1st) 170780.

### Interpretive Attorney General Opinions

Because the public body failed to respond to the FOIA request within 5 business days after its receipt, it is precluded from asserting that the request is unduly burdensome under Section 3(g) of FOIA. Moreover, even if the public body had properly asserted Section 3(g), the burden of compliance would be outweighed by the significant public interest in the dissemination of certified payroll records, as reflected by the enactment of Section 2.10 of FOIA, which expressly requires the disclosure of these records. 2015 *Op. Att'y. Gen. No. 15-011*; 2014 *Op. Att'y. Gen. No. 14-007*.

"Opportunity to confer" under Section 3(g) requires a public body that considers a request to be unduly burdensome to offer to confer with the requester about narrowing the scope of the request to manageable proportions and then to follow through in good faith if the requester accepts the public body's offer. 2021 *Op. Att'y. Gen. No. 21-001*.



Pursuant to Section 3(g), a public body may deny a FOIA request as an unduly burdensome repeated request only if it has previously provided the requester with all of the nonexempt responsive records or properly denied the same FOIA request by the same requester in accordance with FOIA. Thus, the public body must look back to the original request and the response to that request. 2018 *Op. Att’y. Gen. No.*, 18-008.

### **Voluminous Requests**

Within 5 business days after receipt of a voluminous request, the public body shall respond and notify the requester that it is treating the request as a voluminous request and why. 5 ILCS 140/3.6(a)

FOIA defines “voluminous request” as 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.” 5 ILCS 140/2(h).

From the date that the public body sent its “voluminous request” response, the requester shall have 10 business days to respond and amend the request in such a way that it is no longer considered voluminous. If the requester *fails* to respond OR amend the request within 10 business days, the public body must comply with the original voluminous request, but may charge the requester fees as laid out in its fee schedule pursuant to Section 6 (*see* p. 18). 5 ILCS 140/3.6(b).

The public body must then respond to the request (whether amended or not) within 5 business days after the receipt of the requester's amended response OR the expiration of the 10 business days provided for the requester to respond with an amendment, whichever is earlier. 5 ILCS 140/3.6(c). The time for response by the public body may be extended an additional 10 business days thereafter for any of the reasons provided in Section 3(e) of FOIA. (see p. 11). 5 ILCS 140/3.6(d).

### **Recurrent Requesters**

FOIA defines "recurrent requester" as 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." 5 ILCS 140/2(g).

However, this definition does *not* include requests made by news media and non-profit, scientific, or academic organizations when the purpose of the requests is "(i) to access and disseminate information concerning news and current or passing events, (ii) for articles of opinions or features of interest to the public, or (iii) for the purpose of academic, scientific, or public research or education." *Id.*

If a public body receives a request from a recurrent requester, as defined above, the public body has 21 business days after receipt to respond. 5 ILCS 140/3.2(a). However, the public body must notify the recurrent requester within 5 business days that it is treating the request as such and explain the reasons why. 5 ILCS 140/3.2(b).

## Interpretive Attorney General Opinions

A recurrent requester under FOIA must be a “person,” which is further defined as “any individual, corporation, partnership, firm, organization or association, acting individually or as a group.” 2012 *Op. Att’y. Gen. No. 12-001* (citing 5 ILCS 140/2(b)).

FOIA does not permit a public body to aggregate the separate requests of two individuals for purposes of Section 2(g) simply because the individuals are married or live at the same address. 2012 *Op. Att’y. Gen. No. 12-001*.

## Copying Fees

Where feasible at the option of the requester, FOIA mandates a public body to tender copies of requested records in electronic format. If it is not feasible to furnish the records in electronic format, then the public body must tender the records in the format in which they are maintained or in paper format at the option of the requester, and may charge the requester for the actual cost of purchasing the recording medium. 5 ILCS 140/6(a).

If a request is *not* for commercial purpose or a voluminous request, 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. *Id.*

Each public body may charge fees reasonably calculated to reimburse its actual cost for reproducing and certifying public records and for the use of the equipment of the public body to copy records.

- (1) No fees shall be charged for the first 50 pages of black and white (letter or legal sized copies)
- (2) The fee for black and white, letter or legal sized copies shall not exceed 15 cents per page
- (3) If copies are provided in color or a size other than letter or legal, the fee cannot exceed the *actual* cost for reproducing the records, which shall not include the costs of any search for and review of the records or other personnel costs
- (4) The fee to certify a record shall not exceed \$1

5 ILCS 140/6(b). Fees shall be imposed according to a standard scale of fees, established and made public by the body imposing them.

### **Waiver or Reduction of Copying Fees**

If the requester states the specific purpose for their request and indicates that a waiver or reduction of the fee is in the public interest, the public body must provide the requested documents without charge or at a reduced charge. 5 ILCS 140/6(c). A 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 (“commercial” benefit does not apply to news media requests for the same principal purpose outlined in Section 6(c)). *Id.*

### **Copying Fees: Voluminous Requests**

For voluminous requests of electronic records, where the electronic records are *not* in 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. For voluminous requests of electronic records, where the electronic records *are* in PDF, 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. 5 ILCS 140/6(a-5).

### **Copying Fees: Commercial Requests**

For commercial requests, a public body may charge up to \$10 for each hour spent by personnel in searching for and retrieving a requested record or examining a record for necessary redactions. The public body shall not charge a fee for the first 8 hours spent by personnel in searching for or retrieving a requested record. If a public body imposes fees pursuant to this section, it must provide the requester with an accounting of all fees, costs, and personnel hours in connection with the request. 5 ILCS 140/6(f).

### **Interpretive Court Decisions**

Permissible charges for requested records were governed by FOIA, rather than another statute (here: the Property Tax Code), unless the statute expressly provided that the agency could charge fees in excess of those permitted by FOIA. *Sage Information Serv. v. Suhr*, 2014 IL App (2d) 130708.

Department of Transportation did not comply with plaintiff's FOIA request for an unlocked Excel spreadsheet when it tendered a locked version of the spreadsheet, where it was feasible for the Department to provide the unlocked version. FOIA requires public

bodies to provide information *in the format in which it is maintained*. *Fagel v. Dep't of Transportation*, 2013 IL App (1st) 121841.

### Interpretive Attorney General Opinions

While Section 6(b) permits a public body to charge for the cost of reproducing requested records, it does not authorize a public body to charge a requester for preparing a duplicate record of those records for its own files. 2010 *Op. Att'y. Gen.* No. 10-002.

A public body may not charge a non-commercial requester the fees associated with a third-party contractor locating and retrieving the requested public records that are in possession of the contractor. 2013 *Op. Att'y. Gen.* No. 13-018.

### Denying a FOIA Request

If after review of a FOIA request, the public body decides to deny the request for public records, it must notify the requester in writing of (1) the decision to deny the request; (2) the exemption claimed to authorize the denial and the specific reasons, including a detailed factual basis for the application of any exemption claimed and citation to supporting legal authority; and (3) the names and titles or positions of each person responsible for the denial. 5 ILCS 140/9(a). Further, the notice of denial must inform the requester of their right to review by the Public Access Counselor (providing address and phone number for the PAC) and their right to judicial review pursuant to Section 11 of FOIA. *Id.*

Additionally, FOIA mandates that public bodies retain copies of all notices of denial, which shall be open to the public and indexed

according to the type of exemption asserted and, if feasible, the types of records requested. 5 ILCS 140/9(b).

### Interpretive Court Decisions

FOIA did not require a detailed factual basis for a denial where the public body was not claiming an exemption, given that it had established that the requested records did not exist. *Barner v. Fairburn*, 2019 IL App (3d) 180742.

City police department's failure to index record requests under FOIA by type of *record* was due to feasibility concerns (lack of resources) and where the records were properly indexed by type of *exemption*, the court found no violation of FOIA's indexing requirements. *Chicago Alliance for Neighborhood Safety v. City of Chicago*, 348 Ill. App. 3d 188 (1st Dist. 2004).

### Interpretive Attorney General Opinions

FOIA requires a public body to provide denials *in writing*; verbal communications are insufficient for compliance with Section 9(a). 2013 *Op. Att'y. Gen. No. 13-013*.

Even where a public body complies with a request, in part, and denies the request, in part, it must provide a written letter notifying the requester of the partial denial and explaining the factual basis for any claimed exemptions. 2017 *Op. Att'y. Gen. No. 17-003*.

### **Arrest and Criminal History Reports**

FOIA requires disclosure of arrest reports and criminal history records, unless the public body determines that disclosure would

(i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by law enforcement agency; (ii) endanger the life or physical safety of law enforcement or correctional personnel or any other person; or (iii) compromise the security of any correctional facility. However, the provisions of Section 2.15 do not supersede the confidentiality provisions for law enforcement or arrest records of the Juvenile Court Act of 1987. 5 ILCS 140/2.15(a)-(d).

### Interpretive Attorney General Opinions

Section 2.15(a) requires state and local criminal justice agencies to release certain types of information related to arrests. Section 2.15(b) does not permit public bodies to withhold arrest records. Additionally, arrest records are not exempt from disclosure under Section 7(1)(c). 2011 *Op. Att’y. Gen. No. 11-001*.

Section 2.15(a) illustrates a strong public interest in the disclosure of information concerning arrests that outweighs an arrestee’s right to privacy. 2012 *Op. Att’y. Gen. No. 12-006*.

### Settlement Agreements

All settlement and severance agreements entered into by or on behalf of a public body are public records subject to inspection and copying by the public, provided that information that is exempt from disclosure under Section 7 may be redacted. 5 ILCS 140/2.2.

### Interpretive Attorney General Opinions

Confidentiality provisions in settlement agreements involving a public body are inconsistent with the requirements of Section 2.20



and contravene public policy as set forth in FOIA; therefore, they are unenforceable as written and the settlement agreements must be disclosed. 2014 *Op. Att’y. Gen. No. 14-004*; 2015 *Op. Atty. Gen. No. 15-004*.

### **Section 7 List of Exemptions**

Section 7 of FOIA enumerates a list of exemptions to the public body’s obligation to make available public records for inspection and copying. However, where a public record contains some information that is exempt from disclosure but also contains some information that is *not* exempt from disclosure, the public body has an obligation to make the remaining information available for inspection and copying, generally by redacting the exempt information from the record. 5 ILCS 140/7(1).

While the exemptions under Section 7 are numerous, the following are the most commonly claimed exemptions by public bodies. However, the full list of exemptions should be reviewed and can be found on pp. 84-120.

#### **Section 7(1)(a)**

Information specifically prohibited from disclosure by federal or state law or rules and regulations implementing federal or state law is exempt.

