**FOIA VERSUS CONFIDENTIALITY REQUIREMENTS – WHAT THE PAC WON’T TELL YOU**

**![C:\Users\kelliott\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.IE5\J3QG4MQO\MC900431645[1].png]()**

**2016 IAPD/IPRA**

**Soaring to New Heights Conference**

January 29, 2016

Kathleen Elliott, Of Counsel

Robbins Schwartz

631 E. Boughton Road, Suite 200

Bolingbrook, Illinois 60440-8360

p: 630.929.3639 f: 630.783.3231

kelliott@robbins-schwartz.com

**CONFIDENTIALITY LAWS**

**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) PUB. LAW NO. 104-191, §§ 262,264: 45 C.F.R. §§160-164)**

Who Must Follow This Law. Entities that must follow the Privacy Rule are called covered entities. Covered entities include:

Health Plans, including health insurance companies, HMOs, **company health plans**, and certain government programs that pay for health care, such as Medicare and Medicaid.

Protected Health Information. **The Privacy Rule protects all "individually identifiable health information"** held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information "protected health information (PHI)."

**“Individually identifiable health information”** is information, including demographic data, that relates to:

* the individual’s past, present or future physical or mental health or condition,
* the provision of health care to the individual, or
* the past, present, or future **payment for the provision of health care to the individual**,

and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual. Individually identifiable health information includes many common identifiers (e.g., name, address, birth date, Social Security Number).

![C:\Users\kelliott\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.IE5\CHJCSROD\MC900441359[1].png]()**TIP:** Payment for provision of health care to the individual includes: employee paid premiums, co-pays, and other information relating to the employee’s payment for health care. It does not include payments by the employer.

Authorization. **A covered entity must obtain the individual’s written authorization for any use or disclosure of protected health information** that is not for treatment, payment or health care operations or otherwise permitted or required by the Privacy Rule.

The Privacy Rule excludes from protected health information employment records that a covered entity maintains in its capacity as an employer and education and certain other records subject to, or defined in, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g.

|  |  |  |
| --- | --- | --- |
| HIPAA Violation | Minimum Penalty | Maximum Penalty |
| Individual did not know (and by exercising reasonable diligence would not have known) that he/she violated HIPAA | $100 per violation, with an annual maximum of $25,000 for repeat violations (Note: maximum that can be imposed by State Attorneys General regardless of the type of violation) | $50,000 per violation, with an annual maximum of $1.5 million |
| HIPAA violation due to reasonable cause and not due to willful neglect | $1,000 per violation, with an annual maximum of $100,000 for repeat violations | $50,000 per violation, with an annual maximum of $1.5 million |
| HIPAA violation due to willful neglect but violation is corrected within the required time period | $10,000 per violation, with an annual maximum of $250,000 for repeat violations | $50,000 per violation, with an annual maximum of $1.5 million |
| HIPAA violation is due to willful neglect and is not corrected | $50,000 per violation, with an annual maximum of $1.5 million | $50,000 per violation, with an annual maximum of $1.5 million |

**Criminal Penalties**

In June 2005, the U.S. Department of Justice (DOJ) clarified who can be held criminally liable under HIPAA. Covered entities and specified individuals, as explained below, whom "knowingly" obtain or disclose individually identifiable health information in violation of the Administrative Simplification Regulations face a fine of up to $50,000, as well as imprisonment up to one year. Offenses committed under false pretenses allow penalties to be increased to a $100,000 fine, with up to five years in prison. Finally, offenses committed with the intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain or malicious harm permit fines of $250,000, and imprisonment for up to ten years.

**Covered Entity and Specified Individuals**

The DOJ concluded that the criminal penalties for a violation of HIPAA are directly applicable to covered entities—including health plans, health care clearinghouses, health care providers who transmit claims in electronic form, and Medicare prescription drug card sponsors. Individuals such as directors, employees, or officers of the covered entity, where the covered entity is not an individual, may also be directly criminally liable under HIPAA in accordance with principles of "corporate criminal liability." Where an individual of a covered entity is not directly liable under HIPAA, they can still be charged with conspiracy or aiding and abetting.

**“Knowingly”**
The DOJ interpreted the "knowingly" element of the HIPAA statute for criminal liability as requiring only knowledge of the actions that constitute an offense. Specific knowledge of an action being in violation of the HIPAA statute is not required.

**ABUSED AND NEGLECTED CHILD REPORTING ACT** (325 ILCS 5/)

Section 11

**All records concerning reports of child abuse and neglect or records concerning referrals under this Act and all records generated as a result of such reports or referrals, shall be confidential** and shall not be disclosed except as specifically authorized by this Act or other applicable law. **It is a Class A misdemeanor to permit, assist, or encourage the unauthorized release of any information contained in such reports, referrals or records.**

 Nothing contained in this Section prevents the sharing or disclosure of records relating or pertaining to the death of a minor under the care of or receiving services from the Department of Children and Family Services and under the jurisdiction of the juvenile court with the juvenile court, the State's Attorney, and the minor's attorney.

![C:\Users\kelliott\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.IE5\CHJCSROD\MC900441359[1].png]()**TIP:** Any references to the Department of Children and Family Services referrals need to be deleted from police reports.

**LAW ENFORCEMENT AGENCIES DATA SYSTEM (LEADS)** (ILLINOIS ADMINISTRATIVE CODE, TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT, CHAPTER II: DEPARTMENT OF STATE POLICE, PART 1240)

Section 1240.80 Dissemination of Data Obtained Through LEADS

a) The LEADS network and LEADS data shall not be used for personal purposes.

b) Personal or unofficial messages shall not be transmitted.

c) LEADS data shall not be sold.

d) **LEADS data shall not be disseminated to any individual or organization that is not legally authorized to have access to the information.**

**PERSONNEL RECORD REVIEW ACT (820 ILCS 40/)**

Sec. 7

**(1) An employer or former employer shall not divulge a disciplinary report, letter of reprimand, or other disciplinary action to a third party,** to a party who is not a part of the employer's organization, or to a party who is not a part of a labor organization representing the employee, **without written notice as provided in this Section.**

![C:\Users\kelliott\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.IE5\CHJCSROD\MC900441359[1].png]()**TIP:** These rights also apply to former employees.

(2) The written notice to the employee shall be by first-class mail to the employee's last known address and shall be mailed on or before the day the information is divulged.

**(3) This Section shall not apply if:**

 **(a) the employee has specifically waived written notice as part of a written, signed employment application with another employer;**

 (b) the disclosure is ordered to a party in a legal action or arbitration; or

 **(c) information is requested by a government agency as a result of a claim or complaint by an employee, or as a result of a criminal investigation by such agency.**

**Sec. 8.**

**An employer shall review a personnel record before releasing information to a third party and, except when the release is ordered to a party in a legal action or arbitration, delete disciplinary reports, letters of reprimand, or other records of disciplinary action which are more than 4 years old.**

Sec. 11

This Act shall not be construed to diminish a right of access to records already otherwise provided by law, **provided that disclosure of performance evaluations under the Freedom of Information Act shall be prohibited**.

Sec. 12

(a) The Director of Labor or his authorized representative shall administer and enforce the provisions of this Act. The Director of Labor may issue rules and regulations necessary to administer and enforce the provisions of this Act.

(b) If an employee alleges that he or she has been denied his or her rights under this Act, he or she may file a complaint with the Department of Labor. The Department shall investigate the complaint and shall have authority to request the issuance of a search warrant or subpoena to inspect the files of the employer, if necessary. The Department shall attempt to resolve the complaint by conference, conciliation, or persuasion. **If the complaint is not so resolved and the Department finds the employer has violated the Act, the Department may commence an action in the circuit court to enforce the provisions of this Act including an action to compel compliance.** The circuit court for the county in which the complainant resides, in which the complainant is employed, or in which the personnel record is maintained shall have jurisdiction in such actions.

