

**The Freedom of
Information Act:**
*Better Understanding
and Compliance*

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INTRODUCTION

The PURPOSE of FOIA

"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." (Emphasis added.)
5 ILCS 140/1

The Freedom of Information Act

(5 ILCS 140/1 *et seq.*)

The Freedom of Information Act (FOIA) originally became effective on July 1, 1984. On January 1, 2010, significant revisions to FOIA were enacted. Major changes include:

- Presumption of Openness
- Response time shortened from 7 to 5 days
- Copying charge limits
- FOIA Officers and training required
- Public Access Counselor

PUBLIC ACCESS BUREAU

Public Access Counselor

- Office of Public Access Counselor (PAC) created to address obstacles the public encounters in obtaining copies of public records
- Many obstacles result from difficulty that both public and public bodies have had in interpreting and applying FOIA
- PAC serves the significant public interest in access to records and open meetings by providing advice and education with respect to the interpretation and implementation of FOIA and OMA.

Public Access Counselor

Statutory Powers
Attorney General Act, 15 ILCS 205/7(c)

Duties include:

**FREE TRAINING and
EDUCATIONAL MATERIALS;
REQUESTS FOR REVIEW;
ADVISORY OPINIONS;
INFORMAL INQUIRIES;
RESEARCH and RECOMMENDATIONS
ON COMPLIANCE ISSUES,
ESTABLISH ELECTRONIC
FOIA and OMA TRAINING**

Public Access Counselor

The primary function of the Public Access Counselor within the Attorney General's Office is to resolve disputes involving potential violations of the Open Meetings Act or the Freedom of Information Act in response to requests for review by an aggrieved party, by mediation or otherwise informally resolving the dispute, or by issuing a binding opinion.

Requests for Review

"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 [.]"

5 ILCS 140/9.5

FOIA Request for Review

A Request for Review must be filed the Public Access Counselor "not later than 60 days after the date of the final denial."

The request must be in writing, signed by the requester and include:

- 1) a copy of the request for records, and
- 2) any responses from the public body

5 ILCS 140/9.5(a)

PAC Review

- Request for Review forwarded to public body
 - Public body **shall** provide copies of records requested and **shall** otherwise cooperate with the Public Access Counselor
 - PAC shall not further disclose records claimed to be exempt under section 7 of FOIA
- 5 ILCS 140/9.5(c)

Resolution of FOIA Requests for Review

- Informal Resolution
- Non-Binding Opinion (Determination Letter)
 - Not subject to Administrative Review
- Binding Opinion
 - Administrative Review permitted within 35 days, Sangamon or Cook Counties

Judicial Review

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

5 ILCS 140/11(a)

If the requester files suit under section 11 * * * the Public Access Counselor shall take no further action with respect to the request for review and shall so notify the public body.

5 ILCS 140/9.5(g)

Average Number of Requests for Review Filed Per Month

2010: **162**

2011: **237**

2012: **285**

2013: **285**

2014: **326**

2015: **385**

PAC Statistics (3/12/15)

Total New Matters: 2010: 5,229
2011: 5,164
2012: 3,418
2013: 3,425
2014: 4,032
2015: 2,595 (as of 7/22/15)
23,863

Total Open Requests For Review: **3,577**

PUBLIC RECORDS

Defining Public Records and
Public Bodies' Burden with
Respect to Records

PUBLIC RECORDS

The definition of "public records" includes:
"[A]ll *** 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, possessed or under the control of any public body."
5 ILCS 140/2(c).

Hypothetical

During a long and contentious city council meeting debating the closing of the city health department, two council members begin texting each other on their personal cell phones. Several texts detailed the members' ideas concerning the closing. One council member then sent this text to another member:

"I'm starving! Where shall we eat after the meeting?"

Several more text messages involving post-meeting dining plans ensued.

The local newspaper sends a FOIA request for the text messages.

How should the council respond?

Choose your answer:

- a) Release all the texts because all communications made during a public meeting are public records regardless of the content and the public should know which business the council members frequent.
- b) Withhold all the texts because the communications were sent on the private devices of the council members.
- c) Release only the texts that relate to the department closing.