#### **Interpretive Court Decisions**

FOIA is not the proper vehicle for obtaining grand jury transcripts. *Taliani v. Herrmann*, 2011 IL App (3d) 090138.

Procedure rule barring disclosure of matters occurring before a grand jury prohibited disclosure to convict of grand jury's no bills of indictment; thus, no bills of indictment were exempt under FOIA as information specifically prohibited from disclosure by federal or state law. *Williams v. Bruscato*, 2019 IL App (2d) 170779.

Personnel Record Review Act did not prohibit disclosure of the complaint register files for two police officers so as to exempt them under FOIA's exemption for "information specifically prohibited from disclosure" by federal or state law. *Watkins v. McCarthy*, 2012 IL App (1st) 100632.

The phrase "state law" does not include municipal ordinances. *City of Chicago v. Janssen Pharmaceuticals, Inc.*, 2017 IL App (1st) 150870.

Law Enforcement Agencies Data System (LEADS) records are protected from disclosure as information specifically prohibited from disclosure by state law. *Better Government Ass'n v. Zaruba*, 2014 IL App (2d) 140071.

## **Section 7(1)(b)**

Private information is exempt, unless disclosure is required by another provision of FOIA, a state or federal law or a court order.

FOIA defines "private information" as "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.” 5 ILCS 140/2(c-5).

### Interpretive Court Decisions

Personal financial information is universally presumed to be private, not public, for purposes of disclosure under FOIA. *Timpone v. Illinois Student Assistance Commission*, 2019 IL App (1st) 181115.

Drivers’ names, addresses, license numbers, and ticket numbers were “personally identifying” and “private” information and exempt from disclosure under FOIA. *Heinrich v. White*, 2012 IL App (2d) 110564.

Provision in FOIA that exempts medical records from disclosure as private information does not exempt all information contained within those records from disclosure since FOIA expressly provides that a public body may redact protected information and disclose the remaining, unredacted information. *Sun-Times v. Cook County Health and Hospital System*, 2021 IL App (1st) 192551.

### Interpretive Attorney General Opinions

Names are not specifically included in the definition of “private information” and a name is not ordinarily sufficiently unique to identify a specific individual because many persons have the same name. Further, when the legislature intended to exempt a person’s identity from disclosure, it did so explicitly (*see* Sections 7(1)(d)(iv) and 7(1)(j)(iii)). 2012 *Op. Att’y. Gen.* No. 12-003; 21 *Op. Att’y. Gen.* No. 21-007.

A property index number, while it identifies a particular property, standing by itself does not identify the owner or occupant thereof. Therefore, since PINs are unique to properties, not persons, they are not “unique identifiers” for purposes of Section 7(1)(b). 2018 *Op. Att’y. Gen. No. 18-009*.

Photographs of a public employee do not constitute “biometric identifiers” so as to exempt them from disclosure under Section 7(1)(b), particularly given that FOIA specifically defines “public records” to include photographs. 2014 *Op. Att’y. Gen. No. 14-008*.

### **Section 7(1)(c)**

Personal information contained within public records is exempt if the disclosure would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information.

“Unwarranted invasion of personal privacy” means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject’s right to privacy outweighs any legitimate public interest in obtaining the information.

### **Interpretive Court Decisions**

When making the determination that disclosure of public records would constitute an unwarranted invasion of personal privacy, courts consider (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. *McGee v. Kelley*, 2017 IL App (3d) 160324.

Though information contained within a personnel file is generally exempt from disclosure under FOIA for personal privacy reasons, information that bears on the public duties of public employees and officials is not exempt under the personal privacy exemption. *State Journal-Register v. University of Illinois Springfield*, 2013 IL App (4th) 120881.

“Names of testifying witnesses and portions of their statements which were revealed in court proceedings do not constitute highly personal information” and are not exempt from disclosure. However, birth dates and other private information as defined under Section 2(c-5) of both testifying and non-testifying witnesses constitute “private information” and may be redacted.” *Watkins v. Johnson*, 2016 IL App (1st) 152958 (citing PAC opinion issued in the case) (also interpretive of Section 7(1)(b)).

### Interpretive Attorney General Opinions

Surviving family members of a decedent have a cognizable personal privacy interest in autopsy records relating to the death of a close relative, which must be balanced against the interests of the public in accessing the information contained in the specific records. With respect to post-mortem photographs, which are by nature graphic and gruesome, the privacy interests of the surviving family members outweigh the public’s interest in the graphic photographs of the bodies. 2010 *Op. Att’y. Gen.* No. 10-003.

Complaint reports against public employees were not exempt from disclosure under Section 7(1)(c) because the complaints concerned

police officer's conduct while performing his public duties. However, names and other discrete information in the reports that identify the complainants were exempt from disclosure as highly personal. 2018 *Op. Att'y. Gen.* No. 18-018; 2021 *Op. Att'y. Gen.* No. 21-010.

### **Section 7(1)(d)**

Records in the possession of any public body created in the course of administrative enforcement proceedings are exempt as well as any records in the possession of any law enforcement or correctional agency for law enforcement purposes, 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 that is the recipient of the request;
- (ii) Interfere with active administrative enforcement proceedings conducted by the public body that is the recipient of the request;
- (iii) Create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing;
- (iv) Unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who filed complaints with or provide information to administrative, investigative, law enforcement or penal agencies;

- (v) Disclose unique or specialized investigative technique 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, and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request;
- (vi) Endanger the life or physical safety of law enforcement personnel or any other person; or
- (vii) Obstruct an ongoing criminal investigation by the agency that is the recipient of the request.

### **Section 7(1)(d-5)**

A law enforcement record created for law enforcement purposes and contained in a shared electronic record management system is exempt if the law enforcement agency that is the recipient of the request did not create the record, did not participate in or have a role in any of the events which are the subject of the record, and only has access through the shared electronic record management system.

### **Interpretive Court Decisions**

Exemption for records created for law enforcement purposes does not authorize a generic approach in which public bodies claim exemptions over entire files rather than redacting exempt matters and disclosing whatever is left. *Kelly v. Kenilworth*, 2019 IL App (1st) 170780.

Section 7(1)(d)(iv) permits redaction of “confidential information furnished only by confidential sources which was not revealed in court proceedings” and the identifying information of individuals who did not testify at trial.” However, “information disclosed in court proceedings [and] information identifying witnesses who testified in open court” were not exempt from disclosure under this section.” *Watkins v. Johnson*, 2016 IL App (1st) 152958 (citing PAC opinion issued in the case).

### Interpretive Attorney General Opinions

Section 7(1)(d)(i) only applies to records when the public body that is the recipient of the request is, or will be, conducting a law enforcement proceeding related to the subject of the requested police report. 2013 *Op. Att’y. Gen. No. 13-017*.

The mere existence of an open investigation does not render records exempt from disclosure under Section 7(1)(d)(i). To sustain its burden under this exemption, a public body must demonstrate how the disclosure of the particular records would interfere with a pending or actually and reasonably contemplated law enforcement proceeding conducted by the public body that received the FOIA request, beyond simply conclusory statements. 2017 *Op. Att’y. Gen. No. 17-001*.

To demonstrate that records are exempt from disclosure under Section 7(1)(d)(iii), a public body must establish “(1) that a trial or adjudication is pending or truly imminent; and (2) that it is more probable than not that disclosure of the material sought would seriously interfere with the fairness of those proceedings.” 2019 *Op. Att’y. Gen. No. 19-008* (citing *Chiquita Brands Int’l Inc. v. S.E.C.*, 805 F.3d 289, 294 (D.C. Cir. 2015)).



Section 7(1)(d)(iv) is intended to ensure that law enforcement personnel can gather pertinent information from witnesses in order to effectively combat crime, rather than obtain information from criminal suspects. Therefore, witness statements may be withheld in their entireties only if disclosure of their contents “would necessarily result in the disclosure of the identity of that source” of information and “redaction of the file cannot be meaningfully accomplished.” 2019 *Op. Att’y. Gen. No. 19-008* (citing *Copley Press, Inc. v. City of Springfield*, 266 Ill. App. 3d 421, 426 (4th Dist. 1994)).

Section 7(1)(d)(vi) is not designed to exempt disclosure of basic employee attendance records of police officers as there is no reasonable inference that disclosing attendance records would endanger the life or physical safety of police officers or the community. 2021 *Op. Att’y. Gen. No. 21-005*.

### **Section 7(1)(e)**

Records that relate to or affect the security of correctional institutions and detention facilities are exempt.

### **Section 7(1)(e-5)**

Records requested by persons committed to the Department of Corrections, Department of Human Services Division of Mental Health, or a county jail are exempt if those materials are available in the library of the correctional institution or facility or jail where the inmate is confined.

### **Section 7(1)(e-6)**

Records requested by persons committed to the Department of Corrections, Department of Human Services Division of Mental Health, or a county jail are exempt if those materials include records from staff members' personnel files, staff rosters, or other staffing assignment information.

### **Section 7(1)(e-7)**

Records requested by persons committed to the Department of Corrections or Department of Human Services Division of Mental Health are exempt if those materials are available through an administrative request to the Department of Corrections or Department of Human Services Division of Mental Health.

### **Section 7(1)(e-8)**

Records requested by a person committed to the Department of Corrections, Department of Human Services Division of Mental Health, or a county jail are exempt if the disclosure would result in a risk of harm to any person or the risk of an escape from a jail or a correctional institution or facility.

### **Section 7(1)(e-9)**

Records requested by a person in a county jail or committed to the Department of Corrections or Department of Human Services Division of Mental Health, containing personal information pertaining to the person's victim or the victim's family are exempt, including, but not limited to, a victim's home address, home telephone number, work or school address, work telephone

number, social security number, or any other identifying information, except as may be relevant to a requester's current or potential case or claim.

### **Section 7(1)(e-10)**

Law enforcement records of other persons requested by a person committed to the Department of Corrections, Department of Human Services Division of Mental Health, or a county jail are exempt, including, but not limited to, arrest and book records, mug shots, and crime scene photographs, except as these records may be relevant to the requester's current or potential case or claim.

### **Interpretive Attorney General Opinions**

IDOC Administrative Directives were exempt from disclosure under Section 7(1)(e-5) because they were available in a correctional center's library and the correctional center had no obligation to make or furnish photocopies to the inmate. 2014 *Op. Att'y. Gen.* No. 14-013.

### **Section 7(1)(f)**

Preliminary drafts, notes, recommendations and other records in which opinions are expressed, or policies or actions are formulated are exempt, 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.

FOIA defines "head of the public body" as "the president, mayor, chairman, presiding officer, director, superintendent, manager, supervisor or individual otherwise holding primary executive and

administrative authority for the public body, or such person's duly authorized designee." 5 ILCS 140/2(e).

