



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB4383

by Rep. Dwight Kay

SYNOPSIS AS INTRODUCED:

5 ILCS 140/2	from Ch. 116, par. 202
5 ILCS 140/3	from Ch. 116, par. 203
5 ILCS 140/11	from Ch. 116, par. 211

Amends the Freedom of Information Act. Provides that the term "news media" includes any individual or entity that publishes content for public viewing, regardless of whether the individual or entity earns any income. Provides that any public body responding to a categorical request shall attach a verified statement containing the policies and protocol utilized for any search of electronically stored information, including, but not limited to, exact words, spaces, numerals, capitalization, and all filters used in the search. Provides that if the court rules against a party seeking public inspection of documents or the production of copies of documents, the court shall issue an opinion containing specific factual findings upon which the court made its decision. Provides that any action for injunctive or declaratory relief is subject to the provisions of the Code of Civil Procedure.

LRB099 15690 HEP 39986 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, 3, and 11 as follows:

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

7 (Text of Section before amendment by P.A. 99-478)

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

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

1 (b) "Person" means any individual, corporation,
2 partnership, firm, organization or association, acting
3 individually or as a group.

4 (c) "Public records" means all records, reports, forms,
5 writings, letters, memoranda, books, papers, maps,
6 photographs, microfilms, cards, tapes, recordings, electronic
7 data processing records, electronic communications, recorded
8 information and all other documentary materials pertaining to
9 the transaction of public business, regardless of physical form
10 or characteristics, having been prepared by or for, or having
11 been or being used by, received by, in the possession of, or
12 under the control of any public body.

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

22 (c-10) "Commercial purpose" means the use of any part of a
23 public record or records, or information derived from public
24 records, in any form for sale, resale, or solicitation or
25 advertisement for sales or services. For purposes of this
26 definition, requests made by news media and non-profit,

1 scientific, or academic organizations shall not be considered
2 to be made for a "commercial purpose" when the principal
3 purpose of the request is (i) to access and disseminate
4 information concerning news and current or passing events, (ii)
5 for articles of opinion or features of interest to the public,
6 or (iii) for the purpose of academic, scientific, or public
7 research or education.

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

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

17 (f) "News media" means a newspaper or other periodical
18 issued at regular intervals whether in print or electronic
19 format, a news service whether in print or electronic format, a
20 radio station, a television station, a television network, a
21 community antenna television service, ~~or~~ a person or
22 corporation engaged in making news reels or other motion
23 picture news for public showing, or any individual or entity
24 that publishes content for public viewing, regardless of
25 whether the individual or entity earns any income.

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 (Source: P.A. 98-806, eff. 1-1-15; 98-1129, eff. 12-3-14;
21 99-78, eff. 7-20-15.)

22 (Text of Section after amendment by P.A. 99-478)

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

24 (a) "Public body" means all legislative, executive,
25 administrative, or advisory bodies of the State, state

1 universities and colleges, counties, townships, cities,
2 villages, incorporated towns, school districts and all other
3 municipal corporations, boards, bureaus, committees, or
4 commissions of this State, any subsidiary bodies of any of the
5 foregoing including but not limited to committees and
6 subcommittees thereof, and a School Finance Authority created
7 under Article 1E of the School Code. "Public body" does not
8 include a child death review team or the Illinois Child Death
9 Review Teams Executive Council established under the Child
10 Death Review Team Act, or a regional youth advisory board or
11 the Statewide Youth Advisory Board established under the
12 Department of Children and Family Services Statewide Youth
13 Advisory Board Act.

14 (b) "Person" means any individual, corporation,
15 partnership, firm, organization or association, acting
16 individually or as a group.

17 (c) "Public records" means all records, reports, forms,
18 writings, letters, memoranda, books, papers, maps,
19 photographs, microfilms, cards, tapes, recordings, electronic
20 data processing records, electronic communications, recorded
21 information and all other documentary materials pertaining to
22 the transaction of public business, regardless of physical form
23 or characteristics, having been prepared by or for, or having
24 been or being used by, received by, in the possession of, or
25 under the control of any public body.

26 (c-5) "Private information" means unique identifiers,

1 including a person's social security number, driver's license
2 number, employee identification number, biometric identifiers,
3 personal financial information, passwords or other access
4 codes, medical records, home or personal telephone numbers, and
5 personal email addresses. Private information also includes
6 home address and personal license plates, except as otherwise
7 provided by law or when compiled without possibility of
8 attribution to any person.

