

# Illinois Freedom of Information Act

## What are “public bodies”?

FOIA requires all “public bodies” to make their public documents and records available for inspection. Subsection 2(a) of the Act defines a “public body” as including, but not limited to, any legislative executive, administrative, or advisory bodies of the State, State universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of the State, and any subsidiaries of those public bodies, which include committees and subcommittees that are supported in whole or in part by tax revenue, or that expend tax revenue. This definition of “public bodies” is almost identical to that in the Illinois Open Meetings Act (OMA). The term in the FOIA definition is broader in its scope. Therefore, while all bodies that are subject to OMA are subject to FOIA, individual agencies and offices that are not covered by OMA are also included. The definition of “public body” under FOIA does not include the judiciary or its officers or private not-for-profit or business corporations.

## What are “public records”?

According to the Illinois Supreme Court, “[f]reedom of information fosters government accountability and an informed citizenry.” However, FOIA does recognize that some records and information should remain confidential. In an attempt to balance these competing interests, the Act gives very broad and inclusive definitions of “public records,” as well as providing a limited number of very specific exceptions which allow public bodies to withhold certain documents from public inspection. Subsection 2(c) of the Act defines “public records” as including all records, reports, forms, writings, letters, memoranda, papers, maps, books, cards, tapes, photographs, microfilms, recordings, electronic data processing records, recorded information, and all other documentary information that has been prepared, having been or being used, possessed, received, and/or under the public body’s control. The Act expressly extends all records regardless of their physical form or characteristics. It has been upheld that the obligation of the body is to provide the requester with records in the form in which they are ordinarily kept, if so requested; furthermore, a public body may not elect to furnish records in a different format. Therefore, if the requester asks for computerized records on disk, the body could not attempt to satisfy the request by furnishing a paper printout of the records being requested. There is a non-exhaustive list of 14 types of information that fall within the definition of “public record” under the Act:

1. administrative manuals, procedural rules, and instructions to staff, unless exempted by subsection 7(1)(p) of the Act;
2. final opinions and orders made in the adjudication of cases, except an educational institution’s adjudication of student or employee grievance or disciplinary cases;
3. substantive rules;
4. statements and interpretations of policy which have been adopted by a public body;
5. final planning policies, recommendations, and decisions;
6. factual reports, inspection reports, and studies prepared by or for the public body;
7. all information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds of public bodies;
8. names, salaries, titles, and dates of employment of all employees and officers of public bodies;
9. materials containing opinions concerning the rights of the State, the public, a subdivision of a state or local government, or of any private persons;
10. the name of every official and the final records of voting in all proceedings of public bodies;
11. applications for any contract, permit grant, or agreement except as from disclosure by subsection 7(1)(g) of the Act;
12. each report, document, study, or publication prepared by independent consultants or other independent contractors for the public body;
13. all other information required by law to be made available for public inspection or copying; and
14. information relating to any grant or contract made by or between a public body and another public body or private organization.

This list is only intended to provide assistance in determining whether a record falls within the provisions of the Act. If a particular document is not included in this list, it may still be a public record under the Act if it was prepared, possessed, or received by any public body, is being or has been used by the body, or is under the control of the public body.

## What is the difference between “exempt” and “nonexempt” records?

Upon request of a record that contains both exempt and nonexempt information, the public body must separate the exempt from the latter and disclose the available information. If the information is maintained only on computer disks or tapes, the body may be required to prepare a computer program that segregates the information; however, this does

not require the public body to create a new record. To insure the confidentiality of certain types of sensitive records, FOIA provides 31 exceptions to the mandate for availability of public records. To clearly determine the status of availability of records, one must look at exceptions in relation to those defined as "public records." There are seven groups in the exemptions listed in the FOIA:

1. information, which Federal or State law, or rules and regulations adopted pursuant thereto, prohibit disclosing [subsection 7(1)(1)];
2. information which, if disclosed to public inspection, would result in a clearly unwarranted invasion of personal privacy;
3. records related to investigations, law enforcement, and corrections;
4. records related to education, including research and course materials, library circulation records, test questions and answers, faculty evaluations, and records or university grievance procedures;
5. records related to litigation or other legal procedures, including investigatory records compiled for law enforcement purposes when legal proceedings are contemplated or pending;
6. documents related to the internal operations of public bodies, including preliminary drafts of memoranda in which opinions or policies are formulated, information related solely to the internal personnel rules and practices of a body, any records developed predominately for internal use and disclosure that would significantly risk circumvention of the laws and regulations;
7. records that would hinder in protecting the business and financial interests of both private persons and public bodies, including those documents that contain trade secrets, valuable formulas or designs, contracts or agreements which, if disclosed, would frustrate procurement procedures.

### **Who can obtain public records?**

Section 3 of FOIA requires public bodies to make public records available "to any person." Subsection 2(b) defined a "person" as "any individual, corporation, partnership, firm, organization or association, acting individually or as a group."

### **Does the act dictate how public bodies must maintain and make available public records?"**

FOIA's primary purpose is to give the public access to records kept by public bodies. The Act was not intended to dictate the manner in which these bodies maintain the records. The provisions of the State Records Act and the Local Records Act set the requirements for the preservation of certain public records and establish procedures to be followed in the maintenance of these records. These two Acts set the terms primarily for those records available for inspection that were prepared and received prior to July 1, 1984. Records that were prepared and received after this date, however, are covered by FOIA. As a general rule, public bodies do not have to create records to respond to information requests that the body does not ordinarily maintain in record form. However, deleting information from a record or scrambling a record does not constitute creation of a "new" record. The preparation of a computer program to segregate exempt and non-exempt information is not considered to be creation of a "new" record. A public body is under no duty to recreate any records and documents that it no longer is in possession of, at least to the extent that these documents were not destroyed in order to dodge compliance with the Act. However, there are statutory procedures in the Act that require the creation of some documents. Specifically, FOIA requires every public body to produce a brief description of itself, which should include a brief summary of the public body's purpose, a block diagram of its functional subdivisions, the total amount of its operating budget, the number and location of all its separate offices and the approximate number of its full and part-time employees. This description should also include the identity and description of any board, commission, committee, or council membership. The public body should prominently display this description at all administrative and regional offices of the body, and must make it available for inspection and copying by the public as well as mail a copy to any person requesting it. FOIA also requires every public body to produce a brief description of the procedures citizens must follow in requesting information and public records, a directory designating (by titles and addresses) those employees to whom requests for records should be directed, and a schedule of fees to be charged for providing copies of public records. This document should also be prominently displayed at all offices of the body and be made available to the public upon request. Public bodies are also required to maintain and make available for inspection and copying a current list of all types and/or categories of records prepared or received after July 1, 1984. This list should be detailed for ease of obtaining access to records. Public bodies, according to FOIA, are required to maintain and furnish upon request a description of the manner in which records stored by electronic data processing means and how they may be obtained by the public. FOIA requires that data processing records be made available to the public "in a form comprehensible to persons lacking knowledge of computer language or printout format." Copies of all notices of denial of access to public records must also be maintained. These denial notices should be kept in a single central office file that is open to the public, and should be indexed according to the types of exemptions and exceptions stated in the denial, and if feasible, according to the types of records.

### **How must records requests be made?**

Under FOIA, an individual can request records either in person or in writing. However, the appeal procedure and time

limits espoused in the Act are keyed to submission of written requests. (Click [here](#) to view the Illinois Press Association's templates for Illinois and Federal FOIA request letters.) In fact, it might not be possible for the agency to fill an oral request as the party waits. Written requests facilitate the record search and will aid in avoiding problems if the search is denied. The request should reasonably identify the records that have been requested. FOIA states that a request for all public records within a category should not be "unduly burdensome." If such a request is made, the body may extend the time period within which to comply with the request. Or, if a public body determines that filling the request "would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information," it does not have to comply. FOIA also provides that repeated requests for the same records by the same individual shall be determined to be an unduly burdensome request. However, before invoking these exceptions, the body must allow the requester an opportunity to reduce the request to a manageable degree. If the public entity does invoke this exception, it must do so in writing and explain why the request is deemed to be "unduly burdensome."