### Interpretive Court Decisions

For the deliberative-process exemption to apply, a document must be both pre-decisional in the sense that it is actually antecedent to the adoption of an agency policy and deliberative in the sense that it is actually related to the process by which policies are formulated. *Chicago Public Media v. Cook County Office of the President*, 2021 IL App (1st) 200888.

Under the deliberative-process exemption, purely factual material must be disclosed once a final decision has been made, unless the factual material is inextricably intertwined with pre-decisional and deliberative discussions. *Chicago Public Media v. Cook County Office of the President*, 2021 IL App (1st) 200888.

Communications after an agency has issued a decision are not exempt from disclosure under FOIA. *State Journal-Register v. University of Illinois Springfield*, 2013 IL App (4th) 120881.

Only one person can be the "head of the public body" for purposes of the provision of FOIA exempting from disclosure pre-decisional records unless publicly cited and identified by the head of the public body. *Dumke v. City of Chicago*, 2013 IL App (1st) 121668.

### Interpretive Attorney General Opinions

A verbatim recording of an open meeting is not pre-decisional within the meaning of Section 7(1)(f). Although the recording may reflect preliminary discussions of matter pending before the public

body, as the court in *Veltri v. Charleston Urban Renewal Authority* noted, “[by] virtue of the [public] character of that meeting the exchange of ideas which occurred at that meeting was inherently subject to public scrutiny.” 2017 *Op. Att’y. Gen.* No. 17-012 (citing *Veltri v. Charleston Urban Renewal Authority*, 178 W. Va. 669, 363 S. E. 2d 746 (1987)).

A FOIA request for the statistical data related to a public body’s monthly Uniform Crime Report submissions was not exempt under Section 7(1)(f) because it was purely factual information and not inextricably intertwined with pre-decisional discussions. 2013 *Op. Att’y. Gen.* No. 13-015; 2017 *Op. Att’y. Gen.* No. 17-005.

Correspondence between a public body and an independent third-party representing independent interests is not considered “intra-agency communication” and thus, not exempt from disclosure under Section 7(1)(f). 2015 *Op. Att’y. Gen.* No. 15-002; 2021 *Op. Att’y. Gen.* No. 21-004.

Because training materials reflect a public body’s established policy rather than the deliberations that led to creation of the policy, the deliberative process exemption does not apply to them. 2015 *Op. Att’y. Gen.* No. 15-015.

## **Section 7(1)(h)**

Proposals and bids for any contract, grant, or agreement are exempt, 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.

### **Section 7(1)(i)**

Valuable formulae, computer geographic systems, designs, drawings and research data obtained or produced by any public body are exempt 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 FOIA 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.

### **Interpretive Attorney General Opinions**

Although the phrase “valuable formulae” is not defined in FOIA, when read in context with the rest of the exemption for “computer geographic systems, designs, drawings and research data,” it is clear that the General Assembly intended “valuable formulae” to mean something technical in nature. There is no reason to conclude that “valuable formulae” would encompass basic lease agreement information such as the rental amounts or the number of square feet leased. 2014 *Op. Att’y. Gen.* No. 14-016.

### **Section 7(1)(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 are

exempt, and the same for projects constructed or developed with public funds, including, but not limited to, power generating and distribution stations and other transmission and distribution facilities, water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings, but only to the extent that disclosure would compromise security.

### **Section 7(1)(l)**

Minutes of meetings of public bodies closed to the public are exempt 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.

### **Interpretive Court Decisions**

The state's attorney's possession of minutes and transcript of closed meeting of university board of regents did not enable it to release documents in response to request under FOIA. Court held that the board was entitled to assert FOIA exemptions that may have applied if the FOIA request had been issued to the board. *Twin-Cities Broadcasting Corp. v. Reynard*, 277 Ill. App. 3d 777 (4th Dist. 1996).

Section 7(1)(l) only applies to recordings of *closed* meetings; recordings of a public body's open meetings must be disclosed if requested. 2017 *Op. Att'y. Gen. No. 17-012*.

## Section 7(1)(m)

Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation are exempt as well as 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.

### Interpretive Court Decisions

Section 7(1)(m) must be construed and applied narrowly, notwithstanding the public policy favoring confidentiality between attorneys and clients. The public body must establish that (1) the attorney was “representing” the public body and (2) the communications would not be subject to discovery in litigation. *Chicago Public Media v. Cook County Office of the President*, 2021 IL App (1st) 200888.

The Illinois Supreme Court has described the attorney-client privilege as follows: “(1) where legal advice of any kind is sought, (2) from a professional legal advisor in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence, (5) by the client, (6) are permanently protected, (7) from disclosure by himself or the legal advisor, (8) except the protection be waived.” *Ill. Educ. Ass’n v. Ill. State Bd. of Educ.*, 204 Ill. 2d 456, 467 (2003).

Reports drafted by a state’s attorney and given to county board members reflecting her legal advice concerning actions taken by a county official were exempt from disclosure under Section 7(1)(m)



as protected by the attorney-client privilege. 2022 *Op. Att’y. Gen. No. 22-001*.

Records of public body’s legal expenses were not exempt in their entirety from disclosure under Section 7(1)(m), although some parts of the invoices (i.e. billing entries with detailed descriptions of legal services) may be subject to redaction if disclosure could reveal privileged information. 2014 *Op. Att’y. Gen. No. 14-002*; 2012 *Op. Att’y. Gen. No. 12-005*.

Lists containing only general information concerning legal representation of state agencies (i.e. the agency represented; the compensating agency; the hourly rate; the names and addresses of the law firms and/or attorneys; and either the general subject matter of the representation or the court, case name, and case number) and rates of pay do not reveal legal advice and are not protected from disclosure as privileged attorney-client communications under Section 7(1)(m). 2015 *Op. Att’y. Gen. No. 15-010*.

## **Section 7(1)(n)**

Records relating to a public body’s adjudication of employee grievances or disciplinary cases are exempt; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed.

## **Interpretive Court Decisions**

Employee grievance report filed by a police officer, which served as a factual basis for initiation of internal disciplinary cases against two other officers, was not exempt from disclosure as a record

“relating to a public body’s adjudication of employee grievances or disciplinary cases,” where the report was created well before any adjudication took place and existed independent of any adjudication. *Peoria Journal Star v. City of Peoria*, 2016 IL App (3d) 140838.

An “adjudication” for purposes of Section 7(1)(n) is a “formalized legal process that results in a final and enforceable decision.” Further, the scope of Section 7(1)(n) is limited to records generated during an adjudication and does not encompass records of any underlying investigation that may have preceded the adjudication. *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, ¶¶ 13, 22.

### Interpretive Attorney General Opinions

Section 7(1)(n) does not exempt from disclosure all records relating to the discipline of employees of a public body; only records relating to *adjudication* of a disciplinary case or employee grievance. Records generated during a public body’s internal investigation of a matter that did not result in any formal adjudicatory proceeding do not relate to an “adjudication,” within the meaning of Section 7(1)(n). Records of an alleged alcohol-related driving accident involving the assistant police chief where there was no adjudicatory procedure where witnesses were called and the identified employee had a right to call witnesses and make arguments were not exempt from disclosure under Section 7(1)(n). 2013 *Op. Att’y. Gen. No. 13-011*.

An email sent by Village President that was created and sent for the purpose of effectuating his resignation and explaining his reasons for that resignation was not exempt from disclosure under Section 7(1)(n). 2018 *Op. Att’y. Gen. No. 18-001*.

## **Section 7(1)(p)**

Records relating to collective negotiating matters between public bodies and their employees or representatives are exempt, except that any final contract or agreement shall be subject to inspection and copying.

### Interpretive Attorney General Opinions

Section 7(1)(p) exempts from disclosure records pertaining to such aspects of the collective bargaining process as the negotiating of wages and salaries, terms and conditions of employment, working conditions, and similar matters subject to collective bargaining. However, the fact that a public body has secured and paid for the services of an attorney to assist with collective bargaining matters is not information pertaining to the collective bargaining process. 2014 *Op. Att'y. Gen.* No. 14-002.

## **Section 7(1)(r)**

The records, documents, and information relating to real estate purchase negotiations are exempt 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.

## Interpretive Court Decisions

Aerial photos of proposed landfill sites, maps, landfill concept plans, real estate tax information, and appraisals of values of parcels in proposed sites are not protected under Section 7(1)(r) because county had not yet put together a plan for acquiring the site and had not chosen a site. Investigation, fact-finding, analysis, and other background activities must be done before a purchase can be negotiated or condemnation can be “actually or reasonably contemplated.” *Osrán v. Bus*, 226 Ill. App. 3d 704 (2d Dist. 1992).

## **Section 7(1)(s)**

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 are exempt. 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 are also exempt.

## Interpretive Attorney General Opinions

Section 7(1)(s) exempts from disclosure proprietary information regarding the policies, procedures, and practices that an intergovernmental risk management association or self-insurance pool adopts to manage its claims, loss, and risk exposure. 2011 *Op. Att’y. Gen.* No. 11-004.

Section 7(1)(s) does not exempt from disclosure discreet information relating to an individual claim or loss, including the amount of funds expended to settle a claim. 2011 *Op. Att’y. Gen.* No. 11-004.

Records consisting exclusively of de-identified medical findings about state employees who filed workers’ compensation claims within Illinois do not constitute proprietary information protected from disclosure under Section 7(1)(s).

### **Section 7(1)(v)**

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 are exempt, 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.

### **Interpretive Attorney General Opinions**

Section 7(1)(v) applies to assessments, measures, policies, and plans designed to address those potential attacks targeted at the destruction or contamination of a community’s population or infrastructure, but only to the extent that disclosure would constitute a “clear and present danger” to the health or safety of

the community or jeopardize the effectiveness of the measures or the safety of the personnel who implement them. 2011 *Op. Att’y. Gen. No. 11-002*.

Records containing the current sum of the number of sworn police officers assigned to each district are not exempt from disclosure under Section 7(1)(v). 2011 *Op. Att’y. Gen. No. 11-002*.

The attendance records of a police department are not vulnerability assessments, security measures, or response policies or plans and are not designed for the particular purpose of identifying, preventing, or responding to such attacks, nor do they consist of the type of homeland security or other emergency preparation information that is contemplated by the plain language of Section 7(1)(v). 2021 *Op. Att’y. Gen. No. 21-005*.

911 response time data are factual records demonstrating the performance of public duties by public employees and are not vulnerability assessments, security measures, or response policies or plans *designed* to identify, prevent, or respond to potential attacks. Thus, 911 response time data is not exempt from disclosure under Section 7(1)(v). 2021 *Op. Att’y. Gen. No. 21-012*.

