

ILLINOIS FREEDOM OF INFORMATION ACT

ENSURING ILLINOIS RESIDENTS CAN
OBTAIN INFORMATION ABOUT THEIR
GOVERNMENT

DISCLAIMER

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FOIA TOPICS



What is FOIA?



Who is subject to FOIA?



What is a Public Record?



Exemptions?



Requests and responses?



May a fee be charged?

WHAT IS FOIA?

The Freedom of Information Act gives the public the right to access government documents and records.

Under FOIA (5 ILCS 140 et seq), records in the possession of a public body may be accessed by the public upon written request.

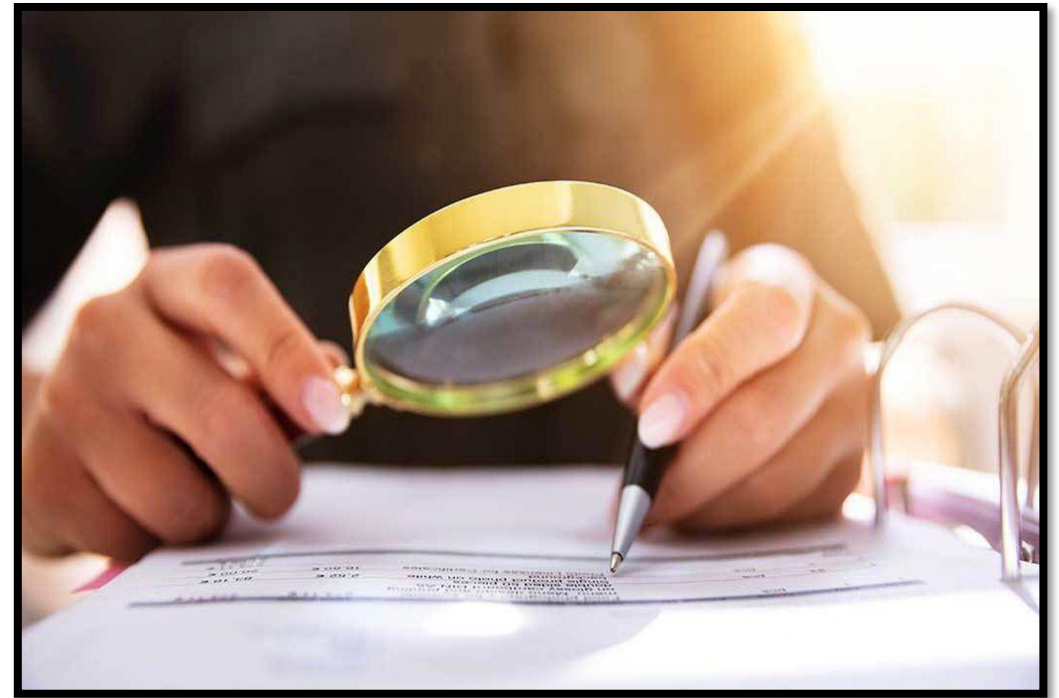
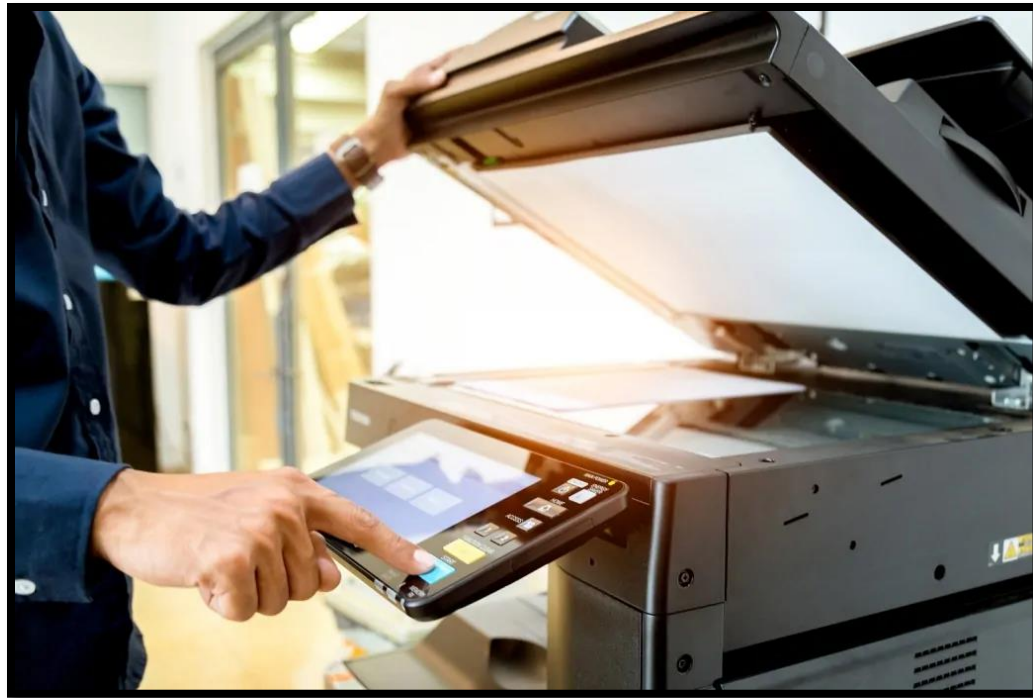