(c) If an employer violates this Act, **an employee may commence an action in the circuit court to enforce the provisions of this Act, including actions to compel compliance, where efforts to resolve the employee's complaint concerning such violation by conference, conciliation or persuasion pursuant to subsection (b) have failed and the Department has not commenced an action in circuit court to redress such violation.** The circuit court for the county in which the complainant resides, in which the complainant is employed, or in which the personnel record is maintained shall have jurisdiction in such actions.

 **(d) Failure to comply with an order of the court may be punished as contempt. In addition, the court shall award an employee prevailing in an action pursuant to this Act the following damages:**

 **(1) Actual damages plus costs.**

 **(2) For a willful and knowing violation of this Act, $200 plus costs, reasonable attorney's fees, and actual damages.**

**(e) Any employer or his agent who violates the provisions of this Act is guilty of a petty offense.**

**(f) Any employer or his agent, or the officer or agent of any private employer, who discharges or in any other manner discriminates against any employee because that employee has made a complaint to his employer, or to the Director or his authorized representative, or because that employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this Act, or because that employee has testified or is about to testify in an investigation or proceeding under this Act, is guilty of a petty offense.**

**IDENTITY PROTECTION ACT (5 ILCS 179/)**

 Sec. 10.

 (a) Beginning July 1, 2010, no person or State or local government agency may do any of the following:

 (1) Publicly post or publicly display in any manner an individual's social security number.

 (2) Print an individual's social security number on any card required for the individual to access products or services provided by the person or entity.

 (3) Require an individual to transmit his or her social security number over the Internet, unless the connection is secure or the social security number is encrypted.

 (4) Print an individual's social security number on any materials that are mailed to the individual, through the U.S. Postal Service, any private mail service, electronic mail, or any similar method of delivery, unless State or federal law requires the social security number to be on the document to be mailed. Notwithstanding any provision in this Section to the contrary, social security numbers may be included in applications and forms sent by mail, including, but not limited to, any material mailed in connection with the administration of the Unemployment Insurance Act, any material mailed in connection with any tax administered by the Department of Revenue, and documents sent as part of an application or enrollment process or to establish, amend, or terminate an account, contract, or policy or to confirm the accuracy of the social security number. A social security number that may permissibly be mailed under this Section may not be printed, in whole or in part, on a postcard or other mailer that does not require an envelope or be visible on an envelope without the envelope having been opened.

 (b) Except as otherwise provided in this Act, beginning July 1, 2010, no person or State or local government agency may do any of the following:

 (1) Collect, use, or disclose a social security number from an individual, unless (i) required to do so under State or federal law, rules, or regulations, or the collection, use, or disclosure of the social security number is otherwise necessary for the performance of that agency's duties and responsibilities; (ii) the need and purpose for the social security number is documented before collection of the social security number; and (iii) the social security number collected is relevant to the documented need and purpose.

 (2) Require an individual to use his or her social security number to access an Internet website.

 (3) Use the social security number for any purpose other than the purpose for which it was collected.

 (c) The prohibitions in subsection (b) do not apply in the following circumstances:

 (1) The disclosure of social security numbers to agents, employees, contractors, or subcontractors of a governmental entity or disclosure by a governmental entity to another governmental entity or its agents, employees, contractors, or subcontractors if disclosure is necessary in order for the entity to perform its duties and responsibilities; and, if disclosing to a contractor or subcontractor, prior to such disclosure, the governmental entity must first receive from the contractor or subcontractor a copy of the contractor's or subcontractor's policy that sets forth how the requirements imposed under this Act on a governmental entity to protect an individual's social security number will be achieved.

 (2) The disclosure of social security numbers pursuant to a court order, warrant, or subpoena.

 (3) The collection, use, or disclosure of social security numbers in order to ensure the safety of: State and local government employees; persons committed to correctional facilities, local jails, and other law-enforcement facilities or retention centers; wards of the State; and all persons working in or visiting a State or local government agency facility.

 (4) The collection, use, or disclosure of social security numbers for internal verification or administrative purposes.

 (5) The disclosure of social security numbers by a State agency to any entity for the collection of delinquent child support or of any State debt or to a governmental agency to assist with an investigation or the prevention of fraud.

 (6) The collection or use of social security numbers to investigate or prevent fraud, to conduct background checks, to collect a debt, to obtain a credit report from a consumer reporting agency under the federal Fair Credit Reporting Act, to undertake any permissible purpose that is enumerated under the federal Gramm-Leach-Bliley Act, or to locate a missing person, a lost relative, or a person who is due a benefit, such as a pension benefit or an unclaimed property benefit.

 (d) If any State or local government agency has adopted standards for the collection, use, or disclosure of social security numbers that are stricter than the standards under this Act with respect to the protection of those social security numbers, then, in the event of any conflict with the provisions of this Act, the stricter standards adopted by the State or local government agency shall control.

Section 15

Public inspection and copying of documents. Notwithstanding any other provision of this Act to the contrary, a person or State or local government agency must comply with the provisions of any other State law with respect to allowing the public inspection and copying of information or documents containing all or any portion of an individual's social security number. **A person or State or local government agency must redact social security numbers from the information or documents before allowing the public inspection or copying of the information or documents.**

Section 30. Embedded social security numbers. Beginning December 31, 2009, no person or State or local government agency may encode or embed a social security number in or on a card or document, including, but not limited to, using a bar code, chip, magnetic strip, RFID technology, or other technology, in place of removing the social security number as required by this Act.

Section 35. Identity-protection policy; local government.

(a) Each local government agency must draft and approve an identity-protection policy within 12 months after the effective date of this Act. [June 1, 2011] The policy must do all of the following:

(1) Identify this Act.

(2) Require all employees of the local government agency identified as having access to social security numbers in the course of performing their duties to be trained to protect the confidentiality of social security numbers. Training should include instructions on the proper handling of information that contains social security numbers from the time of collection through the destruction of the information.

![C:\Users\kelliott\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.IE5\CHJCSROD\MC900441359[1].png]()**TIP:** Training should include securing confidential documents, i.e. do not leave info on computer screen or on a desk unattended, proper disposal of confidential documents.

(3) Direct that only employees who are required to use or handle information or documents that contain social security numbers have access to such information or documents.

(4) Require that social security numbers requested from an individual be provided in a manner that makes the social security number easily redacted if required to be released as part of a public records request.

(5) Require that, when collecting a social security number or upon request by the individual, a statement of the purpose or purposes for which the agency is collecting and using the social security number be provided.

(b) Each local government agency must file a written copy of its privacy policy with the governing board of the unit of local government within 30 days after approval of the policy. Each local government agency must advise its employees of the existence of the policy and make a copy of the policy available to each of its employees, and must also make its privacy policy available to any member of the public, upon request. If a local government agency amends its privacy policy, then that agency must file a written copy of the amended policy with the appropriate entity and must also advise its employees of the existence of the amended policy and make a copy of the amended policy available to each of its employees.

(c) Each local government agency must implement the components of its identity-protection policy that are necessary to meet the requirements of this Act within 12 months after the date the identity-protection policy is approved. This subsection (c) shall not affect the requirements of Section 10 of this Act.

Section 45. Violation. **Any person who intentionally violates the prohibitions in Section 10 of this Act is guilty of a Class B misdemeanor**.