### **Section 7(1)(z)**

Information about students is exempt under FOIA if it is also exempt from disclosure under Sections 10-20.38 or 34-18.29 of the School Code, and information about undergraduate students enrolled at an institution of higher education is exempt under FOIA if it is also exempt from disclosure under Section 25 of the Illinois Credit Card Marketing Act of 2009.

Sections 10-20.38 and 34-18.29 of the School Code provides, “[a] school district, including its agents, employees, student or alumni associations, or any affiliates, may not provide a student’s name, address, telephone number, social security number, e-mail address, or other personal identifying information to a business organization or financial institution that issues credit or debit cards.” 105 ILCS 5/10-20.38; 105 ILCS 5/34-18.29.

Section 25 of the Illinois Credit Card Marketing Act provides, “[i]nstitutions of higher education, including their agents, employees, student groups, alumni organizations, or any affiliates may not provide to a business organization or financial institution for purposes of marketing credit cards the following information about students pursuing an undergraduate education: (i) name, (ii) address, (iii) telephone number, (iv) social security number, (v) e-mail address, or (vi) other personally identifying information. This requirement is waived if the student pursuing an undergraduate education is 21 years of age or older.” 110 ILCS 26/25.

### **Section 7(1)(ee)**

The names, addresses, or other personal information of persons who are minors and are also participants in programs of park districts, forest preserve districts, conservation districts, recreation agencies, and special recreation associations is exempt.

### **Section 7(1)(kk)**

The public body’s credit card numbers, debit card numbers, bank account numbers, Federal Employer Identification Number, security code numbers, passwords, and similar account information is exempt where disclosure could result in identity

theft or impression or defrauding of a governmental entity or a person.

### **Statutory Exemptions**

Similarly, to Section 7, Section 7.5 of FOIA enumerates a list of exemptions to the public body's obligation to make available public records for inspection and copying to the extent provided for by a statute.

While the exemptions under Section 7.5 are also numerous, these are the most commonly claimed statutory exemptions by public bodies. However, full list of exemptions should be reviewed and can be found on pp. 84-120.

#### **Section 7.5(q)**

Information prohibited from being disclosed by the Personnel Record Review Act is exempt.

The PRRA provides that an employer, or former employer, shall not divulge a disciplinary report, letter of reprimand, or other disciplinary action to a third party, to a party who is not a part of the employer's organization, or to a party who is not a part of a labor organization representing the employee, without written notice to the employee. 820 ILCS 40/7(1). The PRRA also prohibits disclosure of disciplinary reports, letters or reprimand, or other records of discipline which are more than 4 years old. 820 ILCS 40/8.



## Interpretive Court Decisions

A “rebuttal letter” written by a school principal in response to a reprimand by the superintendent was not exempt under Section 7.5(q). *Rock River Times v. Rockford Public School Dist.* 205, 2012 IL App (2d) 110879.

Complaint register files are not personnel files that are exempt from disclosure under the Personnel Record Review Act because they pertain to the “initiation, investigation, and resolution of complaints of misconduct made by the public against police officers.” *Fraternal Order of Police, Chicago Lodge No. 7 v. City of Chicago*, 2016 IL App (1st) 143884 (citing *Watkins v. McCarthy*, 2012 IL App (1st) 100632).

The prohibition on disclosure of disciplinary records more than four years old, found in Section 8 of the Personnel Records Review Act (PRRA), applies to FOIA requests and thus, such records are exempt from disclosure under FOIA. The specific language of FOIA, which references the PRRA by name, takes precedence over the general construction guidance found in Section 11 of the PRRA, which states that the PRRA “should not be construed to diminish a right of access to records already otherwise provided by law.” *Johnson v. Joliet Police Dep’t*, 2018 IL App (3d) 170726.

## Interpretive Attorney General Opinions

The Personnel Record Review Act does not prohibit the disclosure of a resume and job application of a public employee pursuant to a FOIA request. 2014 *Op. Att’y. Gen.* No. 14-015.

The Personnel Record Review Act does not prohibit the disclosure of information related to a public employee's compensation. 2016 *Op. Att'y. Gen. No. 16-012*.

## **Section 7.5(r)**

Information prohibited from being disclosed by the Illinois School Student Records Act is exempt.

The Act defines "school student record" to mean any writing or other recorded information concerning a student by which a student may be individually identified.

### Interpretive Court Decisions

"The [Illinois School Student Records] Act prohibits the disclosure of a school student record whereby a student may be individually identified. A masked record, which deletes individual identifying information, does not fall within the definition of a school student record, and is not prohibited under the Act." *Bowie v. Evanston Community Consol. School Dist. 65*, 128 Ill. 2d 373 (1989).

### Interpretive Attorney General Opinions

Where a School District can re-order student scores and redact student names and any other identifying information, a request for de-identified test score data is not exempt from disclosure under Section 7.5(r). 2012 *Op. Att'y. Gen. No. 12-014*.

## Section 7.5(bb)

Information which is or was prohibited from disclosure by the Juvenile Court Act of 1987 is exempt.

### Interpretive Court Decisions

Records concerning the investigation of a police shooting (or other police misconduct) of a minor *do not* relate to the investigation, arrest, or custodial detention of a minor within the meaning of the Juvenile Court Act's confidentiality requirements, and thus, are not exempt from disclosure under Section 7.5(bb) of FOIA. The purpose of the Act is to protect the minor's interest in rehabilitation and confidentiality, not to shield public access to information about alleged police misconduct. *NBC Subsidiary (WMAQ-TV) LLC v. Chicago Police Dep't*, 2019 IL App (1st) 181426.

### Interpretive Attorney General Opinions

The Juvenile Court Act of 1987 does not prohibit the disclosure of investigatory records relating to the death of a minor because the records at issue do not focus upon the alleged criminal conduct of the minor. 2012 *Op. Att'y. Gen. No. 12-012*.

The Juvenile Court Act of 1987 does not prohibit disclosure of records of traffic crashes involving minor passengers because the Act did not intend the term, "juvenile records," to be so broadly applied as to include all law enforcement records in which minors are victims or merely witnesses to incidents concerning adults. 2018 *Op. Att'y. Gen. No. 18-016*.

The Juvenile Court Act of 1987 does not prohibit disclosure of police records where the minor is a victim, unless the suspect or perpetrator is also a juvenile. However, information identifying children who are victims or alleged victims of criminal sex offenses is exempt from disclosure pursuant to Section 7(1)(a) based on Section 3 of the Privacy of Child Victims of Criminal Sexual Offenses Act. 2021 *Op. Att’y. Gen. No. 21-002*; 2020 *Op. Att’y. Gen. No. 20-008*.

### **Section 7.5(cc)**

Records made under the Law Enforcement Officer-Worn Body Camera Act are exempt, except to the extent that disclosure is authorized under that Act.

Section 10-20(b) of the Body Camera Act provides that recordings made with the use of an officer-worn body camera are subject to disclosure where:

- (1) The recording has been flagged due to the filing of a complaint, discharge of a firearm, use of force, arrest or detention, or resulting death or bodily harm.
- (2) But, even if the recording has been flagged for the reasons stated above, if the subject of the encounter has a reasonable expectation of privacy at the time of the recording, and the subject of the encounter captured on the recording is a victim or witness, the law enforcement agency must obtain written permission of the subject or the subject’s legal representative. The subject of the encounter does not have a reasonable expectation of

privacy if the subject was arrested as a result of the encounter.

- (3) Upon request, the law enforcement agency shall disclose, in accordance with the Freedom of Information Act, the recording to the subject of the encounter captured on the recording or to the subject's attorney, or the officer or his or her legal representative.

Only recordings or portions of recordings responsive to the request shall be available for inspection or reproduction. Any recording disclosed under the Freedom of Information Act shall be redacted to remove identification of any person that appears on the recording and is not the officer, a subject of the encounter, or directly involved in the encounter. Nothing in Act requires the disclosure of any recording or portion of any recording which would be exempt from disclosure under the Freedom of Information Act. 50 ILCS 706/10-20(b).

### Interpretive Attorney General Opinions

Section 10-20(a)(7)(b)(iii) of the Body Camera Act provides that "[a]n encounter is deemed to be flagged when: \*\*\* (iii) death or great bodily harm occurred to any person in the recording." Thus, request for the body camera video and audio recordings of an in-custody death were not exempt from disclosure under Section 7.5(cc). 2019 *Op. Att'y. Gen.* No. 19-010.

### Records Maintained Online

A public body is not required to copy a public record that is published on its website. Instead, the public body should notify the

requester that the public record is available online and direct the requester to the website where the record can be reasonably accessed. Only if the requester re-submits his request stating his inability to reasonably access the record, shall the public body be required to make the record available for inspection or copying. 5 ILCS 140/8.5.

### **Public Access Counselor**

#### **Duties**

The office of the Public Access Counselor (PAC) in the Illinois Attorney General's office was created by the General Assembly to establish and administer a training program on FOIA and the Open Meetings Act (OMA), to prepare and distribute interpretive and educational materials and programs, to resolve disputes involving potential violation of FOIA and OMA by mediation, informal opinions or binding opinions, to issue advisory opinions regarding FOIA and OMA, to respond to formal inquiries, to conduct research on compliance issues, to make recommendations to the General Assembly, to develop and make available the online electronic training curriculum regarding FOIA and OMA, to prepare model policies, and to promulgate rules to implement these powers. 15 ILCS 205/7.

#### **Request for PAC Review**

A person whose request to inspect or copy a public record is denied by a public body may file a request for review with the PAC not later than 60 days after the date of the final denial. The request 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. 5 ILCS 140/9.5(a). A person whose request is for a commercial purpose may not file a request for review with the PAC, unless the request for review is for the limited purpose of reviewing whether the public body properly classified the request as for a commercial purpose. 5 ILCS 140/9.5(b).

## **PAC Review**

Upon receipt of a request for review, the PAC will determine whether further action is warranted. If the PAC determines that the alleged violation is unfounded, they will advise the requester and the public body, and no further action will be taken. In all other cases, the PAC will forward a copy of the request for review to the public body within 7 working days. The PAC will specify the records or other documents that the public body must furnish to facilitate the review. Within 7 working days after receipt of the request for review, the public body must provide copies of the records requested and must otherwise fully cooperate with the PAC. If the public body fails to furnish the specified records, or if otherwise necessary, the Attorney General may issue a subpoena to any person or public body having knowledge of or records pertaining to an alleged violation. To the extent the records produced by the public body contain information claimed to be exempt from disclosure, the PAC will not further disclose the information. 5 ILCS 140/9.5(c).