9 (c-10) "Commercial purpose" means the use of any part of a
10 public record or records, or information derived from public
11 records, in any form for sale, resale, or solicitation or
12 advertisement for sales or services. For purposes of this
13 definition, requests made by news media and non-profit,
14 scientific, or academic organizations shall not be considered
15 to be made for a "commercial purpose" when the principal
16 purpose of the request is (i) to access and disseminate
17 information concerning news and current or passing events, (ii)
18 for articles of opinion or features of interest to the public,
19 or (iii) for the purpose of academic, scientific, or public
20 research or education.

21 (d) "Copying" means the reproduction of any public record
22 by means of any photographic, electronic, mechanical or other
23 process, device or means now known or hereafter developed and
24 available to the public body.

25 (e) "Head of the public body" means the president, mayor,
26 chairman, presiding officer, director, superintendent,

1 manager, supervisor or individual otherwise holding primary
2 executive and administrative authority for the public body, or
3 such person's duly authorized designee.

4 (f) "News media" means a newspaper or other periodical
5 issued at regular intervals whether in print or electronic
6 format, a news service whether in print or electronic format, a
7 radio station, a television station, a television network, a
8 community antenna television service, ~~or~~ a person or
9 corporation engaged in making news reels or other motion
10 picture news for public showing, or any individual or entity
11 that publishes content for public viewing, regardless of
12 whether the individual or entity earns any income.

13 (g) "Recurrent requester", as used in Section 3.2 of this
14 Act, means a person that, in the 12 months immediately
15 preceding the request, has submitted to the same public body
16 (i) a minimum of 50 requests for records, (ii) a minimum of 15
17 requests for records within a 30-day period, or (iii) a minimum
18 of 7 requests for records within a 7-day period. For purposes
19 of this definition, requests made by news media and non-profit,
20 scientific, or academic organizations shall not be considered
21 in calculating the number of requests made in the time periods
22 in this definition when the principal purpose of the requests
23 is (i) to access and disseminate information concerning news
24 and current or passing events, (ii) for articles of opinion or
25 features of interest to the public, or (iii) for the purpose of
26 academic, scientific, or public research or education.

1 For the purposes of this subsection (g), "request" means a
2 written document (or oral request, if the public body chooses
3 to honor oral requests) that is submitted to a public body via
4 personal delivery, mail, telefax, electronic mail, or other
5 means available to the public body and that identifies the
6 particular public record the requester seeks. One request may
7 identify multiple records to be inspected or copied.

8 (h) "Voluminous request" means a request that: (i) includes
9 more than 5 individual requests for more than 5 different
10 categories of records or a combination of individual requests
11 that total requests for more than 5 different categories of
12 records in a period of 20 business days; or (ii) requires the
13 compilation of more than 500 letter or legal-sized pages of
14 public records unless a single requested record exceeds 500
15 pages. "Single requested record" may include, but is not
16 limited to, one report, form, e-mail, letter, memorandum, book,
17 map, microfilm, tape, or recording.

18 "Voluminous request" does not include a request made by
19 news media and non-profit, scientific, or academic
20 organizations if the principal purpose of the request is: (1)
21 to access and disseminate information concerning news and
22 current or passing events; (2) for articles of opinion or
23 features of interest to the public; or (3) for the purpose of
24 academic, scientific, or public research or education.

25 For the purposes of this subsection (h), "request" means a
26 written document, or oral request, if the public body chooses

1 to honor oral requests, that is submitted to a public body via
2 personal delivery, mail, telefax, electronic mail, or other
3 means available to the public body and that identifies the
4 particular public record or records the requester seeks. One
5 request may identify multiple individual records to be
6 inspected or copied.

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

10 (Source: P.A. 98-806, eff. 1-1-15; 98-1129, eff. 12-3-14;
11 99-78, eff. 7-20-15; 99-478, eff. 6-1-16.)

12 (5 ILCS 140/3) (from Ch. 116, par. 203)

13 Sec. 3. (a) Each public body shall make available to any
14 person for inspection or copying all public records, except as
15 otherwise provided in Sections 7 and 8.5 of this Act.
16 Notwithstanding any other law, a public body may not grant to
17 any person or entity, whether by contract, license, or
18 otherwise, the exclusive right to access and disseminate any
19 public record as defined in this Act.

