

# SB2978



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB2978

Introduced 2/3/2010, by Sen. John J. Millner

#### SYNOPSIS AS INTRODUCED:

5 ILCS 140/7	from Ch. 116, par. 207
5 ILCS 140/11	from Ch. 116, par. 211

Amends the Freedom of Information Act. Makes changes with respect to the exemptions from disclosure for personal information of public employees and officials, for the investigation, settlement, and adjudication of public employee grievances or disciplinary cases, and for administrative enforcement and law enforcement records. Permits (now, requires) a court to award reasonable attorney fees and court costs to a person who prevails in a proceeding to enforce disclosure of records. Effective January 1, 2011.

LRB096 19762 JAM 35198 b

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 7 and 11 as follows:

6 (5 ILCS 140/7) (from Ch. 116, par. 207)

7 (Text of Section before amendment by P.A. 96-736)

8 Sec. 7. Exemptions.

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

17 (a) Information specifically prohibited from  
18 disclosure by federal or State law or rules and regulations  
19 implementing federal or State law.

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

23 (b-5) Files, documents, and other data or databases

1 maintained by one or more law enforcement agencies and  
2 specifically designed to provide information to one or more  
3 law enforcement agencies regarding the physical or mental  
4 status of one or more individual subjects.

5 (c) Personal information contained within public  
6 records, the disclosure of which would constitute a clearly  
7 unwarranted invasion of personal privacy, unless the  
8 disclosure is consented to in writing by the individual  
9 subjects of the information. "Unwarranted invasion of  
10 personal privacy" means the disclosure of information that  
11 is highly personal or objectionable to a reasonable person  
12 and in which the subject's right to privacy outweighs any  
13 legitimate public interest in obtaining the information.  
14 The disclosure of information that bears on the public  
15 duties of public employees and officials shall not be  
16 considered an invasion of personal privacy, subject to the  
17 other exemptions provided in this Section.

18 (d) Records in the possession of any public body  
19 created in the course of administrative enforcement  
20 proceedings, and any law enforcement or correctional  
21 agency for law enforcement purposes, but only to the extent  
22 that disclosure would:

23 (i) interfere with pending or actually and  
24 reasonably contemplated law enforcement proceedings  
25 conducted by any law enforcement or correctional  
26 agency that is the recipient of the request. †

1 (ii) interfere with pending ~~active~~ administrative  
2 enforcement proceedings conducted by any ~~the~~ public  
3 body. ~~that is the recipient of the request;~~

4 (iii) create a substantial likelihood that a  
5 person will be deprived of a fair trial or an impartial  
6 hearing. ~~†~~

7 (iv) unavoidably disclose the identity of a  
8 confidential source or ~~†~~ confidential information  
9 furnished ~~only~~ by a ~~the~~ confidential source. ~~†~~ ~~or~~  
10 ~~persons who file complaints with or provide~~  
11 ~~information to administrative, investigative, law~~  
12 ~~enforcement, or penal agencies; except that the~~  
13 ~~identities of witnesses to traffic accidents, traffic~~  
14 ~~accident reports, and rescue reports shall be provided~~  
15 ~~by agencies of local government, except when~~  
16 ~~disclosure would interfere with an active criminal~~  
17 ~~investigation conducted by the agency that is the~~  
18 ~~recipient of the request;~~

19 (v) disclose unique or specialized investigative  
20 techniques other than those generally used and known or  
21 disclose internal documents of correctional agencies  
22 related to detection, observation or investigation of  
23 incidents of crime or misconduct. ~~†~~ ~~and disclosure~~  
24 ~~would result in demonstrable harm to the agency or~~  
25 ~~public body that is the recipient of the request;~~

26 (vi) endanger the life or physical safety of law

1 enforcement personnel or any other person. ~~or~~

2 (vii) obstruct an ongoing criminal investigation  
3 ~~by the agency that is the recipient of the request.~~

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

6 (f) Preliminary drafts, notes, recommendations,  
7 memoranda and other records in which opinions are  
8 expressed, or policies or actions are formulated, except  
9 that a specific record or relevant portion of a record  
10 shall not be exempt when the record is publicly cited and  
11 identified by the head of the public body. The exemption  
12 provided in this paragraph (f) extends to all those records  
13 of officers and agencies of the General Assembly that  
14 pertain to the preparation of legislative documents.

15 (g) Trade secrets and commercial or financial  
16 information obtained from a person or business where the  
17 trade secrets or commercial or financial information are  
18 furnished under a claim that they are proprietary,  
19 privileged or confidential, and that disclosure of the  
20 trade secrets or commercial or financial information would  
21 cause competitive harm to the person or business, and only  
22 insofar as the claim directly applies to the records  
23 requested.