Within 7 business days after receipt of a copy of a request for review and request for production of records from the PAC, 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 PAC will 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. The requester may, but is not required to, responding in writing to the answer within 7 business days and shall provide a copy of the response to the public body. A requester and the public body are also permitted to submit affidavits and records regarding any matter germane to the review. 5 ILCS 140/9.5(d) and (e).

## **PAC Decisions**

Unless the PAC extends the time for response by no more than 30 business days by written notice to both parties, stating the reason for the extension, or decides to address the matter without the issuance of a binding opinion, the Attorney General must examine the issues and the records, and make findings of fact and conclusions of law, and must issue to the requester and the public body an opinion within 60 days after receipt of the request for review. The opinion is binding on both the requester and the public body. The Attorney General has the option to resolve a matter by mediation or by means other than a binding opinion. The Attorney General's decision not to issue a binding opinion is not reviewable. Upon receipt of a binding decision, concluding that a violation of FOIA occurred, the public body must either take necessary action as soon as practical to comply with the directive of the opinion or must initiate administrative review under Section 11.5. If the requester files suit with respect to the same matter that is subject to a pending PAC request for review, the requester is to notify the PAC, and the PAC must take no further action, and must notify the public body. 5 ILCS 140/9.5(f) and (g).



## **Administrative Review**

A binding opinion issued by the Attorney General is considered a final decision of an administrative agency for purposes of administrative review under the Administrative Review Law. 5 ILCS 140/11.5. An action for administrative review of a binding opinion must be filed in either Cook or Sangamon County. An advisory opinion is not considered a final decision for purposes of administrative review. 5 ILCS 140/11.5.

## **Advisory Opinions**

The Attorney General may issue advisory opinions to public bodies regarding compliance with the OMA. The public body may initiate a request for an advisory opinion by sending a written request from the head of the public body or from its attorney. The request must contain sufficient, accurate facts from which a determination can be made. The PAC may request additional information. A public body that relies, in good faith, on an advisory opinion in complying with FOIA is not liable for penalties under FOIA, so long as the facts upon which the opinion was based have been fully and fairly disclosed to the PAC. 5 ILCS 140/9.5(h).

## **Interpretive Court Decisions**

A non-binding or advisory opinion by the Attorney General cannot be the basis for a lawsuit or subject to enforcement in a court of law. *Brown v. Grosskopf*, 2013 IL App (4<sup>th</sup>) 120402 (2013).

## Interpretive Attorney General Opinions

A public body's refusal to provide copies of records requested by the PAC and to otherwise cooperate with the PAC constitutes a violation of FOIA. 2012 *Op. Att'y. Gen.* No. 12-007.

### Consequences for Failure to Comply

A requester who is denied access to inspect or copy any public record by a public body may file a lawsuit for injunctive or declaratory relief. A requester may also file an action to enforce a binding PAC opinion issued under Section 9.5 of FOIA. 5 ILCS 140/11(a) and (a-5).

### **Noncompliance with a Binding PAC Opinion**

If a public body fails to comply with a binding opinion issued by the PAC, the requester may file an action under Section 11 for injunctive or declaratory relief. The requester will have the benefit of a rebuttable presumption that the public body willfully and intentionally failed to comply with FOIA pursuant to Section 11(j) if the Attorney General issues a binding opinion, the public body does not file for administrative review of or comply with the binding opinion within 35 days after it is served with the binding opinion. 5 ILCS 140/11.6.

### **Lawsuits for Injunctive or Declaratory Relief**

When a public body is called into court to defend claims it violated FOIA, the circuit court has jurisdiction to enjoin the public body from withholding public records and to order the production of any public records improperly withheld from the requester. If the

public body can show that exceptional circumstances exist, and that it is exercising due diligence in responding the request, the court may allow additional time to complete its review of the records. The court can also order the public body, upon the requester's motion, to provide an index of the records to which access has been denied, detailing a description of the nature of each document and a statement of the claimed exception for each document. Further, where appropriate, the court will conduct an in-camera examination of the requested records to determine if such records or any part thereof may be withheld under FOIA. 5 ILCS 140/11(d), (e), and (f).

In defending a lawsuit where a requester claims it violated FOIA, the public body bears the burden of proof and must show that the record is exempt from disclosure by clear and convincing evidence. 5 ILCS 140/11(f).

### Interpretive Court Decisions

When the PAC issues a letter that it does not characterize as a binding opinion, the parties cannot seek review under the Administrative Review Law; instead, if the parties seek to litigate the issue further, they must either obtain a binding opinion from the Attorney General or proceed under Section 11 and file a lawsuit for injunctive or declaratory relief. *Garlick v. Office of Public Access Counselor*, 2013 IL App (1st) 122444.

Public agency's burden to prove, by clear and convincing evidence, that the requested records fall within an exemption from disclosure under FOIA is met when the agency provides a detailed justification for its claim of exemption, addressing the requested documents specifically and in a manner allowing for adequate

adversary testing. *Chicago Public Media v. Cook County Office of the President*, 2021 IL App (1st) 200888.

An in-camera inspection of requested records is not necessary where the public body meets its burden of showing that a statutory exemption to disclosure applies by means of affidavits. *Chicago Public Media v. Cook County Office of the President*, 2021 IL App (1st) 200888.

### **Attorney's Fees and Costs**

If a person seeking the right to inspect or receive a copy of a public record prevails in a proceeding under Section 11, the court will award that person reasonable attorney's fees and costs. In determining what amount of attorney's fees is reasonable, the court will consider the degree to which the relief obtained relates to the relief sought. 5 ILCS 140/11(f).

### **Interpretive Court Decisions**

Agency's untimely production of public records rendered moot the requesters' claims for declaratory and injunctive relief with respect to production of requested records, but not the requester's claims seeking attorney's fees and civil penalty for agency's failure to comply with or deny the request within 5 business days after receipt. *Roxana Cmty. Unit School Dist. No. 1 v. Environmental Protection Agency*, 2013 IL App (4th) 120825.

When a court finds that a plaintiff has substantially prevailed, it should grant attorney's fees to a non-commercial plaintiff, but may deny fees only where special circumstances would render the fee award unjust: the plaintiff is self-represented, the defendant settled

solely to end a frivolous suit and avoid litigation expenses, the plaintiff was not instrumental in achieving the remedy sought, or the plaintiff agreed to waive its right to attorney's fees. *Rockford Police Benev. and Protective Ass'n, Unit No. 6*, 398 Ill. App. 3d 145.

Newspaper did not "prevail" in FOIA action against school district because the school district released the letter *before* the court issued an order directing that the letter be released. *Rock River Times v. Rockford Public School Dist. 205*, 2012 IL App (2d) 110879.

## **Fines and Penalties**

If the court determines that the public body willfully and intentionally failed to comply with FOIA, or otherwise acted in bad faith, the court will also impose upon the public body a civil penalty of not less than \$2,000 and not more than \$5,000 *for each occurrence*. In assessing the civil penalty, the court will consider the budget of the public body and whether the public body has previously been assessed penalties for violations of FOIA. The court may also impose an additional penalty of up to \$1,000 per day that the violation continues if (1) the public body fails to comply with the court's order after 30 days; (2) the court's order is not on appeal or stayed; and (3) the court does not grant the public body additional time to comply with the court's order to disclose public records. 5 ILCS 140/11(j).

# **The Freedom of Information Act**

## **5 ILCS 140/1**

### **5 ILCS 140/1:**

§ 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.

The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act.

This Act is not intended to cause an unwarranted invasion of personal privacy, nor to allow the requests of a commercial enterprise to unduly burden public resources, 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.

Restraints on access to information, to the extent permitted by this Act, are limited exceptions to the principle that the people of this State have a right to full disclosure of information relating to 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 in accordance with this principle. This Act shall be construed to require disclosure of requested information as expediently and efficiently as possible and adherence to the deadlines established in this Act.

The General Assembly recognizes that this Act imposes fiscal obligations on public bodies to provide adequate staff and equipment to comply with its requirements. The General Assembly declares that providing records in compliance with the requirements of this Act is a primary duty of public bodies to the people of this State, and this Act should be construed to this end, fiscal obligations notwithstanding.

The General Assembly further recognizes that technology may advance at a rate that outpaces its ability to address those advances legislatively. To the extent that this Act may not expressly apply to those technological advances, this Act should nonetheless be interpreted to further the declared policy of this Act that public records shall be made available upon request except when denial

of access furthers the public policy underlying a specific exemption.

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.

### **5 ILCS 140/1.1:**

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

### **5 ILCS 140/1.2:**

§ 1.2. Presumption. All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.

### **5 ILCS 140/2:**

§ 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, or a regional youth advisory board or the Statewide Youth Advisory Board established under the Department of Children and Family Services Statewide Youth Advisory Board 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.

(i) “Severance agreement” means a mutual agreement between any public body and its employee for the employee's resignation in exchange for payment by the public body.

#### **5 ILCS 140/2.5:**

§ 2.5. Records of funds. All records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public.

#### **5 ILCS 140/2.10:**

§ 2.10. Payrolls. Certified payroll records submitted to a public body under Section 5(a)(2) of the Prevailing Wage Act are public records subject to inspection and copying in accordance with the provisions of this Act; except that contractors’ employees’ addresses, telephone numbers, and social security numbers must be redacted by the public body prior to disclosure.

#### **5 ILCS 140/2.15:**

§ 2.15. Arrest reports and criminal history records.

(a) Arrest reports. The following chronologically maintained arrest and criminal history information maintained by State or local criminal justice agencies shall be furnished as soon as practical, but in no event later than 72 hours after the arrest, notwithstanding the time limits otherwise provided for in Section 3 of this Act: (i) information that identifies the individual, including the name, age, address, and photograph, when and if available; (ii) information detailing any charges relating to the arrest; (iii) the time and location of the arrest; (iv) the name of the investigating or arresting law enforcement agency; (v) if the individual is incarcerated, the amount of any bail or bond; and (vi) if the individual is incarcerated, the time and date that the individual was received into, discharged from, or transferred from the arresting agency's custody.

(b) Criminal history records. The following documents maintained by a public body pertaining to criminal history record information are public records subject to inspection and copying by the public pursuant to this Act: (i) court records that are public; (ii) records that are otherwise available under State or local law; and (iii) records in which the requesting party is the individual identified, except as provided under Section 7(1)(d)(vi).

(c) Information described in items (iii) through (vi) of subsection (a) may be withheld if it is determined that disclosure would: (i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement agency; (ii) endanger the life or physical safety of law enforcement or correctional personnel or any other person; or (iii) compromise the security of any correctional facility.