**RIGHT TO PRIVACY IN THE WORKPLACE ACT (820 ILCS 55/)**

Sec. 12. Use of Employment Eligibility Verification Systems.

(c) It is a violation of this Act for an employer enrolled in an Employment Eligibility Verification System, including the E-Verify program and the Basic Pilot program:

(7) to fail to safeguard the information contained in the Employment Eligibility Verification System, and the means of access to the system (such as passwords and other privacy protections). **An employer shall ensure that the System is not used for any purpose other than employment verification of newly hired employees and shall ensure that the information contained in the System and the means of access to the System are not disseminated to any person other than employees who need such information and access to perform the employer's employment verification responsibilities.**

Sec. 15. Administration and enforcement.

 (c) If an employer or prospective employer violates this Act, an employee or applicant for employment may commence an action in the circuit court to enforce the provisions of this Act, including actions to compel compliance, where efforts to resolve the employee's or applicant for employment's complaint concerning the violation by conference, conciliation or persuasion under subsection (b) have failed and the Department has not commenced an action in circuit court to redress the violation. The circuit court for the county in which the complainant resides or in which the complainant is employed shall have jurisdiction in such actions.

 **(d) Failure to comply with an order of the court may be punished as contempt. In addition, the court shall award an employee or applicant for employment prevailing in an action under this Act the following damages:**

 **(1) Actual damages plus costs.**

 **(2) For a willful and knowing violation of this Act, $200 plus costs, reasonable attorney's fees, and actual damages.**

 **(3) For a willful and knowing violation of Section 12(c) or Section 12(c-2) of this Act, $500 per affected employee plus costs, reasonable attorneys’ fees, and actual damages.**

 **(e) Any employer or prospective employer or his agent who violates the provisions of this Act is guilty of a petty offense.**

 (f) Any employer or prospective employer, or the officer or agent of any employer or prospective employer, who discharges or in any other manner discriminates against any employee or applicant for employment because that employee or applicant for employment has made a complaint to his employer, or to the Director or his authorized representative, or because that employee or applicant for employment has caused to be instituted or is about to cause to be instituted any proceeding under or related to this Act, or because that employee or applicant for employment has testified or is about to testify in an investigation or proceeding under this Act, is guilty of a petty offense.

**FOIA (5 ILCS 140/)**

**Section 2.10**

Provides that certified payroll records submitted under the Prevailing Wage Act are public records, but ***requires* redaction of employees' addresses, telephone numbers and social security numbers.**

**Redactions from Settlement Agreements**

Although FOIA now explicitly provides that settlement agreements are public records provided that information exempt from disclosure under Section 7 of this Act may be redacted [5 ILCS 140/2.20], various statutes **require** redaction of certain information from settlement agreements, such as social security numbers [5 ILCS 179/ Identity Protection Act]. Also, private information such as a home address and phone number should be redacted under the private information FOIA exemption [5 ILCS 140/7(1)(b)].

**Section 2.15**

Arrest reports and criminal history records.

 **(d) The provisions of this Section do not supersede the confidentiality provisions for arrest records of the Juvenile Court Act of 1987.**

**JUVENILE COURT ACT OF 1987 (705 ILCS 405/)**

In general, the Juvenile Court Act prohibits the records and activities of juveniles from being disclosed to the general public, but there are many organizations and individuals who are given access to information about the youth. 705 ILCS 405/1-5(6), 405/1-8. Law enforcement agencies are prohibited from releasing the identity of the minor. 705 ILCS 405/1-7(E).

Sec.’s 1-7 and 1-8 - juvenile court and police records can be released to a third party only by court order.

![C:\Users\kelliott\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.IE5\CHJCSROD\MC900441359[1].png]()**TIP: A civil subpoena is not a sufficient court order. The court order must be signed by the juvenile court judge.**

Sec. 5-905. Law enforcement records.

 (1) Law Enforcement Records. Inspection and copying of law enforcement records maintained by law enforcement agencies that relate to a minor who has been arrested or taken into custody before his or her 17th birthday shall be restricted to the following and when necessary for the discharge of their official duties:

 (a) A judge of the circuit court and members of the staff of the court designated by the judge;

 (b) Law enforcement officers, probation officers or prosecutors or their staff, or, when necessary for the discharge of its official duties in connection with a particular investigation of the conduct of a law enforcement officer, an independent agency or its staff created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers;

 (c) The minor, the minor's parents or legal guardian and their attorneys, but only when the juvenile has been charged with an offense;

 (d) Adult and Juvenile Prisoner Review Boards;

 (e) Authorized military personnel;

 (f) Persons engaged in bona fide research, with the permission of the judge of juvenile court and the chief executive of the agency that prepared the particular recording: provided that publication of such research results in no disclosure of a minor's identity and protects the confidentiality of the record;

 (g) Individuals responsible for supervising or providing temporary or permanent care and custody of minors pursuant to orders of the juvenile court or directives from officials of the Department of Children and Family Services or the Department of Human Services who certify in writing that the information will not be disclosed to any other party except as provided under law or order of court;

 (h) The appropriate school official only if the agency or officer believes that there is an imminent threat of physical harm to students, school personnel, or others who are present in the school or on school grounds.

 (A) Inspection and copying shall be limited to law enforcement records transmitted to the appropriate school official or officials whom the school has determined to have a legitimate educational or safety interest by a local law enforcement agency under a reciprocal reporting system established and maintained between the school district and the local law enforcement agency under Section 10-20.14 of the School Code concerning a minor enrolled in a school within the school district who has been arrested or taken into custody for any of the following offenses:

(i) any violation of Article 24 of the Criminal Code of 1961 or the Criminal Code of 2012 (weapons offenses);

 (ii) a violation of the Illinois Controlled Substances Act;

 (iii) a violation of the Cannabis Control Act;

 (iv) a forcible felony as defined in Section 2-8 of the Criminal Code of 1961 or the Criminal Code of 2012;

 (v) a violation of the Methamphetamine Control and Community Protection Act;

 (vi) a violation of Section 1-2 of the Harassing and Obscene Communications Act (now 720 ILSC 5/26.5);

 (vii) a violation of the Hazing Act (now 720 ILCS 5/12c-50); or

(viii) a violation of Section 12-1, 12-2, 12-3, 12-3.05, 12-3.1, 12-3.2, 12-3.4, 12-3.5, 12-5, 12-7.3, 12-7.4, 12-7.5, 25-1, or 25-5 of the Criminal Code of 1961 or the Criminal Code of 2012. (assault, battery, reckless conduct, stalking, cyber-stalking, street gang offenses)

 The information derived from the law enforcement records shall be kept separate from and shall not become a part of the official school record of that child and shall not be a public record. The information shall be used solely by the appropriate school official or officials whom the school has determined to have a legitimate educational or safety interest to aid in the proper rehabilitation of the child and to protect the safety of students and employees in the school. If the designated law enforcement and school officials deem it to be in the best interest of the minor, the student may be referred to in-school or community based social services if those services are available. "Rehabilitation services" may include interventions by school support personnel, evaluation for eligibility for special education, referrals to community-based agencies such as youth services, behavioral healthcare service providers, drug and alcohol prevention or treatment programs, and other interventions as deemed appropriate for the student.

