

A Citizen's Guide to Using the Illinois Freedom of Information Act



**Paul Simon
Public Policy Institute**

Southern Illinois University Carbondale

Preface

Open government is key to a democracy and citizen participation in it.

In the wake of scandal involving former Gov. Rod Blagojevich, the Illinois Legislature and the new governor, Patrick Quinn, rewrote the Illinois Freedom of Information Act in 2009. Many of those changes took effect in 2010. Debate over some of them continues today. To help citizens, government officials and journalists understand and use this new law – and the Open Meetings Act - the Paul Simon Public Policy Institute at Southern Illinois University Carbondale is pleased to publish “A Citizen’s Guide to Using the Illinois Freedom of Information Act” by former veteran Illinois political reporter Adriana Colindres.

The Institute would like to thank several experts for their help in preparing this guide, including Illinois Attorney General Lisa Madigan for the help of her office; William Freivogel, director of the SIUC School of Journalism; and Josh Sharp, director of government relations for the Illinois Press Association.

This is a guidebook. It should not be considered a substitute for sound legal advice from your attorney.

Finally, it is important that supporters of open government remain vigilant in protecting the public’s right to know information, however embarrassing and uncomfortable it may be. Many interest groups and individuals are constantly chipping away at laws seeking to protect openness in an effort to carve out exemptions that would legalize secrecy for themselves or their groups. As we have seen too often in Illinois, secrecy in government can be a breeding ground for corruption or a cover for embarrassing or incompetent behavior by government officials. As U.S. Supreme Court Justice Louis Brandeis once said: sunshine is a good disinfectant.



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The Paul Simon Public Policy Institute thanks its student staffers Cary Bryant and Barton Lorimor for their work in designing this guide and maintaining it on our web site.

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Introduction

This guide has been put together with these main goals in mind:

- To help the layperson understand and become familiar with the Illinois Freedom of Information Act (FOIA), which underwent significant changes that took effect in 2010;
- To offer assistance to people who want to use the FOIA to obtain public records; and
- To help citizens understand and use the Open Meetings Act (OMA).

The guide is divided into seven chapters that examine the background and scope of the FOIA and the OMA. A table of contents on the previous page lists the questions that will be answered here.

The guide also explains what citizens can do if they disagree with a public body's decision on matters involving either of the two Acts.

IN CASE OF EMERGENCY

If a public body denies your Illinois Freedom of Information Act request, and you believe the requested record(s) should be disclosed:

- You can ask for a review by the Public Access Counselor (PAC) in the Attorney General's office, and you have a 60-day window to file the written request with the PAC.
- Instead of going to the PAC, you can try to force disclosure of the records by filing a lawsuit in circuit court. You may need to hire a lawyer to represent you.

For more details, see Chapter Five: Denial of FOIA Requests.

If a public body is closing (or trying to close) a meeting you think should be open to the public:

- Interrupt the meeting if necessary, and ask the public body which exemption(s) to the Open Meetings Act it is citing in order to legally go into a closed session. Ask whether the public body is taking a formal vote to close the meeting, and whether those voting results are being recorded in the minutes.
- If the answers to those questions are unsatisfactory, say that you object to the closure and that you want your objection to be noted in the minutes. You also may want to remind the public body it may not legally take final action on any matter during a closed meeting.

For more details, see Chapter Seven: The Illinois Open Meetings Act. Here is how to contact the PAC:

Public Access Counselor
Office of the Attorney General
500 S. 2nd St., Springfield, IL 62706
publicaccess@atg.state.il.us
Phone: (877) 299-3642 Fax: (217) 782-1396

Chapter One: Background

What is the Illinois Freedom of Information Act?

The Illinois Freedom of Information Act is the main state law that addresses citizens' access to public records that are created, compiled, or kept by governmental bodies. The first version of the Illinois Freedom of Information Act took effect in 1984.

Even before that, however, Illinois law recognized the right to inspect and copy public records. This is mentioned in at least two editions of "A Guide to the Illinois Freedom of Information Act," one issued in 1990 by Attorney General Neil Hartigan and the other issued in 1999 by Attorney General Jim Ryan.

The idea behind the Act is to enable citizens to obtain information about the workings of government – the purpose of which is to serve the public good. From the 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."

What is the nature of the revisions that took effect in January 2010?

For many years, journalists and others viewed the FOIA as weak and full of too many loopholes that public officials and public bodies could (and sometimes did) use to prevent the disclosure of information.

The Illinois General Assembly and the Governor approved the updated version of the Freedom of Information Act in 2009, and it took effect Jan. 1, 2010 (Public Act 96-0542). It resulted from negotiations among various parties, including the Illinois Attorney General's Office, state legislators, and the Illinois Press Association.

Supporters said the revisions tightened and closed many of the loopholes, and that the changes would make government more transparent and accountable. The revisions require public bodies to designate at least one FOI officer to handle requests, and they establish a shorter time frame for public bodies to comply with – or deny – requests made under the FOIA.

The revamped FOIA includes a statement that all "records in the custody or possession of a public body are presumed to be open to inspection or copying." If a public body contends a record is exempt from disclosure, it must prove through "clear and convincing evidence" that the record is exempt.

The updated law also formally established the position of "Public Access Counselor" within the Attorney General's Office. A key part of the Public Access Counselor's job is to review the situation when a public body denies a request made under FOIA and to advise whether the denial was appropriate.

The Illinois Municipal League, which represents local governments, has been a leading critic of the FOIA revisions. In a July 9, 2009, letter to Gov. Pat Quinn, (available online at <http://www.iml.org/files/pages/2385/Concerns-on-SB0189-FOIA-GovQuinn-07082009.pdf>) the IML said that local governments would find the revised FOIA to be overly burdensome and, in some ways, unworkable.