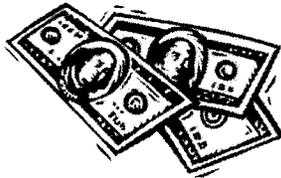
What is a Public Record?

If a public official sent or received communications on a personal electronic device during a public meeting, and those communications pertain to the transaction of public business, then those communications are "public records" subject to the requirements of FOIA.

Ill. Att'y Gen. Pub. Acc. Op. No. 11-006, issued November 15, 2011.
City of Champaign v. Madigan, 2013 IL App (4th)120662, 992N.E.2d 629 (2013)

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 140/2.5



Records of Public Funds

- Paystubs, payment of severance, or overtime payments for public employees.
- Invoices for outside counsel or other legal services.
- Vendor information and payments for rent-related expenses for public housing.
- Wire Transfers made or received by a municipality.
- Money received or spent from public grants.
- Studies created for a municipality's economic development plan.
- Adjustment letters associated with public pension investment performance.

Records of Public Funds, cont.

- Public funds paid in conjunction with an employee's medical issue.
- Cell phone records for devices paid with public funds.
- Lists of residents with delinquent municipal sewer accounts.
- Expenses related to installing security cameras on CTA train platforms.
- Weapons purchased by the State from a Department of Defense surplus program.
- Settlement Agreements (specifically noted in section 2.20 of FOIA).

Payrolls

Certified payrolls submitted to a public body by contractors and subcontractors doing public work under Section (5a)(2) of the Prevailing Wage Act are public records; except that contractors' employees' addresses, telephone numbers, and social security numbers must be redacted by the public body prior to disclosure.

5 ILCS 140/2.10

Settlement Agreements

“All settlement 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 140/2.20

Record Held by Agent

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.

5 ILCS 140/7(2) (West 2010).

Presumption of Openness

Under FOIA, there is a presumption that public records are open to inspection or copying:

“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 140/1.2

What is Clear and Convincing?

Generally, under FOIA, "clear and convincing" evidence requires the public body to "provide a *detailed* justification for its claim of exemption, addressing the requested documents specifically and in a manner allowing for adequate adversary testing." (Emphasis in original.)

Illinois Educ. Ass'n v. Illinois State Bd. of Educ., 204 Ill. 2d 456, 464 (2003).

FOIA REQUESTS

Commercial, Unduly Burdensome,
Recurrent, and Voluminous;
Requirements for Responding

FOIA OFFICERS

- Each public body must designate 1 or more;
- Must develop list of documents or categories of records for immediate disclosure;
- Upon receipt of a FOIA request, note date, compute and record response time;
- Maintain electronic or paper copy of request until response or denial complete;
- Create file for retention of original request, copy of response, all communications.

5 ILCS 140/3.5(a)

Public Body Posting Requirements

Each public must display, make available for inspection and copying, and mail if requested:

- Description of itself, including purpose, organization, budget, offices, employees, and identification of advisory or governing body members;

- FOIA Request Information.

If a public body maintains a website, this information must also be posted there!

5 ILCS 140/4(a), (b)

FOIA REQUESTS

- In writing, directed to the Public Body.
- Oral requests *may* be honored.
- Standard form *may not* be required.
- Public Body *may not require* requester to specify a purpose, *except* to determine whether the request is for a commercial purpose.
- **Forward immediately to FOIA officer.**
See 5 ILCS 140/3(c).

Responding to a Request -Time

A public body must generally respond to a FOIA request within 5 business days after receipt of a written request. The time for response may be extended for an additional 5 business days for one of seven reasons specified in the Act.

See 5 ILCS140/3 (d),(e)

Reasons for 5 Business Day Extension

- (i) Records stored at other locations;
- (ii) Collection of substantial number of records;
- (iii) Extensive search required;
- (iv) Can't locate records after routine search so additional efforts are being made;
- (v) Records require review to determine whether section 7 exemptions apply;
- (vi) Unduly burdensome/interfering in shorter time;
- (vii) Need to consult with another public body/area.