 (B) Any information provided to appropriate school officials whom the school has determined to have a legitimate educational or safety interest by local law enforcement officials about a minor who is the subject of a current police investigation that is directly related to school safety **shall consist of oral information only, and not written law enforcement records**, and shall be used solely by the appropriate school official or officials to protect the safety of students and employees in the school and aid in the proper rehabilitation of the child. The information derived orally from the local law enforcement officials shall be kept separate from and shall not become a part of the official school record of the child and shall not be a public record. This limitation on the use of information about a minor who is the subject of a current police investigation shall in no way limit the use of this information by prosecutors in pursuing criminal charges arising out of the information disclosed during a police investigation of the minor. For purposes of this paragraph, "investigation" means an official systematic inquiry by a law enforcement agency into actual or suspected criminal activity;

 (i) The president of a park district. Inspection and copying shall be limited to law enforcement records transmitted to the president of the park district by the Illinois State Police under Section 8-23 of the Park District Code or Section 16a-5 of the Chicago Park District Act concerning a person who is seeking employment with that park district and who has been adjudicated a juvenile delinquent for any of the offenses listed in subsection (c) of Section 8-23 of the Park District Code or subsection (c) of Section 16a-5 of the Chicago Park District Act.

 **(2) Information identifying victims and alleged victims of sex offenses, shall not be disclosed or open to public inspection under any circumstances.** Nothing in this Section shall prohibit the victim or alleged victim of any sex offense from voluntarily disclosing his or her identity.

 (2.5) If the minor is a victim of aggravated battery, battery, attempted first degree murder, or other non-sexual violent offense, the identity of the victim may be disclosed to appropriate school officials, for the purpose of preventing foreseeable future violence involving minors, by a local law enforcement agency pursuant to an agreement established between the school district and a local law enforcement agency subject to the approval by the presiding judge of the juvenile court.

 (3) Relevant information, reports and records shall be made available to the Department of Juvenile Justice when a juvenile offender has been placed in the custody of the Department of Juvenile Justice.

 (4) Nothing in this Section shall prohibit the inspection or disclosure to victims and witnesses of photographs contained in the records of law enforcement agencies when the inspection or disclosure is conducted in the presence of a law enforcement officer for purposes of identification or apprehension of any person in the course of any criminal investigation or prosecution.

 (5) The records of law enforcement officers, or of an independent agency created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers, concerning all minors under 17 years of age must be maintained separate from the records of adults and may not be open to public inspection or their contents disclosed to the public except by order of the court or when the institution of criminal proceedings has been permitted under Section 5-130 or 5-805 or required under Section 5-130 or 5-805 or such a person has been convicted of a crime and is the subject of pre-sentence investigation or when provided by law.

 (6) Except as otherwise provided in this subsection (6), law enforcement officers, and personnel of an independent agency created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers, may not disclose the identity of any minor in releasing information to the general public as to the arrest, investigation or disposition of any case involving a minor. Any victim or parent or legal guardian of a victim may petition the court to disclose the name and address of the minor and the minor's parents or legal guardian, or both. Upon a finding by clear and convincing evidence that the disclosure is either necessary for the victim to pursue a civil remedy against the minor or the minor's parents or legal guardian, or both, or to protect the victim's person or property from the minor, then the court may order the disclosure of the information to the victim or to the parent or legal guardian of the victim only for the purpose of the victim pursuing a civil remedy against the minor or the minor's parents or legal guardian, or both, or to protect the victim's person or property from the minor.

 (7) Nothing contained in this Section shall prohibit law enforcement agencies when acting in their official capacity from communicating with each other by letter, memorandum, teletype or intelligence alert bulletin or other means the identity or other relevant information pertaining to a person under 17 years of age. The information provided under this subsection (7) shall remain confidential and shall not be publicly disclosed, except as otherwise allowed by law.

 (8) No person shall disclose information under this Section except when acting in his or her official capacity and as provided by law or order of court.

![C:\Users\kelliott\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.IE5\CHJCSROD\MC900441359[1].png]()**TIP:** It is recommended that your personnel policy include disclosure of confidential information as a disciplinary offense.

**WORKERS' OCCUPATIONAL DISEASES ACT (820 ILCS 310/)**

    Sec. 1. This Act shall be known and may be cited as the "Workers' Occupational Diseases Act".
    (a) The term "employer" as used in this Act shall be construed to be:
        1. The State and each county, city, town, township, incorporated village, school district, body politic, or municipal corporation therein.

    Sec. 6. (a) Every employer operating under the compensation provisions of this Act, shall post printed notices in their respective places of employment in conspicuous places and in such number and at such places as may be determined by the Commission, containing such information relative to this Act as in the judgment of the Commission may be necessary to aid employees to safeguard their rights under this Act.

    In addition thereto, the employer shall post in a conspicuous place on the premises of the employment a printed or typewritten notice stating whether he is insured or whether he has qualified and is operating as a self-insured employer. In the event the employer is insured, the notice shall state the name and address of his or her insurance carrier, the number of the insurance policy, its effective date and the date of termination. In the event of the termination of the policy for any reason prior to the termination date stated, the posted notice shall promptly be corrected accordingly. In the event the employer is operating as a self-insured employer the notice shall state the name and address of the company, if any, servicing the compensation payments of the employer, and the name and address of the person in charge of making compensation payments.

    (b) Every employer subject to this Act shall maintain accurate records of work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion or transfer to another job and file with the Illinois Workers' Compensation Commission, in writing, a report of all occupational diseases arising out of and in the course of the employment and resulting in death, or disablement or illness resulting in the loss of more than 3 scheduled work days. In the case of death such report shall be made no later than 2 working days following the occupational death. In all other cases such report shall be made between the 15th and 25th of each month unless required to be made sooner by rule of the Illinois Workers' Compensation Commission. In case the occupational disease results in permanent disability, a further report shall be made as soon as it is determined that such permanent disability has resulted or will result therefrom. All reports shall state the date of the disablement, the nature of the employer's business, the name, address, the age, sex, conjugal condition of the disabled person, the specific occupation of the person, the nature and character of the occupational disease, the length of disability, and, in case of death, the length of disability before death, the wages of the employee, whether compensation has been paid to the employee, or to his legal representative or his heirs or next of kin, the amount of compensation paid, the amount paid for physicians', surgeons' and hospital bills, and by whom paid, and the amount paid for funeral or burial expenses, if known. The reports shall be made on forms and in the manner as prescribed by the Illinois Workers' Compensation Commission and shall contain such further information as the Commission shall deem necessary and require. The making of such reports releases the employer from making such reports to any other officer of the State and shall satisfy the reporting provisions as contained in the "Health And Safety Act" and "An Act in relation to safety inspections and education in industrial and commercial establishments and to repeal an Act therein named", approved July 18, 1955, as amended. The report filed with the Illinois Workers' Compensation Commission pursuant to the provisions of this Section shall be made available by the Illinois Workers' Compensation Commission to the Director of Labor or his representatives, to the Department of Public Health pursuant to the Illinois Health and Hazardous Substances Registry Act, and to all other departments of the State of Illinois which shall require such information for the proper discharge of their official duties. Failure to file with the Commission any of the reports required in this Section is a petty offense.

**Except as provided in this paragraph, all reports filed hereunder shall be confidential and any person having access to such records filed with the Illinois Workers' Compensation Commission as herein required, who shall release the names or otherwise identify any persons sustaining injuries or disabilities, or gives access to such information to any unauthorized person, shall be subject to discipline or discharge, and in addition shall be guilty of a Class B misdemeanor.** The Commission shall compile and distribute to interested persons aggregate statistics, taken from the reports filed hereunder. The aggregate statistics shall not give the names or otherwise identify persons sustaining injuries or disabilities or the employer of any injured or disabled person.

**ILLINOIS PREMISE ALERT PROGRAM (PAP) ACT (430 ILCS 132/)**

 Sec. 10. Definitions. As used in this Act:

 "Disability" means an individual's physical or mental impairment that substantially limits one or more of the major life activities; a record of such impairment; or when the individual is regarded as having such an impairment. "Disability" includes, but is not limited to, a medical impairment that requires the use of pressurized oxygen.

