



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB3683

Introduced 2/24/2009, by Rep. Paul D. Froehlich

#### SYNOPSIS AS INTRODUCED:

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

Amends the Freedom of Information Act. Authorizes a court to award reasonable attorneys fees and costs and assess a fine not to exceed \$1,000 if it finds that a public body denied or delayed access to a public record on improper or unreasonable grounds or for the sole purpose of delaying access without good cause.

LRB096 11325 JAM 21767 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 3 and 11 as follows:

6 (5 ILCS 140/3) (from Ch. 116, par. 203)

7 Sec. 3. (a) Each public body shall make available to any  
8 person for inspection or copying all public records, except as  
9 otherwise provided in Section 7 of this Act. Notwithstanding  
10 any other law, a public body may not grant to any person or  
11 entity, whether by contract, license, or otherwise, the  
12 exclusive right to access and disseminate any public record as  
13 defined in this Act.

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

19 (c) Each public body shall, promptly, either comply with or  
20 deny a written request for public records within 7 working days  
21 after its receipt. Denial shall be by letter as provided in  
22 Section 9 of this Act. Failure to respond to a written request  
23 within 7 working days after its receipt shall be considered a

1 denial of the request. The public body may be subject to  
2 sanctions pursuant to Section 11(j) of this Act if the court  
3 determines that the denial was improper and unreasonable or was  
4 invoked for the sole purpose of delaying, without good cause,  
5 access to the public record.

6 (d) The time limits prescribed in paragraph (c) of this  
7 Section may be extended in each case for not more than 7  
8 additional working days for any of the following reasons:

9 (i) the requested records are stored in whole or in  
10 part at other locations than the office having charge of  
11 the requested records;

12 (ii) the request requires the collection of a  
13 substantial number of specified records;

14 (iii) the request is couched in categorical terms and  
15 requires an extensive search for the records responsive to  
16 it;

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

20 (v) the requested records require examination and  
21 evaluation by personnel having the necessary competence  
22 and discretion to determine if they are exempt from  
23 disclosure under Section 7 of this Act or should be  
24 revealed only with appropriate deletions;

25 (vi) the request for records cannot be complied with by  
26 the public body within the time limits prescribed by

1 paragraph (c) of this Section without unduly burdening or  
2 interfering with the operations of the public body;

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

8 (e) When additional time is required for any of the above  
9 reasons, the public body shall notify by letter the person  
10 making the written request within the time limits specified by  
11 paragraph (c) of this Section of the reasons for the delay and  
12 the date by which the records will be made available or denial  
13 will be forthcoming. In no instance, may the delay in  
14 processing last longer than 7 working days. A failure to render  
15 a decision within 7 working days shall be considered a denial  
16 of the request. The public body may be subject to sanctions  
17 pursuant to Section 11(j) of this Act if the court determines  
18 that the denial was improper and unreasonable or was invoked  
19 for the sole purpose of delaying, without good cause, access to  
20 the public record.

21 (f) 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 body responds to a categorical  
4 request by stating that compliance would unduly burden its  
5 operation and the conditions described above are met, it shall  
6 do so in writing, specifying the reasons why it would be unduly  
7 burdensome and the extent to which compliance will so burden  
8 the operations of the public body. Such a response shall be  
9 treated as a denial of the request for information. Repeated  
10 requests for the same public records by the same person shall  
11 be deemed unduly burdensome under this provision.

12 (g) Each public body may promulgate rules and regulations  
13 in conformity with the provisions of this Section pertaining to  
14 the availability of records and procedures to be followed,  
15 including:

16 (i) the times and places where such records will be  
17 made available, and

18 (ii) the persons from whom such records may be  
19 obtained.

20 (Source: P.A. 90-206, eff. 7-25-97.)

21 (5 ILCS 140/11) (from Ch. 116, par. 211)

22 Sec. 11. (a) Any person denied access to inspect or copy  
23 any public record by the head of a public body may file suit  
24 for injunctive or declaratory relief.

25 (b) Where the denial is from the head of a public body of

1 the State, suit may be filed in the circuit court for the  
2 county where the public body has its principal office or where  
3 the person denied access resides.

4 (c) Where the denial is from the head of a municipality or  
5 other public body, except as provided in subsection (b) of this  
6 Section, suit may be filed in the circuit court for the county  
7 where the public body is located.

8 (d) The circuit court shall have the jurisdiction to enjoin  
9 the public body from withholding public records and to order  
10 the production of any public records improperly withheld from  
11 the person seeking access. If the public body can show that  
12 exceptional circumstances exist, and that the body is  
13 exercising due diligence in responding to the request, the  
14 court may retain jurisdiction and allow the agency additional  
15 time to complete its review of the records.

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

20 (i) A description of the nature or contents of each  
21 document withheld, or each deletion from a released  
22 document, provided, however, that the public body shall not  
23 be required to disclose the information which it asserts is  
24 exempt; and

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

1 (f) In any action considered by the court, the court shall  
2 consider the matter de novo, and shall conduct such in camera  
3 examination of the requested records as it finds appropriate to  
4 determine if such records or any part thereof may be withheld  
5 under any provision of this Act. The burden shall be on the  
6 public body to establish that its refusal to permit public  
7 inspection or copying is in accordance with the provisions of  
8 this Act.

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

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

18 (i) If a person seeking the right to inspect or receive a  
19 copy of a public record substantially prevails in a proceeding  
20 under this Section, the court may award such person reasonable  
21 attorneys' fees and costs. If, however, the court finds that  
22 the fundamental purpose of the request was to further the  
23 commercial interests of the requestor, the court may award  
24 reasonable attorneys' fees and costs if the court finds that  
25 the record or records in question were of clearly significant  
26 interest to the general public and that the public body lacked

1 any reasonable basis in law for withholding the record.

2 (j) If the court determines that the grounds for delay or  
3 denial of access to a public record pursuant to Section 3(c) or  
4 3(e) of this Act were improper and unreasonable or were invoked  
5 for the sole purpose of delay without good cause, the court may  
6 award to the person reasonable attorneys' fees and costs and  
7 may assess a fine not to exceed \$1,000.

8 (Source: P.A. 93-466, eff. 1-1-04.)