The revised FOIA "creates a confusing and complex system for FOIA responses," the IML letter said, and it results in "a legal thicket that will overwhelm the lay people who are charged with dealing with FOIA requests on a day-to-day basis."

The letter cited several specific objections. One, for example, criticizes a provision of the law that says a public body is to provide the first 50 pages of black-and-white, letter- or legal-sized copies at no charge to the requester.

Are further changes to the Illinois Freedom of Information Act possible?

Yes. In fact, some changes already have been implemented. One took effect in mid-January 2010 – weeks after the 2009 FOIA overhaul became law. This change prohibits the disclosure of the performance evaluations of public school teachers, principals, or superintendents. The legislation was Senate Bill 315, and it was signed into law as Public Act 96-0861.

A few months later, Quinn signed into law Senate Bill 3588 (Public Act 96-1212), an amendment to the Personnel Record Review Act. It allows an employer to send written notification to an employee if the employer receives a Freedom of Information Act request for records of disciplinary action against that employee.

More recently, in fall 2010, lawmakers rebuffed Quinn's effort to use his amendatory veto power to rewrite another FOIA-related measure, House Bill 5154. As passed by the General Assembly during the spring 2010 session, the legislation would amend the Personnel Record Review Act by barring the disclosure of all government workers' performance evaluations under the FOIA. Quinn recommended revising the measure to narrow its scope so that it would apply only to the performance evaluations of state and local law enforcement workers, rather than to all government workers. But the Illinois Senate and House of Representatives overrode his amendatory veto – enabling the bill they passed to become law (Public Act 96-1483) despite Quinn's reservations.

Several other FOIA-related bills that were introduced during the spring 2010 session of the General Assembly failed to advance to the governor. House Bill 5069, for instance, would have allowed public bodies to charge for the first 50 pages of a Freedom of Information Act request, lifting the first-50-pages-free provision of the Act.

Chapter Two:

Who/What Falls Under the FOIA?

What entities are covered by the Illinois Freedom of Information Act?

Various types of government, referred to as “public bodies,” are subject to the Act. That two-word phrase is defined in the Act 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.”

What entities don't fall under the FOIA?

While the legislative and executive branches of government are subject to FOIA, the judiciary branch isn't – though court proceedings and court-related documents generally are accessible to the public. Quasi-governmental bodies, such as economic development or strategic planning groups, are not covered by the FOIA. Also, the Act specifies that the term “public body” does not apply to either a child death review team or the Illinois Child Death Review Teams Executive Council, both established under the Child Death Review Team Act.

What documents may be sought through a Freedom of Information Act request?

FOIA may be used to obtain “public records.”

The Act defines these 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.”

Here are some practical examples:

- City Council minutes from an open meeting.
- E-mails among County Board members discussing government business.
- Employee payroll information (listing workers' names and salaries) for a state government agency.
- Contracts in which a governmental body hires a private firm to perform some kind of service.
- Arrest information from a police department.

Information about an arrest is supposed to be available no later than 72 hours after the arrest is made. This information includes the arrested person's name, address, and photograph (when and if available), and what charges are involved.

Additional arrest-related information -- the time and place of arrest, the name of the investigating or arresting law enforcement agency, and the amount of bail or bond if the arrestee is behind bars -- generally is supposed to be available within 72 hours, too. But it may be withheld from disclosure under certain circumstances.

For a more detailed explanation, see Chapter Four: Exemptions. A different part of state law, the Juvenile Court Act of 1987, governs the public disclosure of information about the arrest of anyone younger than 17. Typically, there is a greater degree of confidentiality (and less public disclosure) concerning juveniles accused of committing crimes.

Public records may come in a wide range of possible formats, the Act notes. These include paper, electronic (such as e-mail), photographs, and audio and video recordings.

The Act doesn't require public bodies to keep or create any public record that it didn't already keep or create, unless otherwise required under state, federal, or local laws.

However, it does specify that all of a public body's records "are presumed to be open to inspection or copying." If a public body believes a record is exempt from public disclosure, the public body bears "the burden of proving by clear and convincing evidence that it is exempt."

In other words: Public bodies should adopt the attitude that records generally are supposed to be accessible to the public.

What about legal settlement agreements involving a public body? Are they subject to disclosure under FOIA?

Yes. If a public body enters into a settlement agreement (basically, an out-of-court resolution to a lawsuit), the agreement is considered to be a public record. However, certain information in the settlement agreement may be redacted (blocked from public view) if it falls under one of the FOIA law's exemptions. Exemptions are described in Chapter Four of this guide.

Settlement agreements also are subject to the provisions of the FOIA when (a) outside parties -- in other words, those not defined as "public bodies" -- enter into a settlement agreement on behalf of a public body, or (b) when a public body possesses a settlement agreement that doesn't directly involve a "public body" but that nevertheless pertains to the transaction of public business.

Chapter Three: Requesting Public Records Under the FOIA

Why would I ever use the Illinois Freedom of Information Act?

Specific reasons may vary, but basically, the answer is this: to find out more about the functions and operations of government, enabling you to make more-informed decisions and hold government more accountable – all of which are vital to a healthy democracy.

Are journalists the only people permitted to use the Act to seek public records?

No. Anyone may make a request under the Illinois Freedom of Information Act, even people who do not live in Illinois. In fact, the Attorney General's Office has said that most FOIA requests come from non-journalists.

How do I file a request under the Illinois Freedom of Information Act?

The Act says a public body "may honor oral requests" to inspect or copy public records, but it is not required to do so.

From a requester's point of view, it probably is better to make the request in writing. That can include postal correspondence, e-mail, fax, in-person delivery, or any other method available to the public body that is the target of the request. The public body is supposed to immediately direct any FOIA request to its Freedom of Information officer or another designated person.