Commercial Purpose Requests

“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.”

5 ILCS 140/2(c-10)

- Response due within **21** business days;
- No review by PAC, except commercial purpose designation.

FOIA RESPONSE

A FOIA request may be granted, denied, or granted in part and denied in part. **If denying** a request for public records the public body shall notify the requester in writing of:

1. The decision to deny the request,
2. The reasons for the denial, including a detailed factual basis for the application of any exemption claimed, and
3. The names and titles or positions of each person responsible for the denial.

FOIA Response, cont.

In addition, each notice of denial by a public body shall:

1. Inform the requester of his or her right to seek review by the Public Access Counselor,
2. Provide the address and phone number of the Public Access Counselor,
3. Inform the requester of his right to judicial review under section 11 of FOIA.

5 ILCS 140/9(a)

Failure to Respond

- Failure to respond to a request within the time permitted is considered a denial of the request.
- A public body that fails to timely respond to a request, but then provides copies of the requested public records **may not impose a fee** for those copies.
- A public body that fails to respond to a request received *may not treat the request as unduly burdensome* under section 3(g).

5 ILCS140/3(d)

Improving FOIA RESPONSES

COMMON IMPROPER RESPONSES BY PUBLIC BODIES:

- Don't respond at all
- Fail to conduct a reasonable search for responsive records
- Respond late
- Fail to properly articulate and explain exemptions
- Fail to cooperate with Public Access Bureau review

Responsive Records

FOIA does not require a public body to create records in order to respond to a FOIA request; rather a public body is required to make records within its possession or control available for inspection and copying. *Workmann v. Illinois State Bd. of Educ.*, 229 Ill. App. 3d 459, 464 (2nd Dist. 1992).

Hypothetical

A newspaper reporter sends a FOIA request to a State agency requesting names and position titles of all employees, salaries of all employees, and names of all employees who had been terminated from employment during 2014. The State agency denied this FOIA request saying that it would have to compile this information from different sources and FOIA does not require it to create a new document.

Does the agency's response comply with FOIA?

NO.

In *Hamer v. Lentz*, 132 Ill. 2d 49, 56 (1989), the Illinois Supreme Court considered whether a public body was required to create a computer program to generate a paper copy of information which it possessed only on computer tape, and concluded that it was required to do so: "In sum, the * * * information is maintained by defendants in the ordinary course of business, is nonexempt, and thus must be disclosed. Disclosure of the information in no way involves the creation of a new record." *Lentz*, 132 Ill. 2d at 57;

No Duty to Create Records

March 6, 2014: FOIA request for the number of initial claims received against certain licensed physicians. IDPR would have to review files and tally the number of initial claims, requiring it to create records it did not maintain nor was required by law to maintain. Court ruled in favor of public body.

Chicago Tribune Company v. The Department of Financial and Professional Regulation, 2014 IL App. (4th) 13027.

Duty to Extract Data

On the other hand, compiling data or information that a public body maintains in the course of business is NOT creating a new record. Further, school districts can be required to provide information, such as test scores, in a masked and scrambled format.

Ill. Att'y Gen. Pub. Acc. Op. No.12-014, issued December 11, 2012.

Meaning of Public Records

FOIA is not intended to compel public bodies to interpret or advise requesters as to the meaning or significance of the public records.

5 ILCS 140/3.3

Hypothetical

Central City has recently updated its website to include many of its public records. The City receives a FOIA request from Patrick Painter for various financial records, all of which may be accessed through the City's website. How should the City's FOIA officer respond?

Records Maintained Online

New! Section 8.5 effective December 3, 2014

- Provides that a public body is not required to copy a public record that is published on the public body's website;
- Public body must notify the requester that the public record is available online and direct the requester to the website.
- Persons unable to reasonably access the record online may **re-submit the request**, public body must then respond as provided in section 3.

