

**97TH GENERAL ASSEMBLY****State of Illinois****2011 and 2012****SB2203**

Introduced 2/10/2011, by Sen. David Koehler

SYNOPSIS AS INTRODUCED:

See Index

Amends the Freedom of Information Act. In the Act's intent provisions, removes references to the lower priority of a public body's financial obligations when considering requests. Changes the deadline by which a public body must act on a records request and provides that that period is to be calculated in accordance with the Statute on Statutes and, with respect to School Code entities, certain provisions of the School Code relating to non-pupil attendance days. Authorizes each public body to charge fees for reproducing and certifying public records. Removes the requirement that a public body provide the first 150 pages of a request at no charge. Removes the requirement that a public body include certain legal bases when denying a request. Permits a public body to seek review of a binding opinion of the Public Access Counselor in the county where the body's principal office is located (now, Cook County or Sangamon County). With respect to the disclosure exemption for personal information, removes the balancing test with respect to an unwarranted invasion of privacy. Exempts from disclosure employment applications and applications for appointments to fill vacancies in public offices. Deletes provisions requiring public bodies to give notice to the Public Access Counselor before asserting exemptions for personal information or preliminary documents. Requires (now, permits) a review when a public body seeks an advisory opinion from the Public Access Counselor. Provides for the effects of a public body seeking and relying upon a binding written opinion of the Public Access Counselor. Effective immediately.

LRB097 08645 JDS 48774 b

FISCAL NOTE ACT
MAY APPLY**A BILL FOR**

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 1, 3, 3.1, 6, 7, 9, 9.5, and 11.5 as follows:

6 (5 ILCS 140/1) (from Ch. 116, par. 201)

7 Sec. 1. Pursuant to the fundamental philosophy of the
8 American constitutional form of government, it is declared to
9 be the public policy of the State of Illinois that all persons
10 are entitled to full and complete information regarding the
11 affairs of government and the official acts and policies of
12 those who represent them as public officials and public
13 employees consistent with the terms of this Act. Such access is
14 necessary to enable the people to fulfill their duties of
15 discussing public issues fully and freely, making informed
16 political judgments and monitoring government to ensure that it
17 is being conducted in the public interest.

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

1 compliance with this Act.

2 This Act is not intended to cause an unwarranted invasion
3 of personal privacy, nor to allow a request ~~the requests of a~~
4 ~~commercial enterprise~~ to unduly burden public resources, or to
5 disrupt the duly-undertaken work of any public body independent
6 of the fulfillment of any of the fore-mentioned rights of the
7 people to access to information.

8 This Act is not intended to create an obligation on the
9 part of any public body to maintain or prepare any public
10 record which was not maintained or prepared by such public body
11 at the time when this Act becomes effective, except as
12 otherwise required by applicable local, State or federal law.

13 Restraints on access to information, to the extent
14 permitted by this Act, are limited exceptions to the principle
15 that the people of this State have a right to full disclosure
16 of information relating to the decisions, policies,
17 procedures, rules, standards, and other aspects of government
18 activity that affect the conduct of government and the lives of
19 any or all of the people. The provisions of this Act shall be
20 construed in accordance with this principle. This Act shall be
21 construed to require disclosure of requested information as
22 expediently and efficiently as possible and adherence to the
23 deadlines established in this Act.

24 The General Assembly recognizes that this Act imposes
25 fiscal obligations on public bodies to provide adequate staff
26 and equipment to comply with its requirements. The General

1 Assembly declares that providing records in compliance with the
2 requirements of this Act is a primary duty of public bodies to
3 the people of this State, ~~and this Act should be construed to~~
4 ~~this end, fiscal obligations notwithstanding.~~

5 The General Assembly further recognizes that technology
6 may advance at a rate that outpaces its ability to address
7 those advances legislatively. To the extent that this Act may
8 not expressly apply to those technological advances, this Act
9 should nonetheless be interpreted to further the declared
10 policy of this Act that public records shall be made available
11 upon request except when denial of access furthers the public
12 policy underlying a specific exemption.