24 The information included under this exemption includes  
25 all ~~All~~ trade secrets and commercial or financial  
26 information obtained by a public body, including a public

1 pension fund, from a private equity fund or a privately  
2 held company within the investment portfolio of a private  
3 equity fund as a result of either investing or evaluating a  
4 potential investment of public funds in a private equity  
5 fund. The exemption contained in this item does not apply  
6 to the aggregate financial performance information of a  
7 private equity fund, nor to the identity of the fund's  
8 managers or general partners. The exemption contained in  
9 this item does not apply to the identity of a privately  
10 held company within the investment portfolio of a private  
11 equity fund, unless the disclosure of the identity of a  
12 privately held company may cause competitive harm.

13 Nothing contained in this paragraph (g) shall be  
14 construed to prevent a person or business from consenting  
15 to disclosure.

16 (h) Proposals and bids for any contract, grant, or  
17 agreement, including information which if it were  
18 disclosed would frustrate procurement or give an advantage  
19 to any person proposing to enter into a contractor  
20 agreement with the body, until an award or final selection  
21 is made. Information prepared by or for the body in  
22 preparation of a bid solicitation shall be exempt until an  
23 award or final selection is made.

24 (i) Valuable formulae, computer geographic systems,  
25 designs, drawings and research data obtained or produced by  
26 any public body when disclosure could reasonably be

1 expected to produce private gain or public loss. The  
2 exemption for "computer geographic systems" provided in  
3 this paragraph (i) does not extend to requests made by news  
4 media as defined in Section 2 of this Act when the  
5 requested information is not otherwise exempt and the only  
6 purpose of the request is to access and disseminate  
7 information regarding the health, safety, welfare, or  
8 legal rights of the general public.

9 (j) The following information pertaining to  
10 educational matters:

11 (i) test questions, scoring keys and other  
12 examination data used to administer an academic  
13 examination;

14 (ii) information received by a primary or  
15 secondary school, college, or university under its  
16 procedures for the evaluation of faculty members by  
17 their academic peers;

18 (iii) information concerning a school or  
19 university's adjudication of student disciplinary  
20 cases, but only to the extent that disclosure would  
21 unavoidably reveal the identity of the student; and

22 (iv) course materials or research materials used  
23 by faculty members.

24 (k) Architects' plans, engineers' technical  
25 submissions, and other construction related technical  
26 documents for projects not constructed or developed in

1 whole or in part with public funds and the same for  
2 projects constructed or developed with public funds,  
3 including but not limited to power generating and  
4 distribution stations and other transmission and  
5 distribution facilities, water treatment facilities,  
6 airport facilities, sport stadiums, convention centers,  
7 and all government owned, operated, or occupied buildings,  
8 but only to the extent that disclosure would compromise  
9 security.

10 (l) Minutes of meetings of public bodies closed to the  
11 public as provided in the Open Meetings Act until the  
12 public body makes the minutes available to the public under  
13 Section 2.06 of the Open Meetings Act.

14 (m) Communications between a public body and an  
15 attorney or auditor representing the public body that would  
16 not be subject to discovery in litigation, and materials  
17 prepared or compiled by or for a public body in  
18 anticipation of a criminal, civil or administrative  
19 proceeding upon the request of an attorney advising the  
20 public body, and materials prepared or compiled with  
21 respect to internal audits of public bodies.

22 (n) Records relating to a public body's investigation,  
23 settlement, and adjudication of employee grievances or  
24 disciplinary cases; however, this exemption shall not  
25 extend to cases in which criminal charges are filed for  
26 which disclosure of information shall be governed by that



1       which may be disclosed under the provisions of subsection  
2       (a) of Section 2.15 until there is a final non-appealable  
3       conviction ~~the final outcome of cases in which discipline~~  
4       ~~is imposed.~~

5           (o) Administrative or technical information associated  
6       with automated data processing operations, including but  
7       not limited to software, operating protocols, computer  
8       program abstracts, file layouts, source listings, object  
9       modules, load modules, user guides, documentation  
10      pertaining to all logical and physical design of  
11      computerized systems, employee manuals, and any other  
12      information that, if disclosed, would jeopardize the  
13      security of the system or its data or the security of  
14      materials exempt under this Section.

15          (p) Records relating to collective negotiating matters  
16      between public bodies and their employees or  
17      representatives, except that any final contract or  
18      agreement shall be subject to inspection and copying.

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

22          (r) The records, documents, and information relating  
23      to real estate purchase negotiations until those  
24      negotiations have been completed or otherwise terminated.  
25      With regard to a parcel involved in a pending or actually  
26      and reasonably contemplated eminent domain proceeding

1 under the Eminent Domain Act, records, documents and  
2 information relating to that parcel shall be exempt except  
3 as may be allowed under discovery rules adopted by the  
4 Illinois Supreme Court. The records, documents and  
5 information relating to a real estate sale shall be exempt  
6 until a sale is consummated.