Sec. 8.5 Records Maintained Online (full text)

(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 and copying as provided in Section 3 of this Act. Added by Public Act 98-1129, effective December 3, 2015

What about *Fagel*?

FOIA request to IDOT for “electronic version in Excel format” for information concerning red light system. Because record maintained in “unlocked” format, providing “locked” version was improper.

Fagel v. IDOT, 2013 IL App (1st) 121841

Unduly Burdensome Requests

- Before invoking this section, public bodies must extend to requester an opportunity to reduce the request to manageable proportions.
- The burden of compliance on public body must outweigh public interest in the information.
- Repeated requests by same person for same records identical to records *previously provided* or *properly denied* are unduly burdensome.
5 ILCS 140/3(g)

Unduly Burdensome - Examples

- ... manually locating and compiling large amounts of records from 93 separate facilities or systems over a 23-year time span.
- ... compiling all records, including financial records, school policies, and correspondence for a 12-year period.
- ... only two employees to gather, review, and redact thousands of records from several sources over a six-year span.
- ... creation of new reports to assemble vendor information and payments for rent-related expenses for public housing.

RECURRENT REQUESTER

A person who, 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,
- (iii) a minimum of 7 requests for records within a 7-day period. 5 ILCS 140/2(g)

News media and non-profit, scientific, or academic organizations are generally excluded.

Request

A 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. 5 ILCS 140/2(g).

Notification

Within 5 business days after receiving a request from a recurrent requester, a public body must notify the requester:

1. That the request is being treated as a recurrent request,
2. Of the reasons why the request is being treated as a recurrent request, and
3. That the public body will send an initial response within 21 business days after receipt, in accordance with subsection 3.2(a) of FOIA.

Notification, cont.

The public body shall also notify the requester of the proposed responses that can be asserted to a recurrent requester. 5 ILCS 120/3.2(b).

Response

A public body must respond to a recurrent requester within 21 working days by:

1. Providing the records;
2. Advising when the records will be furnished and the cost;
3. Denying the request if the records are exempted from disclosure; or
4. Advising that the request is unduly burdensome and must be narrowed.

Recurrent Requester, cont.

Unless the records are exempt from disclosure, a public body shall comply with a request from a recurrent requester within a *reasonable period* considering the size and complexity of the request. 5 ILCS 140/3.2(c).

Voluminous Request - Definition

New! Section 2(h) of FOIA:

"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 Definition cont.

"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.

Voluminous Request Definition cont.

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.

Responding to Voluminous Requests- Notification

Within **5 business days** after receiving a request that a public body determines to be voluminous, the public body must **notify** the requester:

- 1) That the request is being treated as voluminous;
- 2) The reasons why the request is being treated as voluminous;

Responding to Voluminous Requests- Notification, cont.

3) That the **requester must respond to the public body** within 10 business days after its notification was sent. The requester must specify whether he or she will amend the request so the public body no longer treats the request as voluminous;

4) That if the requester doesn't respond or if the request is still voluminous after the requester's response, the public body will respond and assess any fees in accordance with section 6;

5) That the public body will respond to the FOIA request within either (a) 5 business days after receipt of the requester's response, or (b) 5 business days from the last day for the requester to amend the request, whichever is sooner;

Responding to Voluminous Requests- Notification, cont.

6) That the public body may request an additional 10 business days to comply with the request;

7) That the requester may seek review of the public body's voluminous determination by the Public Access Counselor, and provide the PAC's address and phone number;

8) That if the requester fails to accept or collect the responsive records from the public body, the public body may still charge fees and the requester's failure to pay will be considered a debt due and owing and may be collected by the public body in accordance with applicable law.

Responding to Voluminous Requests

A public body must give a person 10 business days from the date of the public body's notification to amend the FOIA request. (5 ILCS 140/3.6(b)).

Within **5 business days** after the public body receives the response from the requester to its notification, or, if the requester fails to respond, 5 business days after the final day for the requester's response, whichever is earlier, the public body must respond to the FOIA request.