13 This Act shall be the exclusive State statute on freedom of
14 information, except to the extent that other State statutes
15 might create additional restrictions on disclosure of
16 information or other laws in Illinois might create additional
17 obligations for disclosure of information to the public.

18 (Source: P.A. 96-542, eff. 1-1-10.)

19 (5 ILCS 140/3) (from Ch. 116, par. 203)

20 Sec. 3. (a) Each public body shall make available to any
21 person for inspection or copying all public records, except as
22 otherwise provided in Section 7 of this Act. Notwithstanding
23 any other law, a public body may not grant to any person or
24 entity, whether by contract, license, or otherwise, the
25 exclusive right to access and disseminate any public record as

1 defined in this Act.

2 (b) Subject to the fee provisions of Section 6 of this Act,
3 each public body shall promptly provide, to any person who
4 submits a request, a copy of any public record required to be
5 disclosed by subsection (a) of this Section and shall certify
6 such copy if so requested.

7 (c) Requests for inspection or copies shall be made in
8 writing and directed to the public body. Written requests may
9 be submitted to a public body via personal delivery, mail,
10 telefax, or other means available to the public body. A public
11 body may honor oral requests for inspection or copying. A
12 public body may not require that a request be submitted on a
13 standard form or require the requester to specify the purpose
14 for a request, except to determine whether the records are
15 requested for a commercial purpose or whether to grant a
16 request for a fee waiver. All requests for inspection and
17 copying received by a public body shall immediately be
18 forwarded to its Freedom of Information officer or designee.

19 (d) Each public body shall, promptly, either comply with or
20 deny a request for public records within 10 ~~5~~ business days
21 (calculated in accordance with Section 1.11 of the Statute on
22 Statutes and, when the public body is organized or established
23 pursuant to the School Code, excluding all non-pupil attendance
24 days between the opening and closing days of the school term
25 specified in the calendar established in accordance with
26 Section 10-19 of the School Code) after its receipt of the

1 request, unless the time for response is properly extended
2 under subsection (e) of this Section. Denial shall be in
3 writing as provided in Section 9 of this Act. Failure to comply
4 with a written request, extend the time for response, or deny a
5 request within 5 business days after its receipt shall be
6 considered a denial of the request. A public body that fails to
7 respond to a request within the requisite periods in this
8 Section but thereafter provides the requester with copies of
9 the requested public records may not impose a fee for such
10 copies. A public body that fails to respond to a request
11 received may not treat the request as unduly burdensome under
12 subsection (g).

13 (e) The time for response under this Section may be
14 extended by the public body for not more than 5 business days
15 from the original due date for any of the following reasons:

16 (i) the requested records are stored in whole or in
17 part at other locations than the office having charge of
18 the requested records;

19 (ii) the request requires the collection of a
20 substantial number of specified records;

21 (iii) the request is couched in categorical terms and
22 requires an extensive search for the records responsive to
23 it;

24 (iv) the requested records have not been located in the
25 course of routine search and additional efforts are being
26 made to locate them;

1 (v) the requested records require examination and
2 evaluation by personnel having the necessary competence
3 and discretion to determine if they are exempt from
4 disclosure under Section 7 of this Act or should be
5 revealed only with appropriate deletions;

6 (vi) the request for records cannot be complied with by
7 the public body within the time limits prescribed by
8 paragraph (c) of this Section without unduly burdening or
9 interfering with the operations of the public body;

10 (vii) there is a need for consultation, which shall be
11 conducted with all practicable speed, with another public
12 body or among two or more components of a public body
13 having a substantial interest in the determination or in
14 the subject matter of the request.

15 The person making a request and the public body may agree
16 in writing to extend the time for compliance for a period to be
17 determined by the parties. If the requester and the public body
18 agree to extend the period for compliance, a failure by the
19 public body to comply with any previous deadlines shall not be
20 treated as a denial of the request for the records.