 "Special needs individuals" means those individuals who have or are at increased risk for a chronic physical, developmental, behavioral, or emotional condition and who also require health and related services of a type or amount beyond that required by individuals generally. "Special needs individual" includes, but is not limited to, an individual with a medical impairment that requires the use of pressurized oxygen.

 "Public safety agency" means a functional division of a public agency that provides firefighting, police, medical, or other emergency services.

 "Computer aided dispatch" or "CAD" means a database maintained by the public safety agency or public safety answering point used in conjunction with 9-1-1 caller data.

 "Premise Alert Program" or "PAP" means a computer aided dispatch database of individuals with special needs maintained by public safety agencies.

 **Sec. 25. Confidentiality. The information gathered as part of PAP shall remain strictly confidential. The information shall be used only to provide assistance to emergency medical and police responders. No public safety worker shall knowingly violate this confidentiality clause. Citizens who believe their health privacy rights have been violated may file a complaint with the U.S. Department of Health and Human Services (DHHS) via the Office of Civil Rights (OCR).**

* **TIP: Violation of the confidentiality provisions of this statute constitutes a HIPAA violation, which carries a civil penalty of up to $50,000.**

**EMERGENCY TELEPHONE SYSTEM ACT (50 ILCS 750/)**

 Sec. 10.1. Confidentiality.

 **(a) 9-1-1 information consisting of names, addresses and telephone numbers of telephone customers whose listings are not published in directories or listed in Directory Assistance Offices is confidential.** Except as provided in subsection (b), information shall be provided on a call-by-call basis only for the purpose of responding to emergency calls. For the purposes of this subsection (a), "emergency" means a situation in which property or human life is in jeopardy and the prompt notification of the public safety agency is essential.

 (b) 9-1-1 information, including information described in subsection (a), may be used by a public safety agency for the purpose of placing out-going emergency calls.

 (c) Nothing in this Section prohibits a municipality with a population of more than 500,000 from using 9-1-1 information, including information described in subsection (a), for the purpose of responding to calls made to a non-emergency telephone system that is under the supervision and control of a public safety agency and that shares all or some facilities with an emergency telephone system.

 **(d) Any public safety agency that uses 9-1-1 information for the purposes of subsection (b) must establish methods and procedures that ensure the confidentiality of information as required by subsection (a).**

 **(e) Divulging confidential information in violation of this Section is a Class A misdemeanor.**

**GENETIC INFORMATION PRIVACY ACT (410 ILCS 513/)**

 Sec. 10. Definitions. As used in this Act:

 "Employer" means the State of Illinois, any unit of local government, and any board, commission, department, institution, or school district, any party to a public contract, any joint apprenticeship or training committee within the State, and every other person employing employees within the State.

\*\*\*

 "Genetic testing" and "genetic test" mean a test or analysis of human genes, gene products, DNA, RNA, chromosomes, proteins, or metabolites that detect genotypes, mutations, chromosomal changes, abnormalities, or deficiencies, including carrier status, that (i) are linked to physical or mental disorders or impairments, (ii) indicate a susceptibility to illness, disease, impairment, or other disorders, whether physical or mental, or (iii) demonstrate genetic or chromosomal damage due to environmental factors. Genetic testing and genetic tests do not include routine physical measurements; chemical, blood and urine analyses that are widely accepted and in use in clinical practice; tests for use of drugs; tests for the presence of the human immunodeficiency virus; analyses of proteins or metabolites that do not detect genotypes, mutations, chromosomal changes, abnormalities, or deficiencies; or analyses of proteins or metabolites that are directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

 "Insurer" means (i) an entity that transacts an insurance business and (ii) a managed care plan.

 Sec. 15. Confidentiality of genetic information.

 (a) **Except as otherwise provided in this Act, genetic testing and information derived from genetic testing is confidential and privileged and may be released only to the individual tested and to persons specifically authorized, in writing in accordance with Section 30, by that individual to receive the information.** Except as otherwise provided in subsection (b) and in Section 30, this information shall not be admissible as evidence, nor discoverable in any action of any kind in any court, or before any tribunal, board, agency, or person pursuant to Part 21 of Article VIII of the Code of Civil Procedure. No liability shall attach to any hospital, physician, or other health care provider for compliance with the provisions of this Act including a specific written release by the individual in accordance with this Act.

 (b) When a biological sample is legally obtained by a peace officer for use in a criminal investigation or prosecution, information derived from genetic testing of that sample may be disclosed for identification purposes to appropriate law enforcement authorities conducting the investigation or prosecution and may be used in accordance with Section 5-4-3 of the Unified Code of Corrections. The information may be used for identification purposes during the course of the investigation or prosecution with respect to the individual tested without the consent of the individual and shall be admissible as evidence in court.

 The information shall be confidential and may be disclosed only for purposes of criminal investigation or prosecution.

**![C:\Users\kelliott\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.IE5\CHJCSROD\MC900441359[1].png]()TIP:** Any references to genetic testing of a suspect should be redacted from police reports.

Genetic testing and genetic information derived thereof shall be admissible as evidence and discoverable, subject to a protective order, in any actions alleging a violation of this Act, seeking to enforce Section 30 of this Act through the Illinois Insurance Code, alleging discriminatory genetic testing or use of genetic information under the Illinois Human Rights Act or the Illinois Civil Rights Act of 2003, or requesting a workers' compensation claim under the Workers' Compensation Act.

 (c) If the subject of the information requested by law enforcement is found innocent of the offense or otherwise not criminally penalized, then the court records shall be expunged by the court within 30 days after the final legal proceeding. The court shall notify the subject of the information of the expungement of the records in writing.

 (d) Results of genetic testing that indicate that the individual tested is at the time of the test afflicted with a disease, whether or not currently symptomatic, are not subject to the confidentiality requirements of this Act.

 Sec. 30. Disclosure of person tested and test results.

 (a) No person may disclose or be compelled to disclose the identity of any person upon whom a genetic test is performed or the results of a genetic test in a manner that permits identification of the subject of the test, except to the following persons:

 (7) **All information and records held by a State agency or local health authority pertaining to genetic information shall be strictly confidential and exempt from copying and inspection under the Freedom of Information Act. The information and records shall not be released or made public by the State agency or local health authority and shall not be admissible as evidence nor discoverable in any action of any kind in any court or before any tribunal, board, agency, or person and** shall be treated in the same manner as the information and those records subject to the provisions of Part 21 of Article VIII of the Code of Civil Procedure except under the following circumstances: \*\*\*

 Sec. 35. Disclosure by person to whom results have been disclosed. No person to whom the results of a test have been disclosed may disclose the test results to another person except as authorized by Section 30.

 **Sec. 40. Right of action.**

 **(a) Any person aggrieved by a violation of this Act shall have a right of action in a State circuit court or as a supplemental claim in a federal district court against an offending party. A prevailing party may recover for each violation:**

 **(1) Against any party who negligently violates a provision of this Act, liquidated damages of $2,500 or actual damages, whichever is greater.**

 **(2) Against any party who intentionally or recklessly violates a provision of this Act, liquidated damages of $15,000 or actual damages, whichever is greater.**

 **(3) Reasonable attorney's fees and costs, including expert witness fees and other litigation expenses.**

 **(4) Such other relief, including an injunction, as the State or federal court may deem appropriate.**

 (b) Article XL of the Illinois Insurance Code shall provide the exclusive remedy for violations of Section 30 by insurers.