Voluminous Request-Response

Possible responses:

- 1) Provide an estimate of fees (which a public body may require the person to pay in full before copying the records); or
- 2) Deny the request pursuant to one or more exemptions; or
- 3) Notify the requester that the request is unduly burdensome and extend an opportunity to narrow; or
- 4) Provide the records requested. *See* 5 ILCS 140/3.6(c).

Public body may also extend the time for response for not more than 10 business days from the final day for the requester to respond to the public body's notification for any of the reasons provided in section 3(e) of FOIA.

Voluminous Requests: Public Access Counselor Review

Section 9.5(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.

FEES

Copying Fees

- **Except when a fee is otherwise fixed by statute...**
- The fee for black and white, letter or legal sized copies may not exceed **15 cents per page**.
- No fees may be charged for the first 50 pages of black and white, letter or legal sized copies.
- If a public body provides copies in color or in a size other than letter or legal, the public body may charge its actual cost for reproducing the records.

5 ILCS 140/6(b)

Fees for Electronic Copies

A public body may only charge the requester for the actual cost of purchasing the recording medium, whether disc, diskette, tape, or other medium.

Except to the extent 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. 5 ILCS 140/6(a)

Voluminous Request - Fees

NEW for 2015!

- If a request is determined to be "voluminous," a public body may charge amounts for electronic records as specified by section 6(a-5) of FOIA, according to the megabytes of data provided.

Voluminous Electronic Fees

Records not in PDF:

2 megabytes:	Up to \$20
2-4 megabytes:	Up to \$40
4+ megabytes:	Up to \$100

PDF Records:

80 megabytes:	Up to \$20
80-160 megabytes:	Up to \$40
160+ megabytes:	Up to \$100

Fees for Commercial Requests

- "Commercial purpose" means use of any part of public records or information for sale, resale, or solicitation of advertisement for sales or services.
- A public body may charge up to \$10 for each hour spent by personnel in searching for and retrieving a requested record, after the first 8 hours.
- A public body may charge the actual cost of retrieving and transporting public records from a third-party off-site storage facility.
- Public body must provide an accounting of all fees, costs, and personnel hours
5 ILCS 120/6(f).

Fees for Commercial Requests

New for 2015!

Section 6(f): "[a] public body may charge up to \$10 for each hour spent searching for and retrieving a requested record **or examining the record for necessary redactions.**"

This new language allows a public body to charge not only for searching for records, but for the time spent in reviewing and redacting records, which is often more time consuming than locating records.

The provisions of 6(f) apply only to commercial requests.

EXEMPTIONS

Limited Exceptions to the Duty to Disclose Public Records

EXEMPTIONS

To enable public bodies to maintain certain types of sensitive public records confidentially, FOIA provides a number of exceptions to the requirement that public records be made available for public inspection. The exemptions do not, however, prohibit the dissemination of information; rather, they merely authorize the withholding of information. *Roehrborn v. Lambert*, 277 Ill. App. 3d 181, 186 (1st Dist. 1995), *appeal denied*, 166 Ill. 2d 554.

Exemptions are Narrowly Construed

The exemptions to disclosure under FOIA are to be narrowly construed.

Lieber v. Board of Trustees of Southern Illinois University, 176 Ill. 2d 401, 408 (1997).

Exemptions, cont.

When public records contain information that is exempt from disclosure under section 7, but also contains information that is not exempt from disclosure, the public body **may elect** to redact exempt information; remaining information shall be made available for inspection and copying.

5 ILCS 140/7(1)

Exceptions to Discretionary Redactions within FOIA

Section 2.10: Certified payroll records, **must redact** certain information;

Section 7(1.5): "Any information exempt from disclosure under the Judicial Privacy Act **shall be redacted** from public records prior to disclosure under this Act."

Information Exempt Under Other Laws

Section 7(1)(a) of FOIA exempts from disclosure:

"Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law."

5 ILCS 140/7(1)(a)

Information Exempt Under Other Laws

Section 7(1)(a) applies only when a law or rule implementing a law *specifically* prohibits the public body from releasing the information in question. *Better Government Ass'n v. Blagojevich*, 899 N.E.2d 382, 389 (4th Dist. 2008).