21 (f) When additional time is required for any of the above
22 reasons, the public body shall, within 5 business days after
23 receipt of the request, notify the person making the request of
24 the reasons for the extension and the date by which the
25 response will be forthcoming. Failure to respond within the
26 time permitted for extension shall be considered a denial of

1 the request. A public body that fails to respond to a request
2 within the time permitted for extension but thereafter provides
3 the requester with copies of the requested public records may
4 not impose a fee for those copies. A public body that requests
5 an extension and subsequently fails to respond to the request
6 may not treat the request as unduly burdensome under subsection
7 (g).

8 (g) Requests calling for all records falling within a
9 category shall be complied with unless compliance with the
10 request would be unduly burdensome for the complying public
11 body and there is no way to narrow the request and the burden
12 on the public body outweighs the public interest in the
13 information. Before invoking this exemption, the public body
14 shall extend to the person making the request an opportunity to
15 confer with it in an attempt to reduce the request to
16 manageable proportions. If any body responds to a categorical
17 request by stating that compliance would unduly burden its
18 operation and the conditions described above are met, it shall
19 do so in writing, specifying the reasons why it would be unduly
20 burdensome and the extent to which compliance will so burden
21 the operations of the public body. Such a response shall be
22 treated as a denial of the request for information.

23 Repeated requests from the same person for the same records
24 that are unchanged or identical to records previously provided
25 or properly denied under this Act shall be deemed unduly
26 burdensome under this provision.

1 (h) Each public body may promulgate rules and regulations
2 in conformity with the provisions of this Section pertaining to
3 the availability of records and procedures to be followed,
4 including:

5 (i) the times and places where such records will be
6 made available, and

7 (ii) the persons from whom such records may be
8 obtained.

9 (i) The time periods for compliance or denial of a request
10 to inspect or copy records set out in this Section shall not
11 apply to requests for records made for a commercial purpose.
12 Such requests shall be subject to the provisions of Section 3.1
13 of this Act.

14 (Source: P.A. 96-542, eff. 1-1-10.)

15 (5 ILCS 140/3.1)

16 Sec. 3.1. Requests for commercial purposes.

17 (a) A public body shall respond to a request for records to
18 be used for a commercial purpose within 21 working days after
19 receipt. Each public body may charge fees for reproducing and
20 certifying public records and for the use, by any person, if
21 the equipment of the public body to copy records. The response
22 shall (i) provide to the requester an estimate of the time
23 required by the public body to provide the records requested
24 and an estimate of the fees to be charged, which the public
25 body may require the person to pay in full before copying the

1 requested documents, (ii) deny the request pursuant to one or
2 more of the exemptions set out in this Act, (iii) notify the
3 requester that the request is unduly burdensome and extend an
4 opportunity to the requester to attempt to reduce the request
5 to manageable proportions, or (iv) provide the records
6 requested.

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

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

15 (Source: P.A. 96-542, eff. 1-1-10.)

16 (5 ILCS 140/6) (from Ch. 116, par. 206)

17 Sec. 6. Authority to charge fees.

18 (a) When a person requests a copy of a record maintained in
19 an electronic format, the public body shall furnish it in the
20 electronic format specified by the requester, if feasible. If
21 it is not feasible to furnish the public records in the
22 specified electronic format, then the public body shall furnish
23 it in the format in which it is maintained by the public body,
24 or in paper format at the option of the requester. A public
25 body may charge the requester for the actual cost of purchasing

1 the recording medium, whether disc, diskette, tape, or other
2 medium. A public body may not charge the requester for the
3 costs of any search for and review of the records or other
4 personnel costs associated with reproducing the records.
5 Except to the extent that the General Assembly expressly
6 provides, statutory fees applicable to copies of public records
7 when furnished in a paper format shall not be applicable to
8 those records when furnished in an electronic format.