7 (s) Any and all proprietary information and records  
8 related to the operation of an intergovernmental risk  
9 management association or self-insurance pool or jointly  
10 self-administered health and accident cooperative or pool.  
11 Insurance or self insurance (including any  
12 intergovernmental risk management association or self  
13 insurance pool) claims, loss or risk management  
14 information, records, data, advice or communications.

15 (t) Information contained in or related to  
16 examination, operating, or condition reports prepared by,  
17 on behalf of, or for the use of a public body responsible  
18 for the regulation or supervision of financial  
19 institutions or insurance companies, unless disclosure is  
20 otherwise required by State law.

21 (u) Information that would disclose or might lead to  
22 the disclosure of secret or confidential information,  
23 codes, algorithms, programs, or private keys intended to be  
24 used to create electronic or digital signatures under the  
25 Electronic Commerce Security Act.

26 (v) Vulnerability assessments, security measures, and

1 response policies or plans that are designed to identify,  
2 prevent, or respond to potential attacks upon a community's  
3 population or systems, facilities, or installations, the  
4 destruction or contamination of which would constitute a  
5 clear and present danger to the health or safety of the  
6 community, but only to the extent that disclosure could  
7 reasonably be expected to jeopardize the effectiveness of  
8 the measures or the safety of the personnel who implement  
9 them or the public. Information exempt under this item may  
10 include such things as details pertaining to the  
11 mobilization or deployment of personnel or equipment, to  
12 the operation of communication systems or protocols, or to  
13 tactical operations.

14 (w) (Blank).

15 (x) Maps and other records regarding the location or  
16 security of generation, transmission, distribution,  
17 storage, gathering, treatment, or switching facilities  
18 owned by a utility, by a power generator, or by the  
19 Illinois Power Agency.

20 (y) Information contained in or related to proposals,  
21 bids, or negotiations related to electric power  
22 procurement under Section 1-75 of the Illinois Power Agency  
23 Act and Section 16-111.5 of the Public Utilities Act that  
24 is determined to be confidential and proprietary by the  
25 Illinois Power Agency or by the Illinois Commerce  
26 Commission.

1           (z) Information about students exempted from  
2 disclosure under Sections 10-20.38 or 34-18.29 of the  
3 School Code, and information about undergraduate students  
4 enrolled at an institution of higher education exempted  
5 from disclosure under Section 25 of the Illinois Credit  
6 Card Marketing Act of 2009.

7           (bb) Information regarding interments, entombments, or  
8 inurnments of human remains that are submitted to the  
9 Cemetery Oversight Database under the Cemetery Care Act or  
10 the Cemetery Oversight Act, whichever is applicable.

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

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

22           (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;  
23 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; 96-261, eff. 1-1-10;  
24 96-328, eff. 8-11-09; 96-542, eff. 1-1-10; 96-558, eff. 1-1-10;  
25 96-863, eff. 3-1-10.)

1 (Text of Section after amendment by P.A. 96-736)

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  
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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:

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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  
26 subjects of the information. "Unwarranted invasion of

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

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 pending ~~active~~ administrative  
19 enforcement proceedings conducted by any ~~the~~ public  
20 body. ~~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  
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4 ~~identities of witnesses to traffic accidents, traffic~~  
5 ~~accident reports, and rescue reports shall be provided~~  
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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~~  
15 ~~would result in demonstrable harm to the agency or~~  
16 ~~public body that is the recipient of the request;~~

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18 enforcement personnel or any other person.  ~~or~~

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4 of officers and agencies of the General Assembly that  
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12 cause competitive harm to the person or business, and only  
13 insofar as the claim directly applies to the records  
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15 The information included under this exemption includes  
16 all ~~All~~ trade secrets and commercial or financial  
17 information obtained by a public body, including a public  
18 pension fund, from a private equity fund or a privately  
19 held company within the investment portfolio of a private  
20 equity fund as a result of either investing or evaluating a  
21 potential investment of public funds in a private equity  
22 fund. The exemption contained in this item does not apply  
23 to the aggregate financial performance information of a  
24 private equity fund, nor to the identity of the fund's  
25 managers or general partners. The exemption contained in  
26 this item does not apply to the identity of a privately



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2 equity fund, unless the disclosure of the identity of a  
3 privately held company may cause competitive harm.

4 Nothing contained in this paragraph (g) shall be  
5 construed to prevent a person or business from consenting  
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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  
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20 this paragraph (i) does not extend to requests made by news  
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22 requested information is not otherwise exempt and the only  
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10 university's adjudication of student disciplinary  
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12 unavoidably reveal the identity of the student; and

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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,  
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26 security.