(d) The provisions of this Section do not supersede the confidentiality provisions for law enforcement or arrest records of the Juvenile Court Act of 1987.

(e) Notwithstanding the requirements of subsection (a), a law enforcement agency may not publish booking photographs, commonly known as “mugshots”, on its social networking website in connection with civil offenses, petty offenses, business offenses, Class C misdemeanors, and Class B misdemeanors unless the booking photograph is posted to the social networking website to assist in the search for a missing person or to assist in the search for a fugitive, person of interest, or individual wanted in relation to a crime other than a petty offense, business offense, Class C misdemeanor, or Class B misdemeanor. As used in this subsection, “social networking website” has the meaning provided in Section 10 of the Right to Privacy in the Workplace Act.

## **5 ILCS 140/2.20:**

§ 2.20. Settlement and severance agreements. All settlement and severance agreements entered into by or on behalf of a public body are public records subject to inspection and copying by the public, provided that information exempt from disclosure under Section 7 of this Act may be redacted.

## **5 ILCS 140/3:**

§ 3. (a) Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 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 subsection (d) 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 2 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 3.1, 3.2, and 3.6 of this Act, as applicable.

## **5 ILCS 140/3.1:**

### **§ 3.1. Requests for commercial purposes.**

(a) A public body shall respond to a request for records to be used for a commercial purpose within 21 working days after receipt. The response shall (i) provide to the requester an estimate of the time required by the public body to provide the records requested and 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.

(b) Unless the records are exempt from disclosure, a public body shall comply with a request within a reasonable period considering the size and complexity of the request, and giving priority to records requested for non-commercial purposes.

(c) It is a violation of this Act for a person to knowingly obtain a public record for a commercial purpose without disclosing that it is for a commercial purpose, if requested to do so by the public body.

## **5 ILCS 140/3.2:**

### **§ 3.2. Recurrent requesters.**

(a) Notwithstanding any provision of this Act to the contrary, a public body shall respond to a request from a recurrent requester,

as defined in subsection (g) of Section 2, within 21 business days after receipt. The response shall (i) provide to the requester an estimate of the time required by the public body to provide the records requested and 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.

(b) Within 5 business days after receiving a request from a recurrent requester, as defined in subsection (g) of Section 2, the public body shall notify the requester (i) that the public body is treating the request as a request under subsection (g) of Section 2, (ii) of the reasons why the public body is treating the request as a request under subsection (g) of Section 2, and (iii) that the public body will send an initial response within 21 business days after receipt in accordance with subsection (a) of this Section. The public body shall also notify the requester of the proposed responses that can be asserted pursuant to subsection (a) of this Section.

(c) Unless the records are exempt from disclosure, a public body shall comply with a request within a reasonable period considering the size and complexity of the request.

### **5 ILCS 140/3.3:**

§ 3.3. This Act is not intended to compel public bodies to interpret or advise requesters as to the meaning or significance of the public records.

## 5 ILCS 140/3.5:

### § 3.5. Freedom of information officers.

(a) Each public body shall designate one or more officials or employees to act as its Freedom of Information officer or officers. Except in instances when records are furnished immediately, Freedom of Information officers, or their designees, shall receive requests submitted to the public body under this Act, ensure that the public body responds to requests in a timely fashion, and issue responses under this Act. Freedom of Information officers shall develop a list of documents or categories of records that the public body shall immediately disclose upon request.

Upon receiving a request for a public record, the Freedom of Information officer shall:

- (1) note the date the public body receives the written request;
- (2) compute the day on which the period for response will expire and make a notation of that date on the written request;
- (3) maintain an electronic or paper copy of a written request, including all documents submitted with the request until the request has been complied with or denied; and
- (4) create a file for the retention of the original request, a copy of the response, a record of written communications with the requester, and a copy of other communications.

(b) All Freedom of Information officers shall, within 6 months after the effective date of this amendatory Act of the 96th General Assembly, successfully complete an electronic training curriculum

to be developed by the Public Access Counselor and thereafter successfully complete an annual training program. Thereafter, whenever a new Freedom of Information officer is designated by a public body, that person shall successfully complete the electronic training curriculum within 30 days after assuming the position. Successful completion of the required training curriculum within the periods provided shall be a prerequisite to continue serving as a Freedom of Information officer.

## **5 ILCS 140/3.6:**

### **§ 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 fees 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 140/4:**

§ 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 the Freedom of Information officer or officers, the address where requests for public records should be directed, and any fees allowable under Section 6 of this Act.

A public body that maintains a website shall also post this information on its website.

## **5 ILCS 140/5:**

§ 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.

## 5 ILCS 140/6:

### § 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 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 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.

## **5 ILCS 140/7:**

### **§ 7. Exemptions.**

(1) When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying. Subject to this requirement, the following shall be exempt from inspection and copying:

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

(b) Private information, unless disclosure is required by another provision of this Act, a State or federal law or a court order.

(b-5) Files, documents, and other data or databases maintained by one or more law enforcement agencies and specifically designed to provide information to one or more law enforcement agencies regarding the physical or mental status of one or more individual subjects.

(c) Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is

consented to in writing by the individual subjects of the information. “Unwarranted invasion of personal privacy” means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining 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.

(d) Records in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, 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 that is the recipient of the request;

(ii) interfere with active administrative enforcement proceedings conducted by the public body that is the recipient of the request;

(iii) create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing;

(iv) unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative,

law enforcement, or penal agencies; except that the identities of witnesses to traffic accidents, traffic accident reports, and rescue reports shall be provided by agencies of local government, except when disclosure would interfere with an active criminal investigation conducted by the agency that is the recipient of the request;

(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, and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request;

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

(vii) obstruct an ongoing criminal investigation by the agency that is the recipient of the request.

(d-5) A law enforcement record created for law enforcement purposes and contained in a shared electronic record management system if the law enforcement agency that is the recipient of the request did not create the record, did not participate in or have a role in any of the events which are the subject of the record, and only has access to the record through the shared electronic record management system.

(d-6) Records contained in the Officer Professional Conduct Database under Section 9.2 of the Illinois Police Training Act, except to the extent authorized under that Section. This

includes the documents supplied to Illinois Law Enforcement Training Standards Board from the Illinois State Police and Illinois State Police Merit Board.

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

(e-5) Records requested by persons committed to the Department of Corrections, Department of Human Services Division of Mental Health, or a county jail if those materials are available in the library of the correctional institution or facility or jail where the inmate is confined.

(e-6) Records requested by persons committed to the Department of Corrections, Department of Human Services Division of Mental Health, or a county jail if those materials include records from staff members' personnel files, staff rosters, or other staffing assignment information.

(e-7) Records requested by persons committed to the Department of Corrections or Department of Human Services Division of Mental Health if those materials are available through an administrative request to the Department of Corrections or Department of Human Services Division of Mental Health.

(e-8) Records requested by a person committed to the Department of Corrections, Department of Human Services Division of Mental Health, or a county jail, the disclosure of which would result in the risk of harm to any person or the risk of an escape from a jail or correctional institution or facility.



(e-9) Records requested by a person in a county jail or committed to the Department of Corrections or Department of Human Services Division of Mental Health, containing personal information pertaining to the person's victim or the victim's family, including, but not limited to, a victim's home address, home telephone number, work or school address, work telephone number, social security number, or any other identifying information, except as may be relevant to a requester's current or potential case or claim.

(e-10) Law enforcement records of other persons requested by a person committed to the Department of Corrections, Department of Human Services Division of Mental Health, or a county jail, including, but not limited to, arrest and booking records, mug shots, and crime scene photographs, except as these records may be relevant to the requester's current or potential case or claim.

(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 commercial or financial information are furnished under a

claim that they are proprietary, privileged, or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested.

The information included under this exemption includes 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) The following information pertaining to educational matters:

(i) test questions, scoring keys and other examination data used to administer an academic examination;

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

(iii) information concerning a school or university's adjudication of student disciplinary cases, but only to the extent that disclosure would unavoidably reveal the identity of the student; and

(iv) course materials or research materials used by faculty members.

(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, including, but not limited to, power generating and distribution stations and other transmission and distribution facilities, water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings, but only to the extent that disclosure would compromise security.

(l) 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.

(m) 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.

(n) Records relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed.

(o) 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.

(p) Records 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.

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

(r) 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.

(s) 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. 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.

(t) 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, insurance companies, or pharmacy benefit managers, unless disclosure is otherwise required by State law.

(u) 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 signatures under the Uniform Electronic Transactions Act.

(v) 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.

(w) (Blank).

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

(y) 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.

(z) Information about students exempted from disclosure under Sections 10-20.38 or 34-18.29 of the School Code, and information about undergraduate students enrolled at an institution of higher education exempted from disclosure under Section 25 of the Illinois Credit Card Marketing Act of 2009.

(aa) Information the disclosure of which is exempted under the Viatical Settlements Act of 2009.

(bb) Records and information provided to a mortality review team and records maintained by a mortality review team appointed under the Department of Juvenile Justice Mortality Review Team Act.

(cc) Information regarding interments, entombments, or inurnments of human remains that are submitted to the

Cemetery Oversight Database under the Cemetery Care Act or the Cemetery Oversight Act, whichever is applicable.

(dd) Correspondence and records (i) that may not be disclosed under Section 11-9 of the Illinois Public Aid Code or (ii) that pertain to appeals under Section 11-8 of the Illinois Public Aid Code.

(ee) The names, addresses, or other personal information of persons who are minors and are also participants and registrants in programs of park districts, forest preserve districts, conservation districts, recreation agencies, and special recreation associations.

(ff) The names, addresses, or other personal information of participants and registrants in programs of park districts, forest preserve districts, conservation districts, recreation agencies, and special recreation associations where such programs are targeted primarily to minors.

(gg) Confidential information described in Section 1-100 of the Illinois Independent Tax Tribunal Act of 2012.

(hh) The report submitted to the State Board of Education by the School Security and Standards Task Force under item (8) of subsection (d) of Section 2-3.160 of the School Code and any information contained in that report.

(ii) Records requested by persons committed to or detained by the Department of Human Services under the Sexually Violent Persons Commitment Act or committed to the Department of Corrections under the Sexually Dangerous



Persons Act if those materials: (i) are available in the library of the facility where the individual is confined; (ii) include records from staff members' personnel files, staff rosters, or other staffing assignment information; or (iii) are available through an administrative request to the Department of Human Services or the Department of Corrections.

(jj) Confidential information described in Section 5-535 of the Civil Administrative Code of Illinois.

(kk) The public body's credit card numbers, debit card numbers, bank account numbers, Federal Employer Identification Number, security code numbers, passwords, and similar account information, the disclosure of which could result in identity theft or impression or defrauding of a governmental entity or a person.