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

25 (c) Requests for inspection or copies shall be made in

1 writing and directed to the public body. Written requests may
2 be submitted to a public body via personal delivery, mail,
3 telefax, or other means available to the public body. A public
4 body may honor oral requests for inspection or copying. A
5 public body may not require that a request be submitted on a
6 standard form or require the requester to specify the purpose
7 for a request, except to determine whether the records are
8 requested for a commercial purpose or whether to grant a
9 request for a fee waiver. All requests for inspection and
10 copying received by a public body shall immediately be
11 forwarded to its Freedom of Information officer or designee.

12 (d) Each public body shall, promptly, either comply with or
13 deny a request for public records within 5 business days after
14 its receipt of the request, unless the time for response is
15 properly extended under subsection (e) of this Section. Denial
16 shall be in writing as provided in Section 9 of this Act.
17 Failure to comply with a written request, extend the time for
18 response, or deny a request within 5 business days after its
19 receipt shall be considered a denial of the request. A public
20 body that fails to respond to a request within the requisite
21 periods in this Section but thereafter provides the requester
22 with copies of the requested public records may not impose a
23 fee for such copies. A public body that fails to respond to a
24 request received may not treat the request as unduly burdensome
25 under subsection (g).

26 (e) The time for response under this Section may be

1 extended by the public body for not more than 5 business days
2 from the original due date for any of the following reasons:

3 (i) the requested records are stored in whole or in
4 part at other locations than the office having charge of
5 the requested records;

6 (ii) the request requires the collection of a
7 substantial number of specified records;

8 (iii) the request is couched in categorical terms and
9 requires an extensive search for the records responsive to
10 it;

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

14 (v) the requested records require examination and
15 evaluation by personnel having the necessary competence
16 and discretion to determine if they are exempt from
17 disclosure under Section 7 of this Act or should be
18 revealed only with appropriate deletions;

19 (vi) the request for records cannot be complied with by
20 the public body within the time limits prescribed by
21 paragraph (c) of this Section without unduly burdening or
22 interfering with the operations of the public body;

23 (vii) there is a need for consultation, which shall be
24 conducted with all practicable speed, with another public
25 body or among two or more components of a public body
26 having a substantial interest in the determination or in

1 the subject matter of the request.

2 The person making a request and the public body may agree
3 in writing to extend the time for compliance for a period to be
4 determined by the parties. If the requester and the public body
5 agree to extend the period for compliance, a failure by the
6 public body to comply with any previous deadlines shall not be
7 treated as a denial of the request for the records.

8 (f) When additional time is required for any of the above
9 reasons, the public body shall, within 5 business days after
10 receipt of the request, notify the person making the request of
11 the reasons for the extension and the date by which the
12 response will be forthcoming. Failure to respond within the
13 time permitted for extension shall be considered a denial of
14 the request. A public body that fails to respond to a request
15 within the time permitted for extension but thereafter provides
16 the requester with copies of the requested public records may
17 not impose a fee for those copies. A public body that requests
18 an extension and subsequently fails to respond to the request
19 may not treat the request as unduly burdensome under subsection
20 (g).

21 (g) Requests calling for all records falling within a
22 category shall be complied with unless compliance with the
23 request would be unduly burdensome for the complying public
24 body and there is no way to narrow the request and the burden
25 on the public body outweighs the public interest in the
26 information. Before invoking this exemption, the public body

1 shall extend to the person making the request an opportunity to
2 confer with it in an attempt to reduce the request to
3 manageable proportions. If any public body responds to a
4 categorical request by stating that compliance would unduly
5 burden its operation and the conditions described above are
6 met, it shall do so in writing, specifying the reasons why it
7 would be unduly burdensome and the extent to which compliance
8 will so burden the operations of the public body. Such a
9 response shall be treated as a denial of the request for
10 information.

11 Repeated requests from the same person for the same records
12 that are unchanged or identical to records previously provided
13 or properly denied under this Act shall be deemed unduly
14 burdensome under this provision.

15 (g-5) Any public body responding to a categorical request
16 shall attach a verified statement containing the policies and
17 protocol utilized for any search of electronically stored
18 information, including, but not limited to, exact words,
19 spaces, numerals, capitalization, and all filters used in the
20 search.

21 (h) Each public body may promulgate rules and regulations
22 in conformity with the provisions of this Section pertaining to
23 the availability of records and procedures to be followed,
24 including:

25 (i) the times and places where such records will be
26 made available, and

1 (ii) the persons from whom such records may be
2 obtained.