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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 investigation,  
14 settlement, and adjudication of employee grievances or  
15 disciplinary cases; however, this exemption shall not  
16 extend to cases in which criminal charges are filed for  
17 which disclosure of information shall be governed by that  
18 which may be disclosed under the provisions of subsection  
19 (a) of Section 2.15 until there is a final non-appealable  
20 conviction ~~the final outcome of cases in which discipline~~  
21 ~~is imposed.~~

22 (o) Administrative or technical information associated  
23 with automated data processing operations, including but  
24 not limited to software, operating protocols, computer  
25 program abstracts, file layouts, source listings, object  
26 modules, load modules, user guides, documentation

1           pertaining to all logical and physical design of  
2           computerized systems, employee manuals, and any other  
3           information that, if disclosed, would jeopardize the  
4           security of the system or its data or the security of  
5           materials exempt under this Section.

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7           between public bodies and their employees or  
8           representatives, except that any final contract or  
9           agreement shall be subject to inspection and copying.

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11          examination data used to determine the qualifications of an  
12          applicant for a license or employment.

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

24          (s) Any and all proprietary information and records  
25          related to the operation of an intergovernmental risk  
26          management association or self-insurance pool or jointly

1 self-administered health and accident cooperative or pool.  
2 Insurance or self insurance (including any  
3 intergovernmental risk management association or self  
4 insurance pool) claims, loss or risk management  
5 information, records, data, advice or communications.

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

12 (u) Information that would disclose or might lead to  
13 the disclosure of secret or confidential information,  
14 codes, algorithms, programs, or private keys intended to be  
15 used to create electronic or digital signatures under the  
16 Electronic Commerce Security Act.

17 (v) Vulnerability assessments, security measures, and  
18 response policies or plans that are designed to identify,  
19 prevent, or respond to potential attacks upon a community's  
20 population or systems, facilities, or installations, the  
21 destruction or contamination of which would constitute a  
22 clear and present danger to the health or safety of the  
23 community, but only to the extent that disclosure could  
24 reasonably be expected to jeopardize the effectiveness of  
25 the measures or the safety of the personnel who implement  
26 them or the public. Information exempt under this item may

1 include such things as details pertaining to the  
2 mobilization or deployment of personnel or equipment, to  
3 the operation of communication systems or protocols, or to  
4 tactical operations.

5 (w) (Blank).

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

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

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

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

26 (bb) Information regarding interments, entombments, or

1 inurnments of human remains that are submitted to the  
2 Cemetery Oversight Database under the Cemetery Care Act or  
3 the Cemetery Oversight Act, whichever is applicable.

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

11 (3) This Section does not authorize withholding of  
12 information or limit the availability of records to the public,  
13 except as stated in this Section or otherwise provided in this  
14 Act.

15 (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;  
16 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; 96-261, eff. 1-1-10;  
17 96-328, eff. 8-11-09; 96-542, eff. 1-1-10; 96-558, eff. 1-1-10;  
18 96-736, eff. 7-1-10; 96-863, eff. 3-1-10.)

19 (5 ILCS 140/11) (from Ch. 116, par. 211)

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

23 (b) Where the denial is from a public body of the State,  
24 suit may be filed in the circuit court for the county where the  
25 public body has its principal office or where the person denied

1 access resides.

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

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

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

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

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

25 (f) In any action considered by the court, the court shall  
26 consider the matter de novo, and shall conduct such in camera



1 examination of the requested records as it finds appropriate to  
2 determine if such records or any part thereof may be withheld  
3 under any provision of this Act. The burden shall be on the  
4 public body to establish that its refusal to permit public  
5 inspection or copying is in accordance with the provisions of  
6 this Act. Any public body that asserts that a record is exempt  
7 from disclosure has the burden of proving that it is exempt by  
8 clear and convincing evidence.

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 prevails in a proceeding under this  
20 Section, the court may ~~shall~~ award such person reasonable  
21 attorneys' fees and costs. In determining what amount of  
22 attorney's fees is reasonable, the court shall consider the  
23 degree to which the relief obtained relates to the relief  
24 sought. The changes contained in this subsection apply to an  
25 action filed on or after the effective date of this amendatory  
26 Act of the 96th General Assembly.

1 (j) If the court determines that a public body willfully  
2 and intentionally failed to comply with this Act, or otherwise  
3 acted in bad faith, the court shall also impose upon the public  
4 body a civil penalty of not less than \$2,500 nor more than  
5 \$5,000 for each occurrence. In assessing the civil penalty, the  
6 court shall consider in aggravation or mitigation the budget of  
7 the public body and whether the public body has previously been  
8 assessed penalties for violations of this Act. The changes  
9 contained in this subsection apply to an action filed on or  
10 after the effective date of this amendatory Act of the 96th  
11 General Assembly.

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

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.

20 Section 99. Effective date. This Act takes effect January  
21 1, 2011.