9 (b) Except when a fee is otherwise fixed by statute, each
10 public body may charge fees reasonably calculated to reimburse
11 its actual cost for reproducing and certifying public records
12 and for the use, by any person, of the equipment of the public
13 body to copy records. ~~No fees shall be charged for the first 50~~
14 ~~pages of black and white, letter or legal sized copies~~
15 ~~requested by a requester.~~ The fee for black and white, letter
16 or legal sized copies shall not exceed 15 cents per page. If a
17 public body provides copies in color or in a size other than
18 letter or legal, the public body may not charge more than its
19 actual cost for reproducing the records. In calculating its
20 actual cost for reproducing records or for the use of the
21 equipment of the public body to reproduce records, a public
22 body shall not include the costs of any search for and review
23 of the records or other personnel costs associated with
24 reproducing the records. Such fees shall be imposed according
25 to a standard scale of fees, established and made public by the
26 body imposing them. The cost for certifying a record shall not

1 exceed \$1.

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

19 (d) The imposition of a fee not consistent with subsections
20 (6)(a) and (b) of this Act constitutes a denial of access to
21 public records for the purposes of judicial review.

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

26 (Source: P.A. 96-542, eff. 1-1-10; 96-1000, eff. 7-2-10.)

1 (5 ILCS 140/7) (from Ch. 116, par. 207)

2 Sec. 7. Exemptions.

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

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

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

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

22 (c) Personal information contained within public
23 records, the disclosure of which would constitute a clearly
24 unwarranted invasion of personal privacy, unless the
25 disclosure is consented to in writing by the individual

1 subjects of the information. "Unwarranted invasion of
2 personal privacy" means the disclosure of information that
3 is highly personal or objectionable to a reasonable person
4 ~~and in which the subject's right to privacy outweighs any~~
5 ~~legitimate public interest in obtaining the information.~~
6 The disclosure of information that bears on the public
7 duties of public employees and officials shall not be
8 considered an invasion of personal privacy.

9 (d) Records in the possession of any public body
10 created in the course of administrative enforcement
11 proceedings, and any law enforcement or correctional
12 agency for law enforcement purposes, but only to the extent
13 that disclosure would:

14 (i) interfere with pending or actually and
15 reasonably contemplated law enforcement proceedings
16 conducted by any law enforcement or correctional
17 agency that is the recipient of the request;

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

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

24 (iv) unavoidably disclose the identity of a
25 confidential source, confidential information
26 furnished only by the confidential source, or persons

1 who file complaints with or provide information to
2 administrative, investigative, law enforcement, or
3 penal agencies; except that the identities of
4 witnesses to traffic accidents, traffic accident
5 reports, and rescue reports shall be provided by
6 agencies of local government, except when disclosure
7 would interfere with an active criminal investigation
8 conducted by the agency that is the recipient of the
9 request;

10 (v) disclose unique or specialized investigative
11 techniques other than those generally used and known or
12 disclose internal documents of correctional agencies
13 related to detection, observation or investigation of
14 incidents of crime or misconduct, and disclosure would
15 result in demonstrable harm to the agency or public
16 body that is the recipient of the request;

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

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

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

23 (f) Preliminary drafts, notes, recommendations,
24 memoranda and other records in which opinions are
25 expressed, or policies or actions are formulated, except
26 that a specific record or relevant portion of a record

1 shall not be exempt when the record is publicly cited and
2 identified by the head of the public body. The exemption
3 provided in this paragraph (f) extends to all those records
4 of officers and agencies of the General Assembly that
5 pertain to the preparation of legislative documents.

6 (g) Trade secrets and commercial or financial
7 information obtained from a person or business where the
8 trade secrets or commercial or financial information are
9 furnished under a claim that they are proprietary,
10 privileged or confidential, and that disclosure of the
11 trade secrets or commercial or financial information would
12 cause competitive harm to the person or business, and only
13 insofar as the claim directly applies to the records
14 requested.

15 The information included under this exemption includes
16 all trade secrets and commercial or financial information
17 obtained by a public body, including a public pension fund,
18 from a private equity fund or a privately held company
19 within the investment portfolio of a private equity fund as
20 a result of either investing or evaluating a potential
21 investment of public funds in a private equity fund. The
22 exemption contained in this item does not apply to the
23 aggregate financial performance information of a private
24 equity fund, nor to the identity of the fund's managers or
25 general partners. The exemption contained in this item does
26 not apply to the identity of a privately held company

1 within the investment portfolio of a private equity fund,
2 unless the disclosure of the identity of a privately held
3 company may cause competitive harm.