 (c) Notwithstanding any provisions of the law to the contrary, any person alleging a violation of subsection (a) of Section 15, subsection (b) of Section 25, Section 30, or Section 35 of this Act shall have a right of action in a State circuit court or as a supplemental claim in a federal district court to seek a preliminary injunction preventing the release or disclosure of genetic testing or genetic information pending the final resolution of any action under this Act.

 **Sec. 45. Damages or other relief. Nothing in this Act limits the right of the subject of a test to recover damages or other relief under any other applicable law.**

 **Sec. 50. Home rule. Any home rule unit of local government, any non-home rule municipality, or any non-home rule county within the unincorporated territory of the county may enact ordinances, standards, rules, or regulations that protect genetic information and genetic testing in a manner or to an extent equal to or greater than the protection provided in this Act. This Section is a limitation on the concurrent exercise of home rule power under subsection (i) of Section 6 of Article VII of the Illinois Constitution.**

**PUBLIC ACCESS COUNSELOR BINDING OPINIONS RELATING TO CONFIDENTIALITY**

**PUBLIC ACCESS OPINION 10-003** (Request for Review 2010 PAC 8890, 9217) (October 22, 2010)

FREEDOM OF INFORMATION ACT: Autopsy Reports – The opinion stated that all information from an autopsy report except post-mortem photographs must be disclosed. This case involved public figures who died during investigation into their activities. The families asserted that disclosure of the information was personal information. The test used by the PAC to determine if the exemption was warranted is whether release of the information was highly objectionable to a reasonable person, balanced against the public’s interest.

**PUBLIC ACCESS OPINION 10-004** (Request for Review 2010 PAC 10658) (December 29, 2010)

FREEDOM OF INFORMATION ACT: Settlement Agreements – The opinion stated that a settlement agreement obtained by and in the custody of the public body’s insurance company (IRMA) was a public record of the public body and must be disclosed, subject to redactions of material exempt under FOIA.

**PUBLIC ACCESS OPINION 11-001** (Request for Review 2010 PAC 10242) (February 18, 2011)

FREEDOM OF INFORMATION ACT: Section 2.15 of FOIA Requires Disclosure of Arrest Reports, which may be redacted as permitted by FOIA.

**PUBLIC ACCESS OPINION 11-002** (Request for Review 2010 PAC 11568) (February 25, 2011)

FREEDOM OF INFORMATION ACT: FOIA request for the current sum of the number of sworn officers assigned to each police district was denied under Sec. 7(1)(v) of FOIA, in that it could undermine the effectiveness of the City’s security measures of the safety of the personnel who implemented them, and would be a clear and present danger to the health and safety of the community. The Attorney General found that the public body had failed to demonstrate how the disclosure of the information requested could reasonably be expected to jeopardize the effectiveness of any security measures or the safety of personnel who implemented them, and the information must be disclosed.

**PUBLIC ACCESS OPINION 11-004** (Request for Review 2011 PAC 12406) (April 15, 2011)

FREEDOM OF INFORMATION ACT: Under Section 2.20 of FOIA, settlement agreements entered into by an intergovernmental risk management association or self-insurance pool on behalf of a public body are subject to disclosure. Section 7(1)(s)(risk management information) does not exempt from disclosure the amount of funds expended to settle a claim.

**PUBLIC ACCESS OPINION 11-005** (Request for Review 2011 PAC 11946) (April 18, 2011)

FREEDOM OF INFORMATION ACT: Section 7(1)(s) Exemption—Nerve Conduction Velocity Test results obtained with respect to workers’ compensation claims are not exempt from disclosure.

**PUBLIC ACCESS OPINION 11-006** (Request for Review 2011 PAC 15916) (November 15, 2011) FREEDOM OF INFORMATION ACT: Electronic records relating to the transaction of public business are “public records” subject to disclosure under section 2(c) of FOIA, notwithstanding that they are generated on public officials’ private equipment and/or maintained on personal electronic accounts. This opinion was appealed. The appellate court opinion is City of Champaign v. Madigan, 2013 IL App (4th) 120662. The court held that communications of city council members during a council meeting were public records, even if on the member’s personal electronic device.

**PUBLIC ACCESS OPINION 13-011** (Request for Review 2013 PAC 23559) (June 11, 2013)

FREEDOM OF INFORMATION ACT: The PAC stated that Section 7(1)(n) of FOIA does not exempt from disclosure all records relating to the discipline of employee, only those records relating to the public body’s adjudication of a disciplinary case or an employee grievance. Records related to an internal police investigation were not exempt under section 7(1)(n) of FOIA because no adjudicatory process was commenced. The officer was given a suspension by the chief with no hearing.

**TIP:** **Although it is not discussed in PAC Opinion 13-011, Section 7(1) of the PERSONNEL RECORD REVIEW ACT requires that the local government not divulge a disciplinary report, letter of reprimand, or other disciplinary action to a third party, to a party who is not a part of the employer's organization, or to a party who is not a part of a labor organization representing the employee, without written notice to the employee as provided in Section 7(2).**

 **Sec. 8 of the PERSONNEL RECORD REVIEW ACT requires an employer review a personnel record before releasing information to a third party and, except when the release is ordered to a party in a legal action or arbitration, delete disciplinary reports, letters of reprimand, or other records of disciplinary action which are more than 4 years old. If a record is more than 4 years old, the correct exemption to cite is Section 7(1)(a) of FOIA, exempt because its disclosure is prohibited by another statute, 820 ILCS 40/8.**

**PUBLIC ACCESS OPINION 13-015** (Request for Review 2013 PAC 24905) (September 24, 2013)

Statistical Data is Not Exempt from Disclosure under Section 7(1)(f) of FOIA. The Chicago Tribune made a request to the Illinois State Police for monthly submission of Uniform Crime Report statistics submitted by the City of Harvey from 2012 to date (June 11, 2013). ISP denied the request pursuant to Sec. 7(1)(f), stating the data is considered preliminary and will be verified before the ISP publishes its final report. THE PAC stated that this exemption does not apply to ‘purely factual material’ that is not ‘inextricably intertwined’ with predecisional discussions pursuant to Watkins v. McCarthy, 2012 IL App (1st) 100632. The PAC stated that ISP had not indicated that revising the data involves a deliberative process.

**PUBLIC ACCESS OPINION 14-004** (Request for Review 2014 PAC 27773) (May 9, 2014)

FREEDOM OF INFORMATION ACT: The Belleville News-Democrat requested from St. Clair County all settlement agreements involving St. Clair County from Jan. 1, 2013 to present (Dec. 20, 2013). The County provided some redacted documents, but did not provide any settlement documents coved by a confidentiality agreement, citing the Sec. 7(1)(c) personal information exemption. The county further asserted to the PAC that the agreements with confidentiality provisions were sexual harassment claims, and that disclosure of the victim’s names would further embarrass and humiliate the victims. The PAC cited the legislative history of Public Act 69-542 and case law in stating that confidentiality provisions in settlement agreements involving public bodies are “inconsistent with the requirements of section 2.20 of FOIA and contravene public policy as set forth in FOIA, [therefore] they are unenforceable as written.” The PAC further stated that the County did not identify a personal privacy interest in the disclosure of the names of sexual harassment victims that would outweigh the public’s interest concerning the use of public funds, which includes the identity of persons receiving public funds.