(ll) Records concerning the work of the threat assessment team of a school district.

(1.5) Any information exempt from disclosure under the Judicial Privacy Act shall be redacted from public records prior to disclosure under this Act.

(2) A public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body, and that directly relates to the governmental function and is not otherwise exempt under this Act, shall be considered a public record of the public body, for purposes of this Act.

(3) 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.

## **5 ILCS 140/7.5:**

### **Text of section as amended by P.A 102-36, 102-292, and 102-559:**

§ 7.5. Statutory exemptions. To the extent provided for by the statutes referenced below, the following shall be exempt from inspection and copying:

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

(b) Library circulation and order records identifying library users with specific materials under the Library Records Confidentiality Act.

(c) 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.

(d) 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.

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

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

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

(h) Information the disclosure of which is exempted under the State Officials and Employees Ethics Act, and records of any lawfully created State or local inspector general's office that would be exempt if created or obtained by an Executive Inspector General's office under that Act.

(i) 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.

(j) Information and data concerning the distribution of surcharge moneys collected and remitted by carriers under the Emergency Telephone System Act.

(k) 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.

(l) 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.

(m) 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.

(n) 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 (n) 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.

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

(p) Security portions of system safety program plans, investigation reports, surveys, schedules, lists, data, or information compiled, collected, or prepared by or for the Department of Transportation under Sections 2705-300 and 2705-616 of the Department of Transportation Law of the Civil Administrative Code of Illinois, 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.

(q) Information prohibited from being disclosed by the Personnel Record Review Act.

(r) Information prohibited from being disclosed by the Illinois School Student Records Act.

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

(t) All identified or deidentified health information in the form of health data or medical records contained in, stored in, submitted to, transferred by, or released from the Illinois Health Information Exchange, and identified or deidentified health information in the form of health data and medical records of the Illinois Health Information Exchange in the possession of the Illinois Health Information Exchange Office due to its administration of the Illinois Health Information Exchange. The terms “identified” and “deidentified” shall be given the same meaning as in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, or any subsequent amendments thereto, and any regulations promulgated thereunder.

(u) Records and information provided to an independent team of experts under the Developmental Disability and Mental Health Safety Act (also known as Brian's Law).

(v) Names and information of people who have applied for or received Firearm Owner's Identification Cards under the Firearm Owners Identification Card Act or applied for or received a concealed carry license under the Firearm Concealed Carry Act, unless otherwise authorized by the

Firearm Concealed Carry Act; and databases under the Firearm Concealed Carry Act, records of the Concealed Carry Licensing Review Board under the Firearm Concealed Carry Act, and law enforcement agency objections under the Firearm Concealed Carry Act.

(w) Personally identifiable information which is exempted from disclosure under subsection (g) of Section 19.1 of the Toll Highway Act.

(x) Information which is exempted from disclosure under Section 5-1014.3 of the Counties Code or Section 8-11-21 of the Illinois Municipal Code.

(y) Confidential information under the Adult Protective Services Act and its predecessor enabling statute, the Elder Abuse and Neglect Act, including information about the identity and administrative finding against any caregiver of a verified and substantiated decision of abuse, neglect, or financial exploitation of an eligible adult maintained in the Registry established under Section 7.5 of the Adult Protective Services Act.

(z) Records and information provided to a fatality review team or the Illinois Fatality Review Team Advisory Council under Section 15 of the Adult Protective Services Act.

(aa) Information which is exempted from disclosure under Section 2.37 of the Wildlife Code.

(bb) Information which is or was prohibited from disclosure by the Juvenile Court Act of 1987.

(cc) Recordings made under the Law Enforcement Officer-Worn Body Camera Act, except to the extent authorized under that Act.

(dd) Information that is prohibited from being disclosed under Section 45 of the Condominium and Common Interest Community Ombudsperson Act.

(ee) Information that is exempted from disclosure under Section 30.1 of the Pharmacy Practice Act.

(ff) Information that is exempted from disclosure under the Revised Uniform Unclaimed Property Act.

(gg) Information that is prohibited from being disclosed under Section 7-603.5 of the Illinois Vehicle Code.

(hh) Records that are exempt from disclosure under Section 1A-16.7 of the Election Code.

(ii) Information which is exempted from disclosure under Section 2505-800 of the Department of Revenue Law of the Civil Administrative Code of Illinois.

(jj) Information and reports that are required to be submitted to the Department of Labor by registering day and temporary labor service agencies but are exempt from disclosure under subsection (a-1) of Section 45 of the Day and Temporary Labor Services Act.

(kk) Information prohibited from disclosure under the Seizure and Forfeiture Reporting Act.

(ll) Information the disclosure of which is restricted and exempted under Section 5-30.8 of the Illinois Public Aid Code.

(mm) Records that are exempt from disclosure under Section 4.2 of the Crime Victims Compensation Act.

(nn) Information that is exempt from disclosure under Section 70 of the Higher Education Student Assistance Act.

(oo) Communications, notes, records, and reports arising out of a peer support counseling session prohibited from disclosure under the First Responders Suicide Prevention Act.

(pp) Names and all identifying information relating to an employee of an emergency services provider or law enforcement agency under the First Responders Suicide Prevention Act.

(qq) Information and records held by the Department of Public Health and its authorized representatives collected under the Reproductive Health Act.

(rr) Information that is exempt from disclosure under the Cannabis Regulation and Tax Act.

(ss) Data reported by an employer to the Department of Human Rights pursuant to Section 2-108 of the Illinois Human Rights Act.



(tt) Recordings made under the Children's Advocacy Center Act, except to the extent authorized under that Act.

(uu) Information that is exempt from disclosure under Section 50 of the Sexual Assault Evidence Submission Act.

(vv) Information that is exempt from disclosure under subsections (f) and (j) of Section 5-36 of the Illinois Public Aid Code.

(ww) Information that is exempt from disclosure under Section 16.8 of the State Treasurer Act.

(xx) Information that is exempt from disclosure or information that shall not be made public under the Illinois Insurance Code.

(yy) Information prohibited from being disclosed under the Illinois Educational Labor Relations Act.

(zz) Information prohibited from being disclosed under the Illinois Public Labor Relations Act.

(aaa) Information prohibited from being disclosed under Section 1-167 of the Illinois Pension Code.

(bbb) Information prohibited from being disclosed under Section 35 of the Address Confidentiality for Victims of Domestic Violence, Sexual Assault, Human Trafficking, or Stalking Act.

## 5 ILCS 140/7.5:

**Text of section as amended by P.A. 101-652, P.A. 101-656, P.A. 102-520, and P.A. 102-559:**

§ 7.5. Statutory exemptions. To the extent provided for by the statutes referenced below, the following shall be exempt from inspection and copying:

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

(b) Library circulation and order records identifying library users with specific materials under the Library Records Confidentiality Act.

(c) 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.

(d) 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.

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

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

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

(h) Information the disclosure of which is exempted under the State Officials and Employees Ethics Act, and records of any lawfully created State or local inspector general's office that would be exempt if created or obtained by an Executive Inspector General's office under that Act.

(i) 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.

(j) Information and data concerning the distribution of surcharge moneys collected and remitted by carriers under the Emergency Telephone System Act.

(k) 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.

(l) 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.

(m) 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.

(n) 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 (n) 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.

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

(p) Security portions of system safety program plans, investigation reports, surveys, schedules, lists, data, or information compiled, collected, or prepared by or for the Department of Transportation under Sections 2705-300 and 2705-616 of the Department of Transportation Law of the Civil Administrative Code of Illinois, 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.

(q) Information prohibited from being disclosed by the Personnel Record Review Act.

(r) Information prohibited from being disclosed by the Illinois School Student Records Act.

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

(t) All identified or deidentified health information in the form of health data or medical records contained in, stored in, submitted to, transferred by, or released from the Illinois Health Information Exchange, and identified or deidentified health information in the form of health data and medical records of the Illinois Health Information Exchange in the possession of the Illinois Health Information Exchange Office due to its administration of the Illinois Health Information Exchange. The terms “identified” and “deidentified” shall be given the same meaning as in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, or any subsequent amendments thereto, and any regulations promulgated thereunder.

(u) Records and information provided to an independent team of experts under the Developmental Disability and Mental Health Safety Act (also known as Brian's Law).

(v) Names and information of people who have applied for or received Firearm Owner's Identification Cards under the Firearm Owners Identification Card Act or applied for or received a concealed carry license under the Firearm Concealed Carry Act, unless otherwise authorized by the Firearm Concealed Carry Act; and databases under the Firearm Concealed Carry Act, records of the Concealed Carry Licensing Review Board under the Firearm Concealed Carry Act, and law enforcement agency objections under the Firearm Concealed Carry Act.

(w) Personally identifiable information which is exempted from disclosure under subsection (g) of Section 19.1 of the Toll Highway Act.

(x) Information which is exempted from disclosure under Section 5-1014.3 of the Counties Code or Section 8-11-21 of the Illinois Municipal Code.

(y) Confidential information under the Adult Protective Services Act and its predecessor enabling statute, the Elder Abuse and Neglect Act, including information about the identity and administrative finding against any caregiver of a verified and substantiated decision of abuse, neglect, or financial exploitation of an eligible adult maintained in the Registry established under Section 7.5 of the Adult Protective Services Act.

(z) Records and information provided to a fatality review team or the Illinois Fatality Review Team Advisory Council under Section 15 of the Adult Protective Services Act.

(aa) Information which is exempted from disclosure under Section 2.37 of the Wildlife Code.

(bb) Information which is or was prohibited from disclosure by the Juvenile Court Act of 1987.

(cc) Recordings made under the Law Enforcement Officer-Worn Body Camera Act, except to the extent authorized under that Act.

(dd) Information that is prohibited from being disclosed under Section 45 of the Condominium and Common Interest Community Ombudsperson Act.

(ee) Information that is exempted from disclosure under Section 30.1 of the Pharmacy Practice Act.

(ff) Information that is exempted from disclosure under the Revised Uniform Unclaimed Property Act.

(gg) Information that is prohibited from being disclosed under Section 7-603.5 of the Illinois Vehicle Code.

(hh) Records that are exempt from disclosure under Section 1A-16.7 of the Election Code.

(ii) Information which is exempted from disclosure under Section 2505-800 of the Department of Revenue Law of the Civil Administrative Code of Illinois.

(jj) Information and reports that are required to be submitted to the Department of Labor by registering day and temporary labor service agencies but are exempt from disclosure under subsection (a-1) of Section 45 of the Day and Temporary Labor Services Act.