4 Nothing contained in this paragraph (g) shall be
5 construed to prevent a person or business from consenting
6 to disclosure.

7 (h) Proposals and bids for any contract, grant, or
8 agreement, including information which if it were
9 disclosed would frustrate procurement or give an advantage
10 to any person proposing to enter into a contractor
11 agreement with the body, until an award or final selection
12 is made. Information prepared by or for the body in
13 preparation of a bid solicitation shall be exempt until an
14 award or final selection is made.

15 (i) Valuable formulae, computer geographic systems,
16 designs, drawings and research data obtained or produced by
17 any public body when disclosure could reasonably be
18 expected to produce private gain or public loss. The
19 exemption for "computer geographic systems" provided in
20 this paragraph (i) does not extend to requests made by news
21 media as defined in Section 2 of this Act when the
22 requested information is not otherwise exempt and the only
23 purpose of the request is to access and disseminate
24 information regarding the health, safety, welfare, or
25 legal rights of the general public.

26 (j) The following information pertaining to

1 educational matters:

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

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

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

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

15 (k) Architects' plans, engineers' technical
16 submissions, and other construction related technical
17 documents for projects not constructed or developed in
18 whole or in part with public funds and the same for
19 projects constructed or developed with public funds,
20 including but not limited to power generating and
21 distribution stations and other transmission and
22 distribution facilities, water treatment facilities,
23 airport facilities, sport stadiums, convention centers,
24 and all government owned, operated, or occupied buildings,
25 but only to the extent that disclosure would compromise
26 security.

1 (1) Minutes of meetings of public bodies closed to the
2 public as provided in the Open Meetings Act until the
3 public body makes the minutes available to the public under
4 Section 2.06 of the Open Meetings Act.

5 (m) Communications between a public body and an
6 attorney or auditor representing the public body that would
7 not be subject to discovery in litigation, and materials
8 prepared or compiled by or for a public body in
9 anticipation of a criminal, civil or administrative
10 proceeding upon the request of an attorney advising the
11 public body, and materials prepared or compiled with
12 respect to internal audits of public bodies.

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

17 (o) Administrative or technical information associated
18 with automated data processing operations, including but
19 not limited to software, operating protocols, computer
20 program abstracts, file layouts, source listings, object
21 modules, load modules, user guides, documentation
22 pertaining to all logical and physical design of
23 computerized systems, employee manuals, and any other
24 information that, if disclosed, would jeopardize the
25 security of the system or its data or the security of
26 materials exempt under this Section.

1 (p) Records relating to collective negotiating matters
2 between public bodies and their employees or
3 representatives, except that any final contract or
4 agreement shall be subject to inspection and copying.

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

8 (r) The records, documents, and information relating
9 to real estate purchase negotiations until those
10 negotiations have been completed or otherwise terminated.
11 With regard to a parcel involved in a pending or actually
12 and reasonably contemplated eminent domain proceeding
13 under the Eminent Domain Act, records, documents and
14 information relating to that parcel shall be exempt except
15 as may be allowed under discovery rules adopted by the
16 Illinois Supreme Court. The records, documents and
17 information relating to a real estate sale shall be exempt
18 until a sale is consummated.

19 (s) Any and all proprietary information and records
20 related to the operation of an intergovernmental risk
21 management association or self-insurance pool or jointly
22 self-administered health and accident cooperative or pool.
23 Insurance or self insurance (including any
24 intergovernmental risk management association or self
25 insurance pool) claims, loss or risk management
26 information, records, data, advice or communications.

1 (t) Information contained in or related to
2 examination, operating, or condition reports prepared by,
3 on behalf of, or for the use of a public body responsible
4 for the regulation or supervision of financial
5 institutions or insurance companies, unless disclosure is
6 otherwise required by State law.

