



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB0766

by Rep. Steven A. Andersson

SYNOPSIS AS INTRODUCED:

5 ILCS 140/2
5 ILCS 140/6

from Ch. 116, par. 202
from Ch. 116, par. 206

Amends the Freedom of Information Act. Excludes from the definition of "public records" executable programs or source codes used to store and access electronic data processing records or other electronic communications. Provides that a public body is not required to furnish the executable programs or source codes required to access the information. Effective immediately.

LRB100 07409 HEP 17473 b

1 AN ACT concerning government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Freedom of Information Act is amended by
5 changing Sections 2 and 6 as follows:

6 (5 ILCS 140/2) (from Ch. 116, par. 202)

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

8 (a) "Public body" means all legislative, executive,
9 administrative, or advisory bodies of the State, state
10 universities and colleges, counties, townships, cities,
11 villages, incorporated towns, school districts and all other
12 municipal corporations, boards, bureaus, committees, or
13 commissions of this State, any subsidiary bodies of any of the
14 foregoing including but not limited to committees and
15 subcommittees thereof, and a School Finance Authority created
16 under Article 1E of the School Code. "Public body" does not
17 include a child death review team or the Illinois Child Death
18 Review Teams Executive Council established under the Child
19 Death Review Team Act, or a regional youth advisory board or
20 the Statewide Youth Advisory Board established under the
21 Department of Children and Family Services Statewide Youth
22 Advisory Board Act.

23 (b) "Person" means any individual, corporation,

1 partnership, firm, organization or association, acting
2 individually or as a group.

3 (c) "Public records" means all records, reports, forms,
4 writings, letters, memoranda, books, papers, maps,
5 photographs, microfilms, cards, tapes, recordings, electronic
6 data processing records, electronic communications, recorded
7 information and all other documentary materials pertaining to
8 the transaction of public business, regardless of physical form
9 or characteristics, having been prepared by or for, or having
10 been or being used by, received by, in the possession of, or
11 under the control of any public body. "Public records" does not
12 include executable programs or source codes used to store and
13 access electronic data processing records or other electronic
14 communications.

15 (c-5) "Private information" means unique identifiers,
16 including a person's social security number, driver's license
17 number, employee identification number, biometric identifiers,
18 personal financial information, passwords or other access
19 codes, medical records, home or personal telephone numbers, and
20 personal email addresses. Private information also includes
21 home address and personal license plates, except as otherwise
22 provided by law or when compiled without possibility of
23 attribution to any person.

24 (c-10) "Commercial purpose" means the use of any part of a
25 public record or records, or information derived from public
26 records, in any form for sale, resale, or solicitation or

1 advertisement for sales or services. For purposes of this
2 definition, requests made by news media and non-profit,
3 scientific, or academic organizations shall not be considered
4 to be made for a "commercial purpose" when the principal
5 purpose of the request is (i) to access and disseminate
6 information concerning news and current or passing events, (ii)
7 for articles of opinion or features of interest to the public,
8 or (iii) for the purpose of academic, scientific, or public
9 research or education.

10 (d) "Copying" means the reproduction of any public record
11 by means of any photographic, electronic, mechanical or other
12 process, device or means now known or hereafter developed and
13 available to the public body.

14 (e) "Head of the public body" means the president, mayor,
15 chairman, presiding officer, director, superintendent,
16 manager, supervisor or individual otherwise holding primary
17 executive and administrative authority for the public body, or
18 such person's duly authorized designee.

19 (f) "News media" means a newspaper or other periodical
20 issued at regular intervals whether in print or electronic
21 format, a news service whether in print or electronic format, a
22 radio station, a television station, a television network, a
23 community antenna television service, or a person or
24 corporation engaged in making news reels or other motion
25 picture news for public showing.

26 (g) "Recurrent requester", as used in Section 3.2 of this

1 Act, means a person that, in the 12 months immediately
2 preceding the request, has submitted to the same public body
3 (i) a minimum of 50 requests for records, (ii) a minimum of 15
4 requests for records within a 30-day period, or (iii) a minimum
5 of 7 requests for records within a 7-day period. For purposes
6 of this definition, requests made by news media and non-profit,
7 scientific, or academic organizations shall not be considered
8 in calculating the number of requests made in the time periods
9 in this definition when the principal purpose of the requests
10 is (i) to access and disseminate information concerning news
11 and current or passing events, (ii) for articles of opinion or
12 features of interest to the public, or (iii) for the purpose of
13 academic, scientific, or public research or education.

14 For the purposes of this subsection (g), "request" means a
15 written document (or oral request, if the public body chooses
16 to honor oral requests) that is submitted to a public body via
17 personal delivery, mail, telefax, electronic mail, or other
18 means available to the public body and that identifies the
19 particular public record the requester seeks. One request may
20 identify multiple records to be inspected or copied.

21 (h) "Voluminous request" means a request that: (i) includes
22 more than 5 individual requests for more than 5 different
23 categories of records or a combination of individual requests
24 that total requests for more than 5 different categories of
25 records in a period of 20 business days; or (ii) requires the
26 compilation of more than 500 letter or legal-sized pages of

1 public records unless a single requested record exceeds 500
2 pages. "Single requested record" may include, but is not
3 limited to, one report, form, e-mail, letter, memorandum, book,
4 map, microfilm, tape, or recording.

5 "Voluminous request" does not include a request made by
6 news media and non-profit, scientific, or academic
7 organizations if the principal purpose of the request is: (1)
8 to access and disseminate information concerning news and
9 current or passing events; (2) for articles of opinion or
10 features of interest to the public; or (3) for the purpose of
11 academic, scientific, or public research or education.