Do I have to fill out a special "FOI request" form?

No.

Do I have to explain WHY I am seeking the records?

No.

But a public body might – and can – ask if you want the records for a "commercial purpose." This term is used to refer to anyone asking for public records to glean information they can then use to sell or advertise something.

While that description might seem to apply to news outlets, it doesn't – provided a news outlet's FOIA request is for news purposes. The Act specifies that requests made by news media and non-profit, scientific, or academic organizations are not viewed as having a "commercial purpose" as long as the main purpose of the request is (a) to obtain and share information with others about news or current events, (b) to prepare opinion or feature articles for the public, or (iii) for research or education.

The reason for making this distinction is that public bodies are given a longer period of time – 21 days – to comply with FOIA requests for records that will be used for a commercial purpose. Public bodies have five business days to respond to FOIA requests that don't have a commercial purpose.

A person who is using the FOIA to seek records might want to provide the reason for his/her request if seeking a waiver or a reduction of fees. (See Chapter Six on "Costs.")

How should my FOIA request be phrased?

There is no single "right" answer. In as specific terms as you can, explain what records you seek or what kind of information you seek. It helps if you know exactly what documents are involved – Form XYZ, for example. But that is not necessary.

A sample letter making a request under the Illinois Freedom of Information Act is posted on the Illinois Press Association's Web site and it is included in this guide (page 28).

Can I ask for records to be provided in an electronic format?

Yes.

And you can ask for records in a particular format – an Excel spreadsheet, for example. That may or may not be feasible from the public body's perspective. If it isn't feasible, the public body will provide the records in whatever electronic format it uses, or it will provide the records in paper form if that's what the requester would prefer.

When will I know if my request has been granted or denied? What kind of timetable applies?

The Act requires a public body to comply with or deny a public records request within five business days of receiving it.

However, the public body is allowed to extend that window by another five business days under certain circumstances, that is, if:

- Some or all of the requested records are stored off-site, meaning away from the office that is in charge of the records.
- A "substantial number" of records must be collected.
- An "extensive search" is required to identify the records.
- The records haven't been quickly located, and further searching is necessary.
- The records must be examined by someone with the authority to determine if all or part of the records may be exempt from disclosure under the Act.
- The request for records cannot be granted within the specified time frame "without unduly burdening or interfering with the operations of the public body."
- Some type of consultation is needed with another public body that has "a substantial interest" in the request. This consultation also could take place among multiple divisions of a single public body.

If a public body wants that five-day extension, it must notify the requester within the first five days of getting the request. The notice must explain why the public body wants the extension.

Can the Act's specified timetables for responding to a Freedom of Information Act request ever change?

Under certain circumstances, yes.

It's possible for a public body and a requester to reach their own customized agreement about letting the public body have more time to comply with a Freedom of Information Act request. Once the two parties decide how long the extension should be, their agreement should be finalized in writing.

Also, the timetable may change if a public body that gets a records request contends the records are exempt under specific parts of the Freedom of Information Act (Section 7, subsection 1c; or Section 7, subsection 1f). Any public body citing those exemptions must notify the requester and the Public Access Counselor within the specified time frame for responding to requests – generally, five business days. Exemptions are explained more fully in Chapter Four: Exemptions.

How will I know if the request is denied?

If the public body denies a request for records, that denial must be made in writing. It also must explain the reason(s) for denial, including which exemptions apply, from the perspective of the public body. The written denial must include the names of anyone responsible for the decision to reject the records request.

What if a public body ignores my request for records or fails to act within the specified time frames?

A public body that misses the established deadlines, but then later provides the requested records, may not charge for copies.

A public body that doesn't respond to a request cannot later claim the request is "unduly burdensome" and therefore exempt from disclosure.

If a public body doesn't respond, your options include going to court or asking the Public Access Counselor in the Attorney General's Office to review the matter.

Any other tips for making a FOIA request?

Yes.

Always conduct yourself in a patient, courteous and respectful manner when dealing with busy public servants.

Chapter Four: Exemptions

Why might my FOIA request be denied?

The FOIA law that took effect in January 2010 spells out certain types of records or information that are exempt, meaning a public body is not required to make that information available to the public.

One of these exemptions deals with so-called “categorical requests” – or requests for all records that fall within a particular category. Granting the request might be “unduly burdensome” from the public body’s view, with that burden outweighing public interest in the information. But before a public body can cite this exemption, it must give the requester a chance to narrow his/her request to a more manageable size.

Some of the Act’s exemptions are more broadly written than others. Under Section 7 (i) for example, an exemption applies to “valuable” formulas, computer geographic systems and certain other types of data. But “valuable” is not defined.

Sometimes, a public record includes some information that is exempt from disclosure, even though the entire public record is not exempt. When this happens, the public body may redact (delete, black out, or otherwise block from view) the exempt information before turning over the rest for public inspection or copying.

Exemptions are listed in Sec. 7 and Sec. 7.5 of the Act. Some of the exemptions refer to other parts of Illinois law. To read those other parts of state law verbatim, go to the online Illinois Compiled Statutes at <http://www.ilga.gov/legislation/ilcs/ilcs.asp>

Here’s a boiled-down explanation of the exemptions.

From Section 7:

(a) Information that may not be publicly disclosed under federal or state laws.

(b) ‘PRIVATE INFORMATION.’

“Private information,” which includes an individual’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 e-mail addresses. Private information also may include an individual’s home address and personal license plates, unless otherwise specified in state law or when compiled in a way that doesn’t single out any individual(s) for identification.

(c) INVASION OF PERSONAL PRIVACY.

Personal information in public records that would result in an “unwarranted invasion of personal privacy” if disclosed to the public.

The exempted information may be disclosed to the public if the subject of the information gives written consent.