Examples of 7(1)(a)

Example 1: The Juvenile Court Act mandates that reports in which a minor was arrested and charged **must** be withheld in full. Records are exempt under Section 7(1)(a) and the Juvenile Court Act (705 ILCS 405/1) (West 2012).

Example 2: Section 7 of the Illinois Criminal Identification Act (ICIA) (20 ILCS 2630/7 (West 2012)) specifically prohibits disclosure of information in the Law Enforcement Agencies Data System (LEADS), including vehicle registration information.

Information Exempt Under Other Laws

Section 7.5 of FOIA also exempts information that is exempt under other laws. Section 7.5, however, specifically references statutory exemptions.

Sections 7.5(a) through 7.5(z) list specific statutes.

Examples:

7.5(q) The Personnel Record Review Act.
(Exempts evaluations of employees)

7.5(r) -The Illinois School Student Records Act
(Exempts individually identifiable student records, parent/teacher communications)

Private Information

“Private information” is exempt from disclosure unless disclosure is required by another provision of the Freedom of Information Act, a State or federal law or a court order.

5 ILCS 140/7(1)(b)

Private Information

Unique identifiers, including:

- Social Security Numbers
 - Driver's License Number s
 - Employee Identification Number s
 - Biometric Identifiers,
 - Personal Financial Information
 - Passwords or Other Access Codes
 - Medical Records
 - Home or Personal Telephone Numbers
 - Personal Email Addresses
- 5 ILCS 140/2(c-5)

Personal Information

Section 7(1)(c) of FOIA exempts
“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[.]”
5 ILCS 140/7(1)(c)

Personal Information, cont.

“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.

Personal 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.”
5 ILCS 140/7(1)(c)

Deliberative Process/Preliminary Documents

Also exempted from disclosure under FOIA are:

"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."

5 ILCS 140/7(1)(f)

Deliberative Process/Preliminary Documents

The purpose of the deliberative process privilege is to allow agencies to "explore possibilities, engage in internal debates, or play devil's advocate without fear of public scrutiny."

Assembly of the State of California v. United States Department of Commerce, 797 F.Supp.1554, 1556 E.D. Cal. 1992), *aff'd*, 968 F.2d 916 (9th Cir. 1992).

Deliberative Process/Preliminary Documents

- Portions of police reports setting forth factual data are not within the deliberative process exemption. *See Matter of Gould v. New York City Police Dep't*, 89 N.Y.2d 267, 277; 675 N.E.2d 808, 813 (1996)
- Statistical Data is not exempt from disclosure under section 7(1)(f). *See Ill. Att'y Gen. Pub. Acc. Op. No. 13-015*, issued September 24, 2013

Trade Secrets

Section 7(1)(g) of FOIA exempts from inspection and copying "[t]rade 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[.]"

5 ILCS 140/7(1)(g)

Terms of lease agreements for rental of public property are not exempt under 7(1)(g). Ill. Pub. Acc. Op. No. 14-016, issued December 2, 2014.

Privileged Information

Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, or are prepared in anticipation of litigation, are exempt from disclosure under section 7(1)(m) of FOIA.

Attorney/Client Communication

Section 7(1)(m) does not exempt from disclosure generic descriptions of tasks an attorney performed contained in invoices, such as "read e-mail," "telephone conference," and "court appearance." A public body may redact only information that could reveal legal advice provided or a substantive communication between an attorney and a representative of the public body.

Ill. Att'y Gen. Pub. Acc. Op. No. 12-005, issued March 12, 2012.

Disciplinary Cases

Exemption 7(1)(n) of FOIA allows a public body to withhold 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."

5 ILCS 140/7(1)(n)

Investigative records that do not relate to an actual adjudication are not exempt.

See Ill. Att'y Gen. Pub. Acc. Op. 13-011, issued June 11, 2013; *Kalven v. City of Chicago Police Department*, 2014 IL App. (1st) 121846 (issued March 10, 2014)

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