7 (u) Information that would disclose or might lead to
8 the disclosure of secret or confidential information,
9 codes, algorithms, programs, or private keys intended to be
10 used to create electronic or digital signatures under the
11 Electronic Commerce Security Act.

12 (v) Vulnerability assessments, security measures, and
13 response policies or plans that are designed to identify,
14 prevent, or respond to potential attacks upon a community's
15 population or systems, facilities, or installations, the
16 destruction or contamination of which would constitute a
17 clear and present danger to the health or safety of the
18 community, but only to the extent that disclosure could
19 reasonably be expected to jeopardize the effectiveness of
20 the measures or the safety of the personnel who implement
21 them or the public. Information exempt under this item may
22 include such things as details pertaining to the
23 mobilization or deployment of personnel or equipment, to
24 the operation of communication systems or protocols, or to
25 tactical operations.

26 (v-5) Employment applications and, when the public

1 body has the authority to fill a vacancy in a public office
2 by appointment, applications for appointments to fill
3 vacancies in a public office.

4 (w) (Blank).

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

10 (y) Information contained in or related to proposals,
11 bids, or negotiations related to electric power
12 procurement under Section 1-75 of the Illinois Power Agency
13 Act and Section 16-111.5 of the Public Utilities Act that
14 is determined to be confidential and proprietary by the
15 Illinois Power Agency or by the Illinois Commerce
16 Commission.

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

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

25 (bb) Records and information provided to a mortality
26 review team and records maintained by a mortality review

1 team appointed under the Department of Juvenile Justice
2 Mortality Review Team Act.

3 (cc) ~~(bb)~~ Information regarding interments,
4 entombments, or inurnments of human remains that are
5 submitted to the Cemetery Oversight Database under the
6 Cemetery Care Act or the Cemetery Oversight Act, whichever
7 is applicable.

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

15 (3) This Section does not authorize withholding of
16 information or limit the availability of records to the public,
17 except as stated in this Section or otherwise provided in this
18 Act.

19 (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;
20 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; 96-261, eff. 1-1-10;
21 96-328, eff. 8-11-09; 96-542, eff. 1-1-10; 96-558, eff. 1-1-10;
22 96-736, eff. 7-1-10; 96-863, eff. 3-1-10; 96-1378, eff.
23 7-29-10; revised 9-2-10.)

24 (5 ILCS 140/9) (from Ch. 116, par. 209)

25 Sec. 9. (a) Each public body denying a request for public

1 records shall notify the requester in writing of the decision
2 to deny the request, the reasons for the denial, ~~including a~~
3 ~~detailed factual basis for the application of any exemption~~
4 ~~claimed,~~ and the names and titles or positions of each person
5 responsible for the denial. Each notice of denial by a public
6 body shall also inform such person of the right to review by
7 the Public Access Counselor and provide the address and phone
8 number for the Public Access Counselor. Each notice of denial
9 shall inform such person of his right to judicial review under
10 Section 11 of this Act.

11 (b) When a request for public records is denied on the
12 grounds that the records are exempt under Section 7 of this
13 Act, the notice of denial shall specify the exemption claimed
14 to authorize the denial and the specific reasons for the
15 denial, ~~including a detailed factual basis and a citation to~~
16 ~~supporting legal authority.~~ Copies of all notices of denial
17 shall be retained by each public body in a single central
18 office file that is open to the public and indexed according to
19 the type of exemption asserted and, to the extent feasible,
20 according to the types of records requested.

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

25 (Source: P.A. 96-542, eff. 1-1-10.)

1 (5 ILCS 140/9.5)

2 Sec. 9.5. Public Access Counselor; opinions.

3 (a) A person whose request to inspect or copy a public
4 record is denied by a public body, except the General Assembly
5 and committees, commissions, and agencies thereof, may file a
6 request for review with the Public Access Counselor established
7 in the Office of the Attorney General not later than 60 days
8 after the date of the final denial. The request for review must
9 be in writing, signed by the requester, and include (i) a copy
10 of the request for access to records and (ii) any responses
11 from the public body.