The law does not provide specific examples about what kind of information falls under this exemption. “Unwarranted invasion of personal privacy” is defined as “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 following is NOT considered an invasion of personal privacy: Disclosing information that pertains to the public duties of public employees and officials.

(d) LAW ENFORCEMENT/ADMINISTRATIVE ENFORCEMENT.

Certain records belonging to public entities and pertaining to law enforcement or administrative enforcement (e.g., criminal investigations by police, or non-police matters such as a public body's investigation of potential employee misconduct.)

This exemption applies only to the extent that disclosure would:

- Interfere with pending law enforcement or administrative enforcement proceedings;
- Likely deprive someone of a fair trial or an impartial hearing;
- Reveal a confidential source, information that points to the identity of a confidential source, or the identity of anyone making a complaint or providing other information to law enforcement, investigative, administrative, or penal agencies. There are exceptions: Rescue reports, traffic accident reports, and the names of witnesses to traffic accidents are to be disclosed unless disclosure of the information would interfere with another investigation being conducted by the public body that receives the FOIA request.
- Reveal "unique or specialized investigative techniques" that are not commonly known; or reveal correctional agencies' internal documents about crime, if disclosure would cause "demonstrable harm" to the agency receiving the FOIA request.
- Endanger the life or safety of a law enforcement officer or anyone else.
- Obstruct an ongoing criminal investigation by the public body receiving the FOIA request.

To summarize: Arrest reports and other records generated by law enforcement agencies, including police or sheriff's departments, are subject to public disclosure under FOIA. However, the agency may cite a Freedom of Information Act exemption to fully or partially withhold certain records. Once a law enforcement agency finishes its investigation, some of these exemptions may no longer apply.

(e) PRISONS, DETENTION FACILITIES.

Records pertaining to the security of correctional and detention facilities.

(f) DRAFT DOCUMENTS AND NOTES.

Preliminary drafts, notes, and similar records in which someone has expressed an opinion or in which policies are formulated. Exception: If the head of a public body publicly cites and identifies such a record, the record (or a relevant portion of it) is not exempt from public disclosure. NOTE: This exemption applies to General Assembly records associated with preparation of legislative documents.

(g) TRADE SECRETS, COMMERCIAL INFORMATION.

Proprietary, confidential, or privileged trade secrets, commercial information, or financial information obtained from an individual or business, if disclosure would cause competitive harm.

NOTE: A person or a business may consent to public disclosure of this information.

(h) CONTRACT BIDS, GRANT PROPOSALS.

Proposals and bids for contracts, grants, or agreements, until a final selection is made. Any information that a public body prepares for soliciting bids is exempt from disclosure until a final selection is made.

(i) FORMULAS, COMPUTER GEOGRAPHIC SYSTEMS, RESEARCH DATA.

"Valuable" formulas, computer geographic systems, designs, drawings and research data in the possession of a public body when disclosure "could reasonably be expected to produce private gain or public loss." The exemption cited here for "computer geographic systems" does not apply to news media requests if the information is not otherwise exempt and if disclosure is intended only to provide members of the public with information about their health, safety, welfare, or legal rights.

(j) EDUCATION: SCHOOL EXAMS, PEER EVALUATIONS, STUDENT DISCIPLINE, INSTRUCTORS' TEACHING MATERIALS.

Test questions, answer keys, and other information used in administering an educational examination; information that a school, college, or university gets as part of the process by which academic peers evaluate faculty members; information about how a school or university deals with student disciplinary cases, but only to the degree that public disclosure of the information would identify the student; faculty members' course materials or research materials.

(k) ARCHITECTURAL/CONSTRUCTION DOCUMENTS.

Architectural plans and other technical documents related to construction projects that are not publicly funded. The exemption also applies to documents related to certain construction projects funded with public dollars if disclosure would present a security risk; examples of these types of projects include (but aren't limited to) power generation and power distribution facilities, water treatment plants, airports, sports stadiums, convention centers, and all buildings owned, operated, or occupied by the government.

(l) CLOSED MEETING MINUTES.

Under another part of state law, the Open Meetings Act, public bodies may meet in "closed" session – out of public view – for specific reasons, as spelled out in the Open Meetings Act. The minutes of these "closed" sessions are exempt from disclosure under FOIA. But public bodies are supposed to review these closed-meeting minutes periodically to decide when they may be released for public view. Upon their release, those minutes are subject to disclosure under FOIA.

(m) DISCUSSIONS WITH ATTORNEY/AUDITOR.

Communications between a public body and its attorney, or between a public body and its auditor, as long as those communications would not have to be turned over as part of a legal discovery process. Also exempt are materials that a public body puts together (or has someone else put together) in connection with a public body's internal audits, or materials compiled upon the request of a public body's attorney, who anticipates legal action.

(n) EMPLOYEE GRIEVANCES/DISCIPLINE.

Most records relating to how a public body deals with cases of employee grievances or discipline – EXCEPT for the final outcome of cases that resulted in disciplinary action.

(o) DATA-PROCESSING SYSTEMS.

Administrative or technical information related to automated data processing operations, such as user guides, employee manuals, and any other information that would “jeopardize the security of the system or its data” or the security of other materials exempt under this section of the law.

(p) COLLECTIVE BARGAINING.

Most records dealing with collective bargaining between public bodies and their employees or representatives, (i.e., labor unions) EXCEPT for any final contract or agreement. That is subject to public disclosure.

(q) JOB/LICENSE TESTING.

Examination data, such as test questions and scoring keys, used to determine a person’s qualifications for a license or a job.

Some test results might be construed as “examination data” and therefore exempt, according to the Attorney General’s Office. But that would be determined case-by-case.