PURPOSE OF FOIA

- “Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that **all persons are entitled to full and complete information regarding the affairs of government** and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act. Such access is **necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.**” 5 ILCS 140/1 (emphasis added)

PRIMARY REQUIREMENT OF FOIA

“Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act.” 5 ILCS 140/3.



WHO IS SUBJECT TO FOIA?

- **“Public Body”**—definition includes:
 - State of Illinois
 - Counties
 - Cities, towns, villages, municipal corporations
 - School districts, state universities, and colleges
 - Legislative, executive, administrative, and advisory bodies of these
 - Board, bureaus, committees, commissions, departments and subsidiaries of these
 - Includes State’s Attorneys
 - Includes charter schools
 - Need not receive or spend tax revenue

WHO IS NOT A "PUBLIC BODY" UNDER ILLINOIS FOIA

- Federal agencies are subject only to federal FOIA.
- Courts are subject to other open records laws.



WHAT IS A PUBLIC RECORD?

- “Public Records” defined—Pretty Much Everything BUT it must relate to the public body
 - Three elements pursuant to definition in 5 ILCS 140/2(c):
 - (1) “**all records**, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials . . . **regardless of physical form or characteristics**” (very broad)
 - (2) “**Pertaining to the transaction of public business**”
 - (3) “**Having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.**”

WHAT IS A PUBLIC RECORD?

- Specific statutory examples of public records include:
 - All records relating to the obligation, receipt, and use of public funds (5 ILCS 140/2.5)
 - Certified payroll records of government contractors submitted to a public body under the Prevailing Wage Act (5 ILCS 140/2.10)
 - Certain Arrest Report and Criminal History information (5 ILCS 140/2.15)
 - Settlement and Severance Agreements (5 ILCS 140/2.20)

REQUIREMENT TO MAINTAIN A LIST OF “PUBLIC RECORDS?”

Public body must maintain and make available for inspection and copying a “reasonably current list of types or categories of records under its control.” 5 ILCS 140/5.

PRIVATE EMAIL AND TEXT AS PUBLIC RECORD

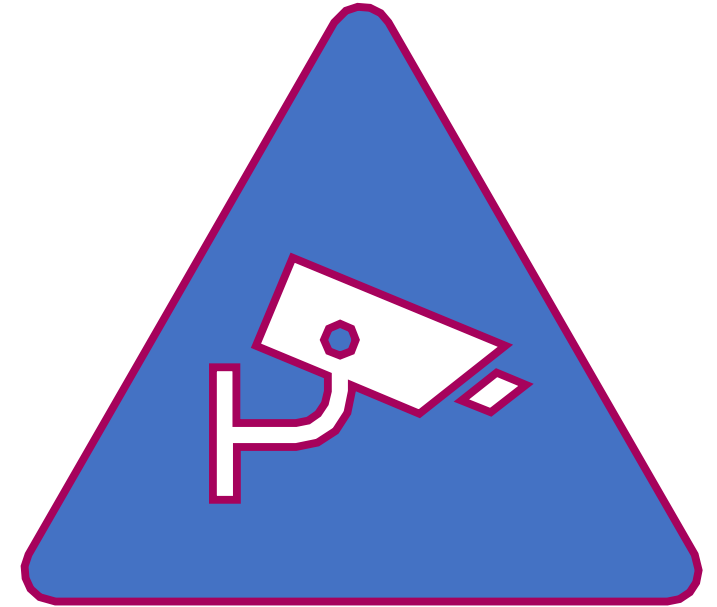
- Emails pertaining to the transaction of public business are public records, even if they are sent from a private email account.
- Text messages (from private phone or publicly issued device) are a public record if they relate to the transaction of public business.