(kk) Information prohibited from disclosure under the Seizure and Forfeiture Reporting Act.

(ll) Information the disclosure of which is restricted and exempted under Section 5-30.8 of the Illinois Public Aid Code.

(mm) Records that are exempt from disclosure under Section 4.2 of the Crime Victims Compensation Act.

(nn) Information that is exempt from disclosure under Section 70 of the Higher Education Student Assistance Act.

(oo) Communications, notes, records, and reports arising out of a peer support counseling session prohibited from disclosure under the First Responders Suicide Prevention Act.

(pp) Names and all identifying information relating to an employee of an emergency services provider or law enforcement agency under the First Responders Suicide Prevention Act.

(qq) Information and records held by the Department of Public Health and its authorized representatives collected under the Reproductive Health Act.

(rr) Information that is exempt from disclosure under the Cannabis Regulation and Tax Act.

(ss) Data reported by an employer to the Department of Human Rights pursuant to Section 2-108 of the Illinois Human Rights Act.

(tt) Recordings made under the Children's Advocacy Center Act, except to the extent authorized under that Act.

(uu) Information that is exempt from disclosure under Section 50 of the Sexual Assault Evidence Submission Act.



(vv) Information that is exempt from disclosure under subsections (f) and (j) of Section 5-36 of the Illinois Public Aid Code.

(ww) Information that is exempt from disclosure under Section 16.8 of the State Treasurer Act.

(xx) Information that is exempt from disclosure or information that shall not be made public under the Illinois Insurance Code.

(yy) Information prohibited from being disclosed under the Illinois Educational Labor Relations Act.

(zz) Information prohibited from being disclosed under the Illinois Public Labor Relations Act.

(aaa) Information prohibited from being disclosed under Section 1-167 of the Illinois Pension Code.

(bbb) Information that is exempt from disclosure under subsection (k) of Section 11 of the Equal Pay Act of 2003.

(ccc) Information that is prohibited from disclosure by the Illinois Police Training Act and the State Police Act.

(ddd) Information prohibited from being disclosed under subsection (b) of Section 75 of the Domestic Violence Fatality Review Act.

## 5 ILCS 140/7.5:

**Text of section as amended by P.A. 101-652, P.A. 102-237, and P.A. 102-559:**

§ 7.5. Statutory exemptions. To the extent provided for by the statutes referenced below, the following shall be exempt from inspection and copying:

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

(b) Library circulation and order records identifying library users with specific materials under the Library Records Confidentiality Act.

(c) 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.

(d) 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.

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

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

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

(h) Information the disclosure of which is exempted under the State Officials and Employees Ethics Act, and records of any lawfully created State or local inspector general's office that would be exempt if created or obtained by an Executive Inspector General's office under that Act.

(i) 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.

(j) Information and data concerning the distribution of surcharge moneys collected and remitted by carriers under the Emergency Telephone System Act.

(k) 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.

(l) 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.

(m) 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.

(n) 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 (n) 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.

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

(p) Security portions of system safety program plans, investigation reports, surveys, schedules, lists, data, or information compiled, collected, or prepared by or for the Department of Transportation under Sections 2705-300 and 2705-616 of the Department of Transportation Law of the Civil Administrative Code of Illinois, 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.

(q) Information prohibited from being disclosed by the Personnel Record Review Act.

(r) Information prohibited from being disclosed by the Illinois School Student Records Act.

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

(t) All identified or deidentified health information in the form of health data or medical records contained in, stored in, submitted to, transferred by, or released from the Illinois Health Information Exchange, and identified or deidentified health information in the form of health data and medical records of the Illinois Health Information Exchange in the possession of the Illinois Health Information Exchange Office due to its administration of the Illinois Health Information Exchange. The terms “identified” and “deidentified” shall be given the same meaning as in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, or any subsequent amendments thereto, and any regulations promulgated thereunder.

(u) Records and information provided to an independent team of experts under the Developmental Disability and Mental Health Safety Act (also known as Brian's Law).

(v) Names and information of people who have applied for or received Firearm Owner's Identification Cards under the Firearm Owners Identification Card Act or applied for or received a concealed carry license under the Firearm Concealed Carry Act, unless otherwise authorized by the Firearm Concealed Carry Act; and databases under the Firearm Concealed Carry Act, records of the Concealed Carry Licensing Review Board under the Firearm Concealed Carry Act, and law enforcement agency objections under the Firearm Concealed Carry Act.

(v-5) Records of the Firearm Owner's Identification Card Review Board that are exempted from disclosure under Section 10 of the Firearm Owners Identification Card Act.

(w) Personally identifiable information which is exempted from disclosure under subsection (g) of Section 19.1 of the Toll Highway Act.

(x) Information which is exempted from disclosure under Section 5-1014.3 of the Counties Code or Section 8-11-21 of the Illinois Municipal Code.

(y) Confidential information under the Adult Protective Services Act and its predecessor enabling statute, the Elder Abuse and Neglect Act, including information about the identity and administrative finding against any caregiver of a verified and substantiated decision of abuse, neglect, or financial exploitation of an eligible adult maintained in the Registry established under Section 7.5 of the Adult Protective Services Act.

(z) Records and information provided to a fatality review team or the Illinois Fatality Review Team Advisory Council under Section 15 of the Adult Protective Services Act.

(aa) Information which is exempted from disclosure under Section 2.37 of the Wildlife Code.

(bb) Information which is or was prohibited from disclosure by the Juvenile Court Act of 1987.

(cc) Recordings made under the Law Enforcement Officer-Worn Body Camera Act, except to the extent authorized under that Act.

(dd) Information that is prohibited from being disclosed under Section 45 of the Condominium and Common Interest Community Ombudsperson Act.

(ee) Information that is exempted from disclosure under Section 30.1 of the Pharmacy Practice Act.

(ff) Information that is exempted from disclosure under the Revised Uniform Unclaimed Property Act.

(gg) Information that is prohibited from being disclosed under Section 7-603.5 of the Illinois Vehicle Code.

(hh) Records that are exempt from disclosure under Section 1A-16.7 of the Election Code.

(ii) Information which is exempted from disclosure under Section 2505-800 of the Department of Revenue Law of the Civil Administrative Code of Illinois.

(jj) Information and reports that are required to be submitted to the Department of Labor by registering day and temporary labor service agencies but are exempt from disclosure under subsection (a-1) of Section 45 of the Day and Temporary Labor Services Act.

(kk) Information prohibited from disclosure under the Seizure and Forfeiture Reporting Act.

(ll) Information the disclosure of which is restricted and exempted under Section 5-30.8 of the Illinois Public Aid Code.

(mm) Records that are exempt from disclosure under Section 4.2 of the Crime Victims Compensation Act.

(nn) Information that is exempt from disclosure under Section 70 of the Higher Education Student Assistance Act.

(oo) Communications, notes, records, and reports arising out of a peer support counseling session prohibited from disclosure under the First Responders Suicide Prevention Act.

(pp) Names and all identifying information relating to an employee of an emergency services provider or law enforcement agency under the First Responders Suicide Prevention Act.

(qq) Information and records held by the Department of Public Health and its authorized representatives collected under the Reproductive Health Act.

(rr) Information that is exempt from disclosure under the Cannabis Regulation and Tax Act.

(ss) Data reported by an employer to the Department of Human Rights pursuant to Section 2-108 of the Illinois Human Rights Act.

(tt) Recordings made under the Children's Advocacy Center Act, except to the extent authorized under that Act.



(uu) Information that is exempt from disclosure under Section 50 of the Sexual Assault Evidence Submission Act.

(vv) Information that is exempt from disclosure under subsections (f) and (j) of Section 5-36 of the Illinois Public Aid Code.

(ww) Information that is exempt from disclosure under Section 16.8 of the State Treasurer Act.

(xx) Information that is exempt from disclosure or information that shall not be made public under the Illinois Insurance Code.

(yy) Information prohibited from being disclosed under the Illinois Educational Labor Relations Act.

(zz) Information prohibited from being disclosed under the Illinois Public Labor Relations Act.

(aaa) Information prohibited from being disclosed under Section 1-167 of the Illinois Pension Code.

(bbb) Information that is exempt from disclosure under subsection (k) of Section 11 of the Equal Pay Act of 2003.

(ccc) Information that is prohibited from disclosure by the Illinois Police Training Act and the State Police Act.

(ddd) Records exempt from disclosure under Section 2605-304 of the Department of State Police Law of the Civil Administrative Code of Illinois.

## **5 ILCS 140/8.5:**

### **§ 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:**

§ 9. (a) Each public body denying a request for records shall notify the requester in writing of the decision to deny the request, the reasons for the denial, including a detailed factual basis for the application of any exemption claimed, 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 the right to review by the Public Access Counselor and provide the address and phone number for the Public Access Counselor. Each notice of denial 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 and the specific reasons for the denial, including a detailed factual basis and a citation to supporting legal authority. 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.

(c) Any person making a request for public records shall be deemed to have exhausted his or her administrative remedies with respect to that request if the public body fails to act within the time periods provided in Section 3 of this Act.

## **5 ILCS 140/9.5:**

### **§ 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.

## **5 ILCS 140/11:**

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

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

(b) Where the denial is from 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 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. Any public body that asserts that a record is exempt from disclosure has the burden of proving that it is exempt by clear and convincing evidence.

(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 prevails in a proceeding under this Section, the court shall award such person reasonable attorney's fees and costs. In determining what amount of attorney's fees is reasonable, the court shall consider the degree to which the relief obtained relates to the relief sought. The changes contained in this subsection apply to an action filed on or after January 1, 2010 (the effective date of Public Act 96-542).

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

- (1) the public body fails to comply with the court's order after 30 days;
- (2) the court's order is not on appeal or stayed; and
- (3) the court does not grant the public body additional time to comply with the court's order to disclose public records.

The changes contained in this subsection made by Public Act 96-542 apply to an action filed on or after January 1, 2010 (the effective date of Public Act 96-542).

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

#### **5 ILCS 140/11.5:**

§ 11.5. Administrative review. A binding opinion issued by the Attorney General shall be considered a final decision of an administrative agency, for purposes of administrative review under the Administrative Review Law (735 ILCS 5/Art. III). An action for administrative review of a binding opinion of the Attorney General shall be commenced in Cook or Sangamon County. An advisory opinion issued to a public body shall not be considered a final decision of the Attorney General for purposes of this Section.

#### **5 ILCS 140/11.6:**

§ 11.6. Noncompliance with binding opinion.

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

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

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

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

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

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

(c) This Section applies to binding opinions of the Attorney General requested or issued on or after the effective date of this amendatory Act of the 99th General Assembly.