**PUBLIC ACCESS OPINION 14-008** (Request for Review 2014 PAC 29297) (August 19, 2014)

FREEDOM OF INFORMATION ACT: The Will County Sheriff’s Office denied a FOIA request for photographs of a former Auxiliary Deputy Sheriff, stating the photos were exempt from disclosure as private information containing biometric identifiers. The PAC noted that since the term ‘biometric identifier’ is not defined in FOIA, it would look to the commonly understood meaning of the term – the measurement and analysis of a unique physical or behavioral characteristic that identifies a person. The PAC stated that the photos in question were general in nature and did not focus upon any unique physical attribute or particular characteristic associated with that person, and were not biometric identifiers. The PAC also cited that photos were expressly excluded from the definition of biometric identifiers in the Biometric Information Privacy Act (740 ILCS 14/).

**PUBLIC ACCESS OPINION 14-015** (Request for Review 2014 PAC 30785) (November 25, 2014)

FREEDOM OF INFORMATION ACT: The Village of Winnetka received a FOIA request for the résumé and job application of a village employee. The village denied the request as personal information and as being prohibited from disclosure by the Personnel Record Review Act. In responding to the PAC the village asserted the information was exempt per se as personnel file documents, citing case law interpreting a prior version of the personal information exemption. The PAC stated that personnel records are no longer exempt per se, but subject to a balancing test of the employee’s privacy vs. the public interest. The PAC stated that the public interest in the employee’s qualifications outweighs the employee’s privacy rights.

**PUBLIC ACCESS OPINION 14-016** (Request for Review 2014 PAC 30882) (December 2, 2014)

FREEDOM OF INFORMATION ACT: A FOIA request was filed for the terms of lease agreements for rental spaces at trade shows at McCormick Place. The public body denied the request as exempt from disclosure under Sec. 7(1)(g) as confidential and proprietary to the show management customers who negotiate space agreements with other venues as well as McCormick Place. The public body argued to the PAC that the financial terms of convention center leases undermines the show organizer’s ability to negotiate pricing. The PAC stated that the lease terms did not include information obtained from a person or business as provided in Sec. 7(1)(g). The public body also contended that its pricing formula was exempt under Sec. 7(1)(i) as valuable formulae. The PAC stated that this information was not valuable formulae, as it was not technical in nature, and that the information was expressly subject to disclosure under Sec. 2.5 as related to the receipt of public funds.

**PUBLIC ACCESS OPINION 15-002** (Request for Review – 2014 PAC 31746) (January 23, 2015)

FREEDOM OF INFORMATION ACT: A FOIA request was filed with the Village of Rosemont for all documents related to Garth Brooks’ appearance at the Allstate Arena. The Village provided documents but redacted certain financial information as exempt under Sec. 7(1)(f) as preliminary information and under Sec. 7(1)(g), stating release of the financial information would harm the village’s competitive position. While the PAC was reviewing this matter the Village passed an ordinance that provided that the financial information being sought is exempt from disclosure, asserting its home rule authority. The PAC, citing *City of Chicago v. StubHub*, Inc., 2011 IL 111127 (2012), found that FOIA is an area in which the state has a vital interest and traditionally exclusive role, and therefore the ordinance was not a valid exercise of the village’s home rule power. The PAC found that home rule ordinance does not supersede FOIA and that negotiated terms of contracts with public bodies do not constitute trade secrets.

**PUBLIC ACCESS OPINION 15-006** (Request for Review 2015 PAC 35427) (August 31, 2015)

FREEDOM OF INFORMATION ACT: A hospital district could not redact the salary from physicians’ employment agreements. The District asserted that the physicians did not perform public duties, but provided medical care. The PAC found that the salaries if employees of a public body are subject to disclosure, rejecting the District’s argument.

**PUBLIC ACCESS OPINION 15-011** (Request for Review 2015 PAC 36548) (November 9, 2015)

FREEDOM OF INFORMATION ACT: IDOT received a request for certified payroll records of contractors. IDOT sent the requestor a response stating the request was unduly burdensome, but did not send it within the 5 business days required by FOIA. The PAC held that IDOT’s failure to timely respond to FOIA request precludes denial as unduly burdensome. The PAC also noted that disclosure of redacted certified payroll records is required by FOIA, and even though redacting the documents may place a burden on the unit of government, the legislature stated an intent for the records to be disclosed.

**FREEDOM OF INFORMATION ACT (5 ILCS 140/) SUMMARY**

(As of January 1, 2016. This summary is not all-inclusive, but highlights significant provisions)

**Sec. 1. General Statements of Intent**

 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.

 The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. **It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act.**

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

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

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

 **The General Assembly recognizes that this Act imposes fiscal obligations on public bodies to provide adequate staff and equipment to comply with its requirements. The General Assembly declares that providing records in compliance with the requirements of this Act is a primary duty of public bodies to the people of this State, and this Act should be construed to this end, fiscal obligations notwithstanding.**

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

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

![MC900441359[1]]()**TIP:** This statement of intent indicates that FOIA does NOT preempt confidentiality statutes, even if they were enacted before FOIA.

**Sec. 1.2. Presumption.**

All records are presumed to be open to inspection and copying and any exemption used to deny a request must be proven by clear and convincing evidence.

**Sec. 2. Definitions**

(a) "Public body" means all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees thereof.

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

(c) "Public records" means 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 pertaining to the transaction of public business, regardless of physical form or characteristics, 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.

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

**TIP: What are “biometric identifiers”?**

Biometric verification is any means by which a person can be uniquely identified by evaluating one or more distinguishing biological traits. Unique identifiers include fingerprints, hand geometry, earlobe geometry, retina and iris patterns, voice waves, DNA, and signatures.

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

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

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

**Section 2.5. Records of funds.**

Records relating to the obligation, receipt, and use of public funds are public records subject to copying and inspection.

**Section 2.10. Payrolls.**

Provides that certified payroll records submitted by public works contractors under the Prevailing Wage Act are public records, but **requires** redaction of employees' addresses, telephone numbers and social security numbers.

**Section 2.15. Arrest reports and criminal history records.**

(a) Requires the disclosure of arrest reports within 72 hours, including the following information:

(i) information that identifies the individual, including the name, age, address, and photograph, when and if available;

(ii) information detailing any charges relating to the arrest;

(iii) the time and location of the arrest;

(iv) the name of the investigating or arresting law enforcement agency;

(v) if the individual is incarcerated, the amount of any bail or bond; and

(vi) if the individual is incarcerated, the time and date that the individual was received into, discharged from, or transferred from the arresting agency's custody.

(c) Information described in items (iii) through (vi) of subsection (a) may be withheld if it is determined that disclosure would: (i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement agency; (ii) endanger the life or physical safety of law enforcement or correctional personnel or any other person; or (iii) compromise the security of any correctional facility.

(d) The provisions of this Section do not supersede the confidentiality provisions for arrest records of the Juvenile Court Act of 1987.

**Section 2.20. Settlement agreements.**

Provides that settlement agreements are public records that are subject to disclosure, provided that information exempt from disclosure under Section 7 of this Act may be redacted.

![C:\Users\kelliott\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.IE5\CHJCSROD\MC900441359[1].png]()**TIP:** Although FOIA now explicitly provides that settlement agreements are public records provided that information exempt from disclosure under Section 7 of this Act may be redacted [5 ILCS 140/2.20], various statutes **REQUIRE REDACTION** of certain information from settlement agreements, such as social security numbers [5 ILCS 179/ Identity Protection Act]. Also, private information such as a home address and phone number should be redacted under the private information FOIA exemption [5 ILCS 140/7(1)(b)].

**Sec. 3 - Production of Public Records**

(c) Requires requests for inspection or copies to be made in writing and be directed to the public body. A public body may not require that a request be submitted on a standard form or require the requester to specify the purpose for a request, except to determine whether the records are requested for a commercial purpose or whether to grant a request for a fee waiver. A public body may respond to an oral request. The request must be immediately forwarded to the FOIA officer or designee.