As a side note, results from the bar exam – which lawyers must pass if they want to practice in Illinois – are not subject to disclosure under the FOIA, according to the Attorney General’s Office. That’s because the Illinois Board of Admissions to the Bar handles administration of the bar exam. Because the Board of Admissions to the Bar is an appointed body of the judiciary (the Illinois Supreme Court), it isn’t subject to FOIA provisions.

(r) LAND PURCHASE.

Records related to negotiations on a real estate purchase, until the negotiations end -- either because they’re completed or because they’re terminated. Records dealing with properties that are the subject of an eminent domain proceeding also are exempt from disclosure, except for what is allowed under the Illinois Supreme Court’s rules on legal discovery. Records dealing with the sale of real estate are exempt until the sale goes through.

(s) INSURANCE.

Proprietary information dealing with the operation of an intergovernmental risk management association, self-insurance pool, or jointly self-administered health and accident cooperative/pool. Also: Insurance claims, self-insurance claims, and loss/risk management information.

(t) REGULATION OF FINANCIAL/INSURANCE INSTITUTIONS.

Information in condition reports or similar documents used by a public body that regulates or supervises financial institutions or insurance companies. This exemption could apply, for example, to some of the records kept by two state agencies, the Illinois Department of Financial and Professional Regulation (which deals with banks and other financial institutions) and the Illinois Department of Insurance. However, this exemption does not apply if any other state law requires public disclosure of this type of information.

(u) ELECTRONIC SIGNATURES.

Information that would or might disclose confidential information intended to be used for creating electronic or digital signatures under the Electronic Commerce Security Act.

(v) **ATTACKS ON A COMMUNITY.**

Vulnerability assessments, security measures, and response plans related to potential attacks on a community that would threaten health or safety. This exemption applies only to the extent that public disclosure "could reasonably be expected to jeopardize" the effectiveness of the plans, public safety, or the safety of the people implementing the plans. Exempted information may include details about deployment of personnel or equipment, operation of communication systems, and tactical operations.

(w) **NOTE:** This letter was left blank in the text of the Act.

(x) **ELECTRICAL AND OTHER UTILITIES.**

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

(y) **ELECTRIC POWER PROCUREMENT.**

Information dealing with electric power procurement proposals/bids/negotiations, as deemed confidential and proprietary by the Illinois Commerce Commission or the Illinois Power Agency.

From Section 7.5:

(a) **TRADE SECRETS, ETC.**

Information deemed to be confidential under Section 4002 of the Technology Advancement and Development Act. This refers to certain information, such as trade secrets, the Department of Commerce and Economic Opportunity would receive from an applicant seeking funding under this Act.

(b) **LIBRARY PATRONS' READING HABITS.**

Individual library users' circulation and order records, i.e, what specific books or other materials they check out. (Under the Library Records Confidentiality Act.)

(c) **ORGAN TRANSPLANT DOCUMENTS.**

Applications, medical records and similar documents received by the Experimental Organ Transplantation Procedures Board, as well as documents that the Board prepares in connection with its received applications.

(d) **SEXUALLY TRANSMITTED DISEASES.**

Information kept by the Department of Public Health (and its authorized representatives) related to known or suspected cases of sexually transmitted disease and information that may not be disclosed under the Illinois Sexually Transmissible Disease Control Act.

Key exceptions are:

- (1) When the information would be disclosed for statistical purposes and summarized in a way that does not identify anyone by name or allow for anyone to be identified.
- (2) When disclosure is made with the consent of everyone to whom the information applies.

(e) RADON TESTING.

Information that does not have to be disclosed under the Radon Industry Licensing Act. This refers to certain information that the Illinois Emergency Management Agency obtains about radon testing results in buildings or dwellings – specifically, the medical condition of an identified person or the concentration of radon in a specific dwelling. However, the dwelling’s owner or occupant may obtain this information upon request.

(f) STATE AGENCIES’ EVALUATIONS OF CONTRACTUALLY HIRED ARCHITECTS, ENGINEERS.

State law (the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act) requires state agencies to evaluate firms it hires once the contract terms are completed, and the firm may make a written response. Both of these are exempt from public disclosure under the FOIA.

(g) ILLINOIS’ PREPAID TUITION PROGRAM.

Information that is restricted/exempt from disclosure under the Illinois Prepaid Tuition Act. This includes information that identifies purchasers or beneficiaries of any Illinois prepaid tuition contract, as well as terms of the contract as they pertain to an individual purchaser or beneficiary.

(h) ALLEGED ETHICAL MISCONDUCT BY STATE EMPLOYEES.

Information that is exempt from disclosure under the State Officials and Employees Ethics Act. This includes the name of any person who reports alleged misconduct and most documents created by an ethics officer under the Act. Also included are allegations and related documents submitted to the Executive Inspector General, and pleadings and related documents submitted to the Executive Ethics Commission.

EXCEPTION: If the Executive Ethics Commission finds that someone has violated the Act, the following are NOT exempt: the record of proceedings before the commission, the commission’s decision and recommendation, and the response “from the agency head or ultimate jurisdictional authority.” While those records are not exempt from disclosure, they are to be redacted to delete information that is exempt under other provisions of FOIA.

(i) PEAK POWER DEMAND SITUATIONS.

Information in a “local emergency energy plan,” that is, an electric utility’s strategy for what to do when demand for electricity in a municipality exceeds the supply, or is at risk of exceeding the supply. The local emergency energy plan includes such details as: the circumstances that would lead to its implementation, and the locations, sequence, and duration of intentional power shutoffs.

(j) WIRELESS CARRIER SURCHARGES.

Information about the surcharges collected and paid by wireless carriers under the Wireless Emergency Telephone Safety Act. The Act itself states that public disclosure of this information as it pertains to individual wireless carriers could stifle competition. The combined amount paid by all carriers is NOT exempt.

(k) POLICE/DRIVER IDs IN RACIAL PROFILING STUDY.