12 For the purposes of this subsection (h), "request" means a
13 written document, or oral request, if the public body chooses
14 to honor oral requests, that is submitted to a public body via
15 personal delivery, mail, telefax, electronic mail, or other
16 means available to the public body and that identifies the
17 particular public record or records the requester seeks. One
18 request may identify multiple individual records to be
19 inspected or copied.

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

23 (Source: P.A. 98-806, eff. 1-1-15; 98-1129, eff. 12-3-14;
24 99-78, eff. 7-20-15; 99-478, eff. 6-1-16.)

25 (5 ILCS 140/6) (from Ch. 116, par. 206)

1 Sec. 6. Authority to charge fees.

2 (a) When a person requests a copy of a record maintained in
3 an electronic format, the public body shall furnish it in the
4 electronic format specified by the requester, if feasible. The
5 public body is not required to furnish the executable programs
6 or source codes required to access the information. If it is
7 not feasible to furnish the public records in the specified
8 electronic format, then the public body shall furnish it in the
9 format in which it is maintained by the public body, or in
10 paper format at the option of the requester. A public body may
11 charge the requester for the actual cost of purchasing the
12 recording medium, whether disc, diskette, tape, or other
13 medium. If a request is not a request for a commercial purpose
14 or a voluminous request, a public body may not charge the
15 requester for the costs of any search for and review of the
16 records or other personnel costs associated with reproducing
17 the records. Except to the extent that the General Assembly
18 expressly provides, statutory fees applicable to copies of
19 public records when furnished in a paper format shall not be
20 applicable to those records when furnished in an electronic
21 format.

22 (a-5) If a voluminous request is for electronic records and
23 those records are not in a portable document format (PDF), the
24 public body may charge up to \$20 for not more than 2 megabytes
25 of data, up to \$40 for more than 2 but not more than 4 megabytes
26 of data, and up to \$100 for more than 4 megabytes of data. If a

1 voluminous request is for electronic records and those records
2 are in a portable document format, the public body may charge
3 up to \$20 for not more than 80 megabytes of data, up to \$40 for
4 more than 80 megabytes but not more than 160 megabytes of data,
5 and up to \$100 for more than 160 megabytes of data. If the
6 responsive electronic records are in both a portable document
7 format and not in a portable document format, the public body
8 may separate the fees and charge the requester under both fee
9 scales.

10 If a public body imposes a fee pursuant to this subsection
11 (a-5), it must provide the requester with an accounting of all
12 fees, costs, and personnel hours in connection with the request
13 for public records.

14 (b) Except when a fee is otherwise fixed by statute, each
15 public body may charge fees reasonably calculated to reimburse
16 its actual cost for reproducing and certifying public records
17 and for the use, by any person, of the equipment of the public
18 body to copy records. No fees shall be charged for the first 50
19 pages of black and white, letter or legal sized copies
20 requested by a requester. The fee for black and white, letter
21 or legal sized copies shall not exceed 15 cents per page. If a
22 public body provides copies in color or in a size other than
23 letter or legal, the public body may not charge more than its
24 actual cost for reproducing the records. In calculating its
25 actual cost for reproducing records or for the use of the
26 equipment of the public body to reproduce records, a public

1 body shall not include the costs of any search for and review
2 of the records or other personnel costs associated with
3 reproducing the records, except for commercial requests as
4 provided in subsection (f) of this Section. Such fees shall be
5 imposed according to a standard scale of fees, established and
6 made public by the body imposing them. The cost for certifying
7 a record shall not exceed \$1.

8 (c) Documents shall be furnished without charge or at a
9 reduced charge, as determined by the public body, if the person
10 requesting the documents states the specific purpose for the
11 request and indicates that a waiver or reduction of the fee is
12 in the public interest. Waiver or reduction of the fee is in
13 the public interest if the principal purpose of the request is
14 to access and disseminate information regarding the health,
15 safety and welfare or the legal rights of the general public
16 and is not for the principal purpose of personal or commercial
17 benefit. For purposes of this subsection, "commercial benefit"
18 shall not apply to requests made by news media when the
19 principal purpose of the request is to access and disseminate
20 information regarding the health, safety, and welfare or the
21 legal rights of the general public. In setting the amount of
22 the waiver or reduction, the public body may take into
23 consideration the amount of materials requested and the cost of
24 copying them.

25 (d) The imposition of a fee not consistent with subsections
26 (6) (a) and (b) of this Act constitutes a denial of access to

1 public records for the purposes of judicial review.

2 (e) The fee for each abstract of a driver's record shall be
3 as provided in Section 6-118 of "The Illinois Vehicle Code",
4 approved September 29, 1969, as amended, whether furnished as a
5 paper copy or as an electronic copy.

6 (f) A public body may charge up to \$10 for each hour spent
7 by personnel in searching for and retrieving a requested record
8 or examining the record for necessary redactions. No fees shall
9 be charged for the first 8 hours spent by personnel in
10 searching for or retrieving a requested record. A public body
11 may charge the actual cost of retrieving and transporting
12 public records from an off-site storage facility when the
13 public records are maintained by a third-party storage company
14 under contract with the public body. If a public body imposes a
15 fee pursuant to this subsection (f), it must provide the
16 requester with an accounting of all fees, costs, and personnel
17 hours in connection with the request for public records. The
18 provisions of this subsection (f) apply only to commercial
19 requests.

20 (Source: P.A. 97-579, eff. 8-26-11; 98-1129, eff. 12-3-14.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.