3 (i) The time periods for compliance or denial of a request
4 to inspect or copy records set out in this Section shall not
5 apply to requests for records made for a commercial purpose,
6 requests by a recurrent requester, or voluminous requests. Such
7 requests shall be subject to the provisions of Sections 3.1,
8 3.2, and 3.6 of this Act, as applicable.

9 (Source: P.A. 98-1129, eff. 12-3-14.)

10 (5 ILCS 140/11) (from Ch. 116, par. 211)

11 Sec. 11. (a) Any person denied access to inspect or copy
12 any public record by a public body may file suit for injunctive
13 or declaratory relief.

14 (b) Where the denial is from a public body of the State,
15 suit may be filed in the circuit court for the county where the
16 public body has its principal office or where the person denied
17 access resides.

18 (c) Where the denial is from a municipality or other public
19 body, except as provided in subsection (b) of this Section,
20 suit may be filed in the circuit court for the county where the
21 public body is located.

22 (d) The circuit court shall have the jurisdiction to enjoin
23 the public body from withholding public records and to order
24 the production of any public records improperly withheld from
25 the person seeking access. If the public body can show that

1 exceptional circumstances exist, and that the body is
2 exercising due diligence in responding to the request, the
3 court may retain jurisdiction and allow the agency additional
4 time to complete its review of the records.

5 (e) On motion of the plaintiff, prior to or after in camera
6 inspection, the court shall order the public body to provide an
7 index of the records to which access has been denied. The index
8 shall include the following:

9 (i) A description of the nature or contents of each
10 document withheld, or each deletion from a released
11 document, provided, however, that the public body shall not
12 be required to disclose the information which it asserts is
13 exempt; and

14 (ii) A statement of the exemption or exemptions claimed
15 for each such deletion or withheld document.

16 (f) In any action considered by the court, the court shall
17 consider the matter de novo, and shall conduct such in camera
18 examination of the requested records as it finds appropriate to
19 determine if such records or any part thereof may be withheld
20 under any provision of this Act. The burden shall be on the
21 public body to establish that its refusal to permit public
22 inspection or copying is in accordance with the provisions of
23 this Act. Any public body that asserts that a record is exempt
24 from disclosure has the burden of proving that it is exempt by
25 clear and convincing evidence. If the court rules against a
26 party seeking public inspection of documents or the production

1 of copies of documents, the court shall issue an opinion
2 containing specific factual findings upon which the court made
3 its decision.

4 (g) In the event of noncompliance with an order of the
5 court to disclose, the court may enforce its order against any
6 public official or employee so ordered or primarily responsible
7 for such noncompliance through the court's contempt powers.

8 (h) Except as to causes the court considers to be of
9 greater importance, proceedings arising under this Section
10 shall take precedence on the docket over all other causes and
11 be assigned for hearing and trial at the earliest practicable
12 date and expedited in every way.

13 (i) If a person seeking the right to inspect or receive a
14 copy of a public record prevails in a proceeding under this
15 Section, the court shall award such person reasonable
16 attorney's ~~attorneys'~~ fees and costs. In determining what
17 amount of attorney's fees is reasonable, the court shall
18 consider the degree to which the relief obtained relates to the
19 relief sought. The changes contained in this subsection apply
20 to an action filed on or after January 1, 2010 (the effective
21 date of Public Act 96-542) ~~this amendatory Act of the 96th~~
22 ~~General Assembly.~~

23 (j) If the court determines that a public body willfully
24 and intentionally failed to comply with this Act, or otherwise
25 acted in bad faith, the court shall also impose upon the public
26 body a civil penalty of not less than \$2,500 nor more than

1 \$5,000 for each occurrence. In assessing the civil penalty, the
2 court shall consider in aggravation or mitigation the budget of
3 the public body and whether the public body has previously been
4 assessed penalties for violations of this Act. The changes
5 contained in this subsection apply to an action filed on or
6 after January 1, 2010 (the effective date of Public Act 96-542)
7 ~~this amendatory Act of the 96th General Assembly.~~

8 (k) Any action for injunctive or declaratory relief filed
9 under this Section is subject to the provisions of the Code of
10 Civil Procedure.

11 (Source: P.A. 96-542, eff. 1-1-10; 97-813, eff. 7-13-12;
12 revised 10-14-15.)

13 Section 95. No acceleration or delay. Where this Act makes
14 changes in a statute that is represented in this Act by text
15 that is not yet or no longer in effect (for example, a Section
16 represented by multiple versions), the use of that text does
17 not accelerate or delay the taking effect of (i) the changes
18 made by this Act or (ii) provisions derived from any other
19 Public Act.