Identification information for either a police officer or a driver, as collected by a police agency or the Illinois Department of Transportation under Section 11-212 of the Illinois Vehicle Code – i.e., a “traffic stop statistical study” that tracks the race of motorists who are pulled over for alleged traffic violations.

(l) REVIEWS OF NURSING HOME SEXUAL ASSAULTS OR DEATHS.

Information provided to a “sexual assault and review team” or the “Illinois Residential Health Care Facility Resident Sexual Assault and Death Review Teams Executive Council” under the Abuse Prevention Review Team Act. Those two entities scrutinize sexual assaults and unusual/unexpected deaths in nursing homes and come up with recommendations on how to prevent them.

(m) PREDATORY LENDING DATABASE.

Information provided to the predatory lending database under the Residential Real Property Disclosure Act, except to the extent that the Act says otherwise. The Act established a predatory lending database program in Cook County in July 2008, and in Kane, Peoria, and Will counties in July 2010.

(n) DEATH PENALTY CASES—DEFENSE EXPENSES.

The defense’s litigation budget and the paperwork it files in court to seek payments for court-appointed lawyers in cases that fall under the Capital Crimes Litigation Act (i.e., death penalty cases where the defendant is too poor to pay for an attorney).

NOTE: This exemption is temporary. It lasts only until the end of each case’s trial, regardless of whether prosecutors decide at some point not to pursue the death penalty against the defendant.

(o) CANCER-COLLECTION DATA.

Information that may not be disclosed under Section 4 of the Illinois Health and Hazardous Substances Registry Act. This refers to the collection of data about the incidence of cancer and specifically includes patient names, phone numbers, dates of diagnosis, and age, among other information. Some of this data may be disclosed if it is aggregated to cover a multi-year period.

(p) PUBLIC TRANSIT SECURITY.

Security-related information from the Regional Transportation Authority’s or the St. Clair County Transit District’s system safety program plans, investigation reports, schedules, or other similar records.

(q) PERSONNEL RECORDS.

Information that may not be disclosed under the Personnel Record Review Act. For example: An employer or former employer is not supposed to divulge a disciplinary report about an employee to a third party without sending written notice to the employee.

(r) STUDENT SCHOOL RECORDS.

Information that may not be disclosed under the Illinois Student Records Act, which basically says that students’ school-related information (including name, grades, and attendance record) may be released only to select parties, including the students’ parents and school officials.

(s) ICC/UTILITY COMPANIES.

Information that is restricted from disclosure under Section 5-108 of the Public Utilities Act. This Section makes it a misdemeanor offense for any representative of the Illinois Commerce Commission, without authorization, to divulge any information he/she has acquired because of an examination or investigation into a public utility’s accounts or records.

As an example, this FOIA exemption may restrict what type of information can be disclosed regarding an ICC investigation into a utility company's request to raise customer rates. By way of background, the ICC regulates some aspects of the investor-owned public utility companies that provide electricity, natural gas, and other services to Illinois residents. Whenever one of these companies wants to raise rates, the ICC investigates whether a rate hike is warranted. Such investigations typically are lengthy and highly detailed; ICC staff and commissioners may therefore learn information about a utility company that is proprietary and generally kept confidential.

Chapter Five:

Denial of FOIA Requests

What recourse do I have if a public body denies my FOIA request?

That depends on which public body denied the request. If the denial came from any entity that is NOT the Illinois General Assembly, its committees, commissions, or other agencies, you have 60 days to file a written request asking the Public Access Counselor (PAC) in the Office of the Attorney General to review the matter.

This written request to the PAC should include the original FOIA request and any communication from the public body, especially the notification of denial.

The PAC reviews whether the denial of the FOIA request was proper.

If the PAC decides the denial was appropriate, the requester and the public body will be notified, and the process comes to an end.

In every other instance, the PAC will review the matter further—potentially using subpoena power to get information. Within 60 days of receiving the request for review, the PAC issues an opinion on whether the public body has violated the Act and whether the requested records should be disclosed. This time period may be extended by 21 business days.

The PAC's opinion is binding on the requester and on the public body. But either side can continue to appeal the dispute through an administrative review process.

The PAC might choose to try to resolve a records dispute without issuing a binding opinion. For example, the PAC could bring the parties together for mediation.

Are there other options for appealing the denial of a Freedom of Information Act request?

Yes. You can file a lawsuit in circuit court to fight the denial of your records request. Then, the judicial system takes over and eventually settles the question of which, if any, records should be disclosed. The Act specifies that if a public body asserts a record is exempt from disclosure, the public body must prove that assertion "by clear and convincing evidence."

If your FOIA request was denied and you choose to fight in court, you should notify the PAC if the PAC already has been asked to review the records denial. In such an instance, the PAC will drop his/her inquiry.

Chapter Six: Costs

What costs might I incur with a successful FOIA request?

Regarding FOIA requests for paper records, the Act specifies that the first 50 pages of black-and-white, letter- or legal-sized copies shall be provided to the requester for free. Beyond 50 pages, the fee may not exceed 15 cents a page for black-and-white, letter- or legal-sized copies.

For paper copies that are in color or that are printed on something other than letter- or legal-sized paper, the public body may not charge more than its actual reproduction costs.

If you requested records in an electronic format, and they are provided that way, the public body may charge you for the actual cost of the compact disc, audio tape, DVD, flash drive, or whatever medium is used.

A public body may NOT charge the requester for personnel costs associated with locating, reviewing, and copying the records, regardless of their format.

Can I try to get the fees reduced or eliminated?

Yes.

A public body can decide to waive or reduce fees if the requester explains the purpose for his/her request and indicates that a waiver or reduction would be in the public interest.