12 (b) (Blank). ~~A public body that receives a request for~~
13 ~~records, and asserts that the records are exempt under~~
14 ~~subsection (1) (e) or (1) (f) of Section 7 of this Act, shall,~~
15 ~~within the time periods provided for responding to a request,~~
16 ~~provide written notice to the requester and the Public Access~~
17 ~~Counselor of its intent to deny the request in whole or in~~
18 ~~part. The notice shall include: (i) a copy of the request for~~
19 ~~access to records; (ii) the proposed response from the public~~
20 ~~body; and (iii) a detailed summary of the public body's basis~~
21 ~~for asserting the exemption. Upon receipt of a notice of intent~~
22 ~~to deny from a public body, the Public Access Counselor shall~~
23 ~~determine whether further inquiry is warranted. Within 5~~
24 ~~working days after receipt of the notice of intent to deny, the~~
25 ~~Public Access Counselor shall notify the public body and the~~
26 ~~requester whether further inquiry is warranted. If the Public~~

1 ~~Access Counselor determines that further inquiry is warranted,~~
2 ~~the procedures set out in this Section regarding the review of~~
3 ~~denials, including the production of documents, shall also be~~
4 ~~applicable to the inquiry and resolution of a notice of intent~~
5 ~~to deny from a public body. Times for response or compliance by~~
6 ~~the public body under Section 3 of this Act shall be tolled~~
7 ~~until the Public Access Counselor concludes his or her inquiry.~~

8 (c) Upon receipt of a request for review, the Public Access
9 Counselor shall determine whether further action is warranted.
10 If the Public Access Counselor determines that the alleged
11 violation is unfounded, he or she shall so advise the requester
12 and the public body and no further action shall be undertaken.
13 In all other cases, the Public Access Counselor shall forward a
14 copy of the request for review to the public body within 7
15 working days after receipt and shall specify the records or
16 other documents that the public body shall furnish to
17 facilitate the review. Within 7 working days after receipt of
18 the request for review, the public body shall provide copies of
19 records requested and shall otherwise fully cooperate with the
20 Public Access Counselor. If a public body fails to furnish
21 specified records pursuant to this Section, or if otherwise
22 necessary, the Attorney General may issue a subpoena to any
23 person or public body having knowledge of or records pertaining
24 to a request for review of a denial of access to records under
25 the Act. To the extent that records or documents produced by a
26 public body contain information that is claimed to be exempt

1 from disclosure under Section 7 of this Act, the Public Access
2 Counselor shall not further disclose that information.

3 (d) Within 7 working days after it receives a copy of a
4 request for review and request for production of records from
5 the Public Access Counselor, the public body may, but is not
6 required to, answer the allegations of the request for review.
7 The answer may take the form of a letter, brief, or memorandum.
8 The Public Access Counselor shall forward a copy of the answer
9 to the person submitting the request for review, with any
10 alleged confidential information to which the request pertains
11 redacted from the copy. The requester may, but is not required
12 to, respond in writing to the answer within 7 working days and
13 shall provide a copy of the response to the public body.

14 (e) In addition to the request for review, and the answer
15 and the response thereto, if any, a requester or a public body
16 may furnish affidavits or records concerning any matter germane
17 to the review.

18 (f) Unless the Public Access Counselor extends the time by
19 no more than 21 business days by sending written notice to the
20 requester and the public body that includes a statement of the
21 reasons for the extension in the notice, or decides to address
22 the matter without the issuance of a binding opinion, the
23 Attorney General shall examine the issues and the records,
24 shall make findings of fact and conclusions of law, and shall
25 issue to the requester and the public body an opinion in
26 response to the request for review within 60 days after its

1 receipt. The opinion shall be binding upon both the requester
2 and the public body, subject to administrative review under
3 Section 11.5.

4 In responding to any request under this Section 9.5, the
5 Attorney General may exercise his or her discretion and choose
6 to resolve a request for review by mediation or by a means
7 other than the issuance of a binding opinion. The decision not
8 to issue a binding opinion shall not be reviewable.