* Special considerations for when communications sent during a meeting of a public body



ACCESS TO PUBLIC RECORDS ON PRIVATE DEVICES

- General policy consideration for public body:
 - Adopt policy prohibiting use of private devices and email by public officials and employees for public business.
 - If the use of private device or account is unavoidable, require the message to be forwarded to a public body account.



EXEMPTIONS

GENERAL CONSIDERATIONS

Under FOIA law, all records in the custody or possession of a public body are presumed to be available to the public, unless the public body proves otherwise through exemption.

Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.

Partially exempt documents are addressed through redactions

No requirement that the public body assert any exemptions unless another law requires

- Specific exemptions to public disclosure are set forth in 5 ILCS 140/7 **include but are not limited to:**
 - Private Information: unique identifiers such as SSNs, home address/phone/email, personal financial information, medical records, driver's license number, etc.
 - Personal Information: information that "would constitute a clearly unwarranted invasion of personal privacy," which means the "disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." HOWEVER, the disclosure of information that bears on the public duties of public employees and officials shall NOT be considered an invasion of personal privacy.
 - Law Enforcement Records regarding ongoing investigations
 - Preliminary Drafts
 - Business Trade Secrets
 - Pending Proposals and Bids
 - Attorney and Auditor Records

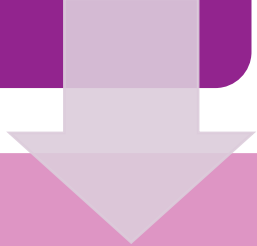
EXEMPTIONS

- A public body is “**not required to copy a public record that is published on the public body’s website**”. The public body shall notify the requester that the public record is available online and direct the requester to the website where the record can be reasonably accessed.
5 ILCS 140/8.5
 - HOWEVER, if a person requesting the record is unable to reasonably access the record online after being directed to the website, the requester may re-submit his or her request for the record stating his or her inability to reasonably access the record online, and the public body shall make the requested record available for inspection or copying.

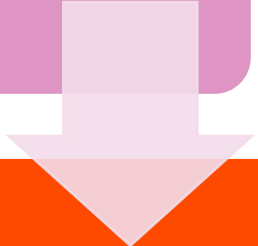
**EXEMPTIONS -
DOCUMENTS AVAILABLE ON WEBSITE**

FOIA REQUESTS

FOIA requests should include the date, contact information, and detailed information regarding the information you're requesting. Name does NOT have to be provided.



Public bodies can require that FOIA requests be submitted in writing, but they must accept requests by mail, personal delivery, fax, e-mail, or other means available.



FOIA requests should be submitted to the FOIA Officer. The designated FOIA Officer must be listed on the public body's website.

FOIA RESPONSE

A public body must respond to a FOIA request within 5 business days after the request is received. (UNLESS EXTENDED AS AUTHORIZED BY FOIA)

The day *following* the day the request is received is considered day 1.

- Specific statutory exemption
- Request cannot unduly burden the operations of the public body.
5 ILCS 140/3(g) The public body must demonstrate how responding to the request would interfere with its operations if it had to comply within the strict confines of FOIA.
- Repeat Request deemed unduly burdensome under FOIA
- No duty to create records to comply with the request

AUTHORITY TO DENY A REQUEST

CAN PUBLIC BODY CHARGE A FEE?

- Pursuant to 5 ILCS 140/6 of the FOIA, public bodies "may charge fees that are reasonably calculated to reimburse its actual cost for reproducing and certifying public records."
- If the requested records are B&W and **50** pages, or less, the records will be copied and mailed to the requestor at no cost.
- If the records requested exceed **50** pages, the public body will notify the requester that a copy fee will be incurred by the requester at a rate of up to \$.15 cents per B&W page or actual cost for color for every page after 50.
- Fees may be waived or reduced under certain circumstances when it is determined to be in the public interest to do so.



REMEDIES FOR FOIA DENIALS

- File request for review with Attorney General's Public Access Counselor
- File a Lawsuit



This concludes the "FOIA" presentation. Thank you for your attention!