The Act explains that a waiver or reduction is in the public interest if the main purpose of the request is to access and share information about the general public's health, safety, welfare, or legal rights. The main purpose cannot be "personal or commercial benefit." In this context, "commercial benefit" doesn't apply to news media requests aimed at acquiring and sharing information about public health, safety, welfare, or legal rights.

How can I avoid being surprised by an unexpectedly large bill to fulfill a Freedom of Information Act request?

A good technique is to spell out some kind of cost threshold in your written FOIA request. For example, the FOIA letter may include a sentence along these lines: "If the fee for these records would exceed \$XX, please advise me before you process my request."

To save on copying costs, you might consider making arrangements with the public body to inspect the records in person, rather than having them reproduced.

Another possible cost-saving option would be to narrow the scope of your FOIA request.

What costs will I incur if my FOIA request is denied and I decide to appeal the denial?

It depends on which method you choose for appeal. There are no fees associated with asking the PAC to review a records denial. By fighting the denial in court, you may have to pay an attorney to represent you.

But if a court fight eventually turns out in the requester's favor, a judge may award him/her "reasonable attorneys' fees and costs."

Are public bodies subject to any penalties for violating the FOIA?

Yes.

If a court finds that a public body “willfully and intentionally” failed to comply with the Act or “otherwise acted in bad faith,” the court may fine the public body \$2,500 to \$5,000 for each violation of the Act.

Chapter Seven: The Illinois Open Meetings Act

The overhaul of the FOIA also resulted in revisions to the Illinois Open Meetings Act (OMA) because, for example, the Public Access Counselor's job includes resolving disputes when someone alleges a public body has violated the Open Meetings Act.

What is the Open Meetings Act?

The OMA is a state law whose purpose is to ensure that public bodies act and deliberate in the open -- not in secret or behind closed doors. This includes giving advance notice about meetings so members of the public may attend.

What entities are or aren't covered by the Open Meetings Act?

Public bodies must comply with the Open Meetings Act.

The OMA includes a lengthy definition of "public body." In short, that term applies to most legislative and executive governmental bodies, cities, counties and school districts.

It does NOT apply to the Illinois General Assembly, its committees, or its commissions.

Nor does it apply to a child death review team or the Illinois Child Death Review Teams Executive Council, as provided in the Child Death Review Team Act.

Under the State Officials and Employees Ethics Act, meetings of the Executive Ethics Commission also are exempt from the Open Meetings Act.

What is the OMA's actual definition of "public body"?

This comes directly from the Open Meetings Act:

"Public body" includes all legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof. "Public body" includes tourism boards and convention or civic center boards located in counties that are contiguous to the Mississippi River with populations of more than 250,000 but less than 300,000. "Public body" includes the Health Facilities and Services Review Board. "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 an ethics commission acting under the State Officials and Employees Ethics Act.

What constitutes a "meeting"?

A meeting does not have to take place in person. It can be over the phone, through video conference, or by other electronic means such as e-mail or instant messaging.

A meeting generally consists of a majority of a quorum (usually, a majority of a majority) of the members on a public body. For five-member public bodies, a meeting consists of a quorum, which equals three.

Can a public body meet in secret?

No. A public body may close a meeting or a portion of a meeting under certain circumstances. But first it must meet in open session to take a recorded vote on closing a meeting.

If the public body doesn't explain what OMA exemption it is using to close the meeting, reporters and citizens may ask which OMA exemption is being applied.

Any final action, such as a vote on a particular issue, must take place in an open meeting.

What kind of advance notice must a public body give for its meetings?

A public body should give notice of its schedule of regular meetings at the beginning of a calendar year or its fiscal year.

An agenda for each regular meeting should be posted at the meeting place and at the public body's main office at least 48 hours before the meeting.

Public notice of any meeting, except in an emergency, must come 48 hours ahead of time.

When can a meeting be closed to the public?

A public body may vote to close a meeting to the public when considering:

- Appointment, employment, pay, discipline, performance, or dismissal of its employees or its attorney.
- Collective bargaining negotiations, such as contract talks between the public body and one of the labor unions representing its employees.
- Selection of an individual to fill a public office, if the public body has such authority.
- Evidence or testimony to a "quasi-adjudicative body," meaning an administrative body authorized to hold hearings, take evidence, and make rulings.
- Purchase, lease, or sale of property.
- Sale or purchase of investments.
- Security procedures and the allocation of resources (people and equipment) in responding to a real or potential danger.
- Student disciplinary cases.
- Matters dealing with individual students, such as their placement in special education programs.
- Actual or imminent litigation involving the public body.
- The settling of housing discrimination complaints, provided there is a law or ordinance creating an entity to enforce fair housing practices.
- Informants, undercover personnel, and past, present, or future criminal investigations, as long as they are considered by a public body with criminal investigation responsibilities.
- Applications received under the Experimental Organ Transplantation Procedures Act.
- Matters deemed to be "confidential" by the State Government Suggestion Award Board.
- Minutes from closed meetings.
- Certain matters dealing with a municipally owned utility – specifically, contracts for the purchase, sale, or delivery of electricity or natural gas, or load-forecast studies.

Meetings also may be closed when:

- An advisory panel for a licensing or regulatory agency considers matters dealing with professional ethics or performance.
- A public body that is a member of a statewide association meets with a representative of that association to consider matters of professional ethics or self-evaluation.
- A public body that operates a hospital or other health-care institution considers recruiting, disciplining, or conducting a peer review of doctors or other health-care professionals.
- The Illinois Prisoner Review Board conducts deliberations.
- The State Emergency Medical Services Disciplinary Review Board conducts deliberations.
- They involve a nursing home sexual assault team, death review team, or Executive Council, as provided under the Abuse Prevention Review Team Act.

What actions can I take if I believe a public body is closing a meeting without a proper reason?