9 Upon receipt of a binding opinion concluding that a
10 violation of this Act has occurred, the public body shall
11 either take necessary action immediately to comply with the
12 directive of the opinion or shall initiate administrative
13 review under Section 11.5. If the opinion concludes that no
14 violation of the Act has occurred, the requester may initiate
15 administrative review under Section 11.5.

16 A public body that discloses records in accordance with an
17 opinion of the Attorney General is immune from all liabilities
18 by reason thereof and shall not be liable for penalties under
19 this Act.

20 (g) If the requester files suit under Section 11 with
21 respect to the same denial that is the subject of a pending
22 request for review, the requester shall notify the Public
23 Access Counselor, and the Public Access Counselor shall take no
24 further action with respect to the request for review and shall
25 so notify the public body.

26 (h) The Attorney General may also issue advisory opinions

1 to public bodies regarding compliance with this Act. A review
2 shall ~~may~~ be initiated upon receipt of a written request from
3 the head of the public body or its attorney, which shall
4 contain sufficient accurate facts from which a determination
5 can be made. The Public Access Counselor may request additional
6 information from the public body in order to assist in the
7 review. A public body that relies in good faith on an advisory
8 opinion of the Attorney General in responding to a request is
9 not liable for penalties under this Act, so long as the facts
10 upon which the opinion is based have been fully and fairly
11 disclosed to the Public Access Counselor.

12 (i) If a public body requests an opinion from the Public
13 Access Counselor, the public body shall notify the requester in
14 writing by or before the deadline for response to the request.
15 The notification shall toll the time for response until the
16 public body receives a binding written opinion from the Public
17 Access Counselor that identifies whether or not the requested
18 information must be provided and to what extent that
19 information shall be disclosed. Upon receipt of such an opinion
20 from the Public Access Counselor, the public body shall have 5
21 days to comply.

22 (j) In the event an action is brought before the Public
23 Access Counselor against a public body for failure to comply
24 with this Act after the public body has properly sought an
25 opinion from the Public Access Counselor, the Public Access
26 Counselor's inquiry shall be limited to whether or not the

1 public body complied with the Public Access Counselor's ruling.

2 (k) Service of any complaint in a court of law brought
3 against a public body shall, in addition to the public body,
4 also be made upon the Public Access Counselor. If the basis of
5 the complaint is rooted in the production of documents in
6 compliance with an opinion or directive of the Public Access
7 Counselor, or if the basis of the complaint is rooted in the
8 denial of documents in compliance with an opinion or directive
9 of the Public Access Counselor, the Public Access Counselor
10 shall be required to defend its advice in the action. The
11 public body shall only be required to prove its full compliance
12 with the directive of the Public Access Counselor and shall be
13 immune from suit or inquiry as to whether or not the Public
14 Access Counselor's opinion was consistent with this Act.

15 (Source: P.A. 96-542, eff. 1-1-10.)

16 (5 ILCS 140/11.5)

17 Sec. 11.5. Administrative review. A binding opinion issued
18 by the Attorney General shall be considered a final decision of
19 an administrative agency, for purposes of administrative
20 review under the Administrative Review Law (735 ILCS 5/Art.
21 III). An action for administrative review of a binding opinion
22 of the Attorney General shall be commenced in the county where
23 the principal office of the public body is located ~~Cook or~~
24 ~~Sangamon County~~. An advisory opinion issued to a public body
25 shall not be considered a final decision of the Attorney

1 General for purposes of this Section.

2 (Source: P.A. 96-542, eff. 1-1-10.)

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 5 ILCS 140/1 from Ch. 116, par. 201

4 5 ILCS 140/3 from Ch. 116, par. 203

5 5 ILCS 140/3.1

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

7 5 ILCS 140/7 from Ch. 116, par. 207

8 5 ILCS 140/9 from Ch. 116, par. 209

9 5 ILCS 140/9.5

10 5 ILCS 140/11.5