### **Are there rules public bodies must follow in regards to assessing fees?**

The FOIA statute does not establish detailed requirements for requests, but it does authorize public bodies to promulgate rules and regulations that pertain to the availability of records and procedures to follow in inspecting and gaining copies of them. These rules can cover areas such as the time and place that records are available, and person who will respond to record requests. Every public body may charge fees to cover the costs of reproducing and certifying public records; however, these costs cannot include any of the searching costs and cannot exceed the cost of reproduction. Illinois' FOIA, like the Federal Act, provides that documents shall be furnished without charge if the public body determines that such a reduction or waiver of fees is "in the public interest." Furthermore, inspection is a right that is guaranteed under FOIA. Thus, a person is not required to purchase copies of records in order to gain access to them.

### **What is the appeal procedure in Illinois?**

When an individual's request has been denied by a public body, that body must, within seven working days, or within any extended compliance time period, notify the requester, by letter, of the decision to deny their request for information. The letter must state the reason for denial, as well as list the names and titles of all individuals responsible for the denial. If the denial is based upon one of the exemptions in the Act, the letter should state the exemption that authorizes the denial. Denial letters should also explain that the requesting party can appeal the denial to the head of the public body and explain the appeal procedure. All letters of denial should be retained by the body. Appeal procedures for denied information is similar to that of the Federal Act. (Click [here](#) to view the Illinois Press Association's template for FOIA appeal letters.) The requester should send a letter to the head of the public body, who, upon receipt of the appeal, should review the requested public record promptly, and determine whether it falls under the provisions of the Act. The requester must be notified of that determination within seven working days. If the head of the body or his/her appointee denies access to public records, he/she must explain in the letter of denial that the requester has a right to judicial review of that decision. Under section 10 of FOIA, if the head of a public body denies access to the records, the requesting person is "deemed to have exhausted his administrative remedies." At this time, the requesting individual may file suit in the circuit court for declaratory relief or an injunction. If such a suit is brought in circuit court, the court considers the matter "de novo," or as a new matter and not as an appeal from the decision of the head of the public body. FOIA allows the court to examine the records being denied in private in order to determine whether they may be withheld. The burden remains upon the public body to establish that refusal to permit access is in accordance with FOIA. The court can order the public body to produce the records or enjoin in its decision to withhold them. The court also has jurisdiction to allow the public body additional time to review the records if it can show that exceptional circumstances exist. The courts can also enforce any order entered under FOIA against any public official through the court's contempt powers, as well as award attorney's fees to the requester, if the court finds that the records were of significant interest to the general public and were withheld without any reasonable basis in law.

### **Are there time limits for processing records requests?**

FOIA provides a timetable to which all public bodies must adhere when processing requests. Public bodies should respond to requests as quickly as practicable. If no extraordinary circumstances exist, the body must respond within seven working days of the receipt request. Failure to respond within this time is considered a denial of the request. The Act provides several circumstances that may provide for an extension of seven working days:

1. the requested records are stored in whole or in part in another location, other than the office having charge of the requested records;
2. the request requires the collection of a substantial number of specified records;
3. the request is couched in categorical terms and requires an extensive search for the records;
4. the requested records have not been located in the course of routine search and additional efforts are being made to locate them;
5. the requested records require examination and evaluation by personnel having the necessary competence

and discretion to determine if they are exempt from disclosure under section 7 of FOIA, or should be revealed only with appropriate deletions;

6. the public body cannot comply with the request for records within the time limits prescribed by subsection 3(c) without unduly burdening or interfering with the operations of the public body; or

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

When additional time is required for any of these reasons, the body must notify by letter the person making the request. The letter should specify the reason for the delay and the date when either the records will be released or the denial will be made. This letter must be sent within the original seven-day period. If a response is not made within the required seven-day extension, the request will be considered denied.

**Source:** *Illinois Press Association Guide to First Amendment & Access Laws* (1995)