If you are attending an open meeting, and officials are calling for a closed session, they must explain which exemption or exemptions to the OMA apply. If the public body does not explain why it wants to go into closed session, you may want to speak up and ask what exemption(s) it is citing.

These examples on what an objector might say have been adapted from the Open Idaho Web site (<http://idahoptv.org/dialogue/openidaho/help.cfm>).

"Under what provision of the (Illinois Open Meetings Act) do you intend to close this meeting? Has a majority voted to close the meeting, and has that vote been recorded in the minutes?"
"I object to the closure of this meeting, and I note for the record that any action taken in an illegally closed meeting is null and void. I also remind the (public body) that even in a valid executive session, no final action or decision can be made."

Does a public body have to keep minutes during a closed session?

Yes. It also must keep a "verbatim" record, either with an audio or video recording. A public body must periodically review its closed-session minutes to decide what is no longer confidential and may be disclosed to the public.

What recourse do I have after the conclusion of a meeting that I believe was in violation of the Open Meetings Act?

You have 60 days from the time of the alleged OMA violation to bring a civil action in circuit court. Anyone, including the state's attorney in the county of the alleged violation, may bring the action.

Then the judicial system takes over. A judge could eventually invalidate a public body's action on a particular piece of business if, for example, he or she determined that an OMA violation occurred.

Another option for recourse involves filing a request for review with the Public Access Counselor. Again, this should be filed within 60 days of the alleged OMA violation.

The PAC procedures and timetable are the same as under the Freedom of Information Act. The process ends with the PAC issuing a binding opinion, though either party then can seek administrative review.

The PAC has the option of trying to resolve any OMA dispute in another manner, such as through mediation.

What is the penalty for violating the Open Meetings Act?

Anyone violating the Act is guilty of a Class C misdemeanor, punishable by up to 30 days in jail.

Sample FOI Request Letter

As provided by the Illinois Press Association

Date
Name
Company Name (if applicable)
Address
Phone Number
Dear FOI Officer:

Pursuant to the Illinois Freedom of Information Act, (5 ILCS 140/1 et seq.) and your agency's implementing regulations, I respectfully request access to [insert a specific, detailed description of the material you are seeking including names of reports, places or the period of time about which you are interest]. I believe these records are in the custody of [to the extent possible, identify the specific office/department/bureau where the records are located].

I am a representative of the news media employed by/affiliated with [name of company], and am requesting this information in that capacity for noncommercial purposes.

After the first 50 pages of black and white, letter or legal sized copies, which shall be provided without charge (5 ILCS 140/6), I am willing to pay up to a total of \$_____. Please inform me before my request is processed if you expect the duplication fee to exceed this amount.

OR;

As you know, the FOIA requires an agency to reduce or even waive duplication fees where the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government. I believe the principal purpose of my request is to access and disseminate information regarding the health, safety, welfare and legal rights of the general public. I plan to use the requested information as the basis of an article on [identify the subject]. [Describe how your qualifications and the nature of the information you are requesting and the article to be published meet the fee waiver criteria described above.]

Therefore, I respectfully request a waiver of all duplication fees associated with this request. If you deny this request for a duplication fee waiver, I am willing to pay up to a total of \$_____, after the first 50 pages of black and white, letter or legal sized copies, which shall be provided without charge (5 ILCS 140/6). Please inform me before my request is processed if you expect the duplication fees to exceed this amount.

I believe that all of the information I have requested is subject to public disclosure pursuant the FOIA. However, if you decide to withhold all or part of the information requested, please send me a detailed statement of the reasons for this denial along with references to the specific exemptions of the FOIA you are claiming for each withheld document. I expect you to release all legally disclosable portions of otherwise exempt material.

Because I am making this request as a journalist and this information is of timely value, I would appreciate a response to my request within 5 working days as required by the Act.

Sincerely,
[SIGNATURE]

For a digital version of this sample letter, please go to:

http://illinoispress.org/images/stores/File/Access%20Laws/FOIA/sample_state_foi_request_letter.pdf

Text of the revised Illinois Freedom of Information Act

From Illinois General Assembly Web site (“marked up” version):

<http://www.ilga.gov/legislation/publicacts/96/PDF/096-0542.pdf>

From Attorney General’s Web site (“clean” version):

<http://foia.ilattorneygeneral.net/FreedomofInformationAct.aspx>

Illinois Attorney General’s Web site, “Ensuring Open and Honest Government”

<http://foia.ilattorneygeneral.net/Default.aspx>

Illinois Attorney General’s Web site, “Ensuring Open and Honest Government”: Educational Materials

http://foia.ilattorneygeneral.net/foia_educationalmaterials.aspx

Informational material from Illinois Press Association Web site

http://illinoispress.org/index.php?option=com_content&task=view&id=73&Itemid=94

Text of the Illinois Open Meetings Act

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=84&ChapAct=5 ILCS 120/&ChapterID=2&ChapterName=GENERAL+PROVISIONS&ActName=Open+Meetings+Act.&Print=True>)

ABOUT THE WRITER OF THIS GUIDE: Adriana Colindres

Adriana Colindres worked as a professional journalist in Illinois for more than 20 years -- 13 of them in Springfield as a state government reporter based in the State Capitol. In that role, she covered the administrations of four governors, the Illinois Supreme Court and the Illinois General Assembly. She wrote about a wide range of legislative proposals, including the 2009 overhaul of the Illinois Freedom of Information Act.

A native of southwestern Illinois, Colindres earned a bachelor’s degree in journalism from the University of Illinois at Urbana-Champaign and a master’s degree in public affairs reporting from what now is the University of Illinois Springfield (formerly Sangamon State University). She has received awards from the Illinois Press Association and Capitolbeat, a national organization of journalists covering state government. She now is on staff at Knox College in Galesburg, Ill.

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