(d) The time for responding to a request is five business days.

(e) The public body may, for one or more of the following specific reasons, extend the five-day period by five additional business days:

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

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

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

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

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

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

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

The requester and public body may mutually agree to further extend the time period for response.

(f) If a public body fails to respond to a FOIA request within the time permitted, then the public body may not charge copying fees or treat the request as unduly burdensome.

(g) Repeated requests from the same person are deemed to be unduly burdensome if the "the same records that are unchanged or identical to records previously provided" are being requested.

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

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

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

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

**Sec. 3.1. Requests for commercial purposes.**

(a) Within 21 working days after receiving a commercial request, the public body must do one of four things:

(i) provide the documents;

(ii) deny the request due to exemptions;

(iii) treat the request as unduly burdensome under subsection (g) of Section 3 [formerly subsection (f)]; or

(iv) provide an estimate of the time required to provide the records requested and an estimate of the fees to be charged which can be required to be paid before copying. The public body may require that the fees be paid up front before copying.

(b) A public body must comply with a request within a reasonable period considering the size and complexity of the request, and giving priority to records requested for non-commercial purposes.

(c) It is a violation of the Freedom of Information Act for a person to knowingly obtain a public record for a commercial purpose without disclosing that it is for a commercial purpose if asked to do so by the public body.

**Sec. 3.2 – Response to Recurrent Requesters**

(a) A public body MUST respond to a request from a recurrent requester, as defined in subsection (g) of Section 2, within 21 business days after receipt. The response shall:

(i) provide to the requester an estimate of the time required by the public body to provide the records requested and an estimate of the fees to be charged, which the public body may require the person to pay in full before copying the requested documents,

(ii) deny the request pursuant to one or more of the exemptions set out in this Act,

(iii) notify the requester that the request is unduly burdensome and extend an opportunity to the requester to attempt to reduce the request to manageable proportions, **or**

(iv) provide the records requested.

(b) Within 5 business days after receiving a request from a recurrent requester, as defined in subsection (g) of Section 2, the public body shall notify the requester:

(i) that the public body is treating the request as a request under subsection (g) of Section 2,

(ii) of the reasons why the public body is treating the request as a request under subsection (g) of Section 2, **and**

(iii) that the public body will send an initial response within 21 business days after receipt in accordance with subsection (a) of this Section. The public body shall also notify the requester of the proposed responses that can be asserted pursuant to subsection (a) of this Section.

(c) Unless the records are exempt from disclosure, a public body shall comply with a request within a reasonable period considering the size and complexity of the request.

**Sec. 3.3 No Requirement to Interpret Public Documents**

Provides that the Act is not intended to compel public bodies to interpret or advise requesters as to the meaning or significance of the public records.

**Sec. 3.5. Freedom of Information Officers.**

* + Receiving FOIA requests
	+ Ensuring timely responses to FOIA requests
	+ Issuing responses
	+ Developing a list of documents or categories of records that the public body shall "immediately disclose upon request"

 FOIA officers' duties upon receiving requests are:

* + Note the date the public body receives the written request
	+ Compute the day on which the period for response will expire and make a notation of that date on the written request
	+ Maintain an electronic or paper copy of a written request, including all documents submitted with the request until the request has been complied with or denied
	+ Create a file for the retention of the original request, a copy of the response, a record of written communications with the requester, and a copy of other communications.

(b) Within six months after January 1, 2010 all FOIA officers must successfully complete an electronic training curriculum provided by the Public Access Counselor, and they must **annually** complete the curriculum thereafter. New FOIA officers must complete the curriculum within 30 days after assuming the position.

**Sec. 4 – Disclosure of Description of the Public Body**

Each public body shall prominently display at each of its administrative or regional offices, make available for inspection and copying, and send through the mail if requested, each of the following:

 (a) A brief description of itself, which will include, but not be limited to, a short summary of its purpose, a block diagram giving its functional subdivisions, the total amount of its operating budget, the number and location of all of its separate offices, the approximate number of full and part-time employees, and the identification and membership of any board, commission, committee, or council which operates in an advisory capacity relative to the operation of the public body, or which exercises control over its policies or procedures, or to which the public body is required to report and be answerable for its operations; **and**

 (b) A brief description of the methods whereby the public may request information and public records, a directory designating the Freedom of Information officer or officers, the address where requests for public records should be directed, and any fees allowable under Section 6 of this Act.

If the public body maintains a website, it must post all of the information required by Sec. 4 on that site.

**Sec. 5.**

As to public records prepared or received after the effective date of this Act, each public body shall maintain and make available for inspection and copying a reasonably current list of all types or categories of records under its control. The list shall be reasonably detailed in order to aid persons in obtaining access to public records pursuant to this Act. Each public body shall furnish upon request a description of the manner in which public records stored by means of electronic data processing may be obtained in a form comprehensible to persons lacking knowledge of computer language or printout format.

**Sec. 6. Authority to charge fees.**

(a) If a person requests a copy of a record that is maintained in an electronic format, the public body must furnish it in the electronic format specified by the requester, if feasible. If it is not feasible to furnish the public records in the specified electronic format, then the public body shall furnish it in the format in which it is maintained by the public body, or in paper format at the option of the requester. Unless otherwise provided, statutory fees that apply to copies of public records when furnished in a paper format do not apply to those records when they are furnished in an electronic format.

(b) The public body may not charge fees for the first 50 pages of black and white, letter or legal sized copies, and the fee for black and white, letter or legal sized copies may not exceed 15 cents per page. The fee for color or irregular sized copies may not exceed the actual cost for reproducing the records. The fee for certification may not exceed $1.

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

(f) A public body may charge up to $10 for each hour spent by personnel in searching for and retrieving a requested record. No fees shall be charged for the first 8 hours spent by personnel in searching for or retrieving a requested record. A public body may charge the actual cost of retrieving and transporting public records from an off‑site storage facility when the public records are maintained by a third‑party storage company under contract with the public body. If a public body imposes a fee pursuant to this subsection (f), it must provide the requester with an accounting of all fees, costs, and personnel hours in connection with the request for public records. The provisions of this subsection (f) apply only to commercial requests.

**Sec. 7. Exemptions.**

(1)(a) Information prohibited from disclosure by another statute.

(b) Private information, as defined in Sec. 2 of FOIA [unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person], is exempt unless its disclosure is required by another provision of FOIA, a different State or federal law, or a court order.

![C:\Users\kelliott\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.IE5\CHJCSROD\MC900441359[1].png]()**TIP: Exception: Candidate petitions**, including the home addresses of the candidate and the petition signers, must be provided by the local election official pursuant to the Election Code.

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

(c) The exemption for unwarranted invasion of personal privacy is defined as 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.

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

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

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

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

 (iv) unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies; except that the identities of witnesses to traffic accidents, traffic accident reports, and rescue reports shall be provided by agencies of local government, except when disclosure would interfere with an active criminal investigation conducted by the agency that is the recipient of the request;

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

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

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

(f) Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body.

 (g) Trade secrets and other proprietary information is exempt only if it is furnished under a claim that it is proprietary, privileged or confidential, and that disclosure would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested.

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

(k) Architects' plans, engineers' technical submissions, and other construction related technical documents for projects not constructed or developed in whole or in part with public funds and the same for projects constructed or developed with public funds, and all government owned, operated, or occupied buildings, but only to the extent that disclosure would compromise security.

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

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

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

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

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

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

(r) The records, documents, and information relating to real estate purchase negotiations until those negotiations have been completed or otherwise terminated.

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

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

 (ee) The names, addresses, or other personal information of persons who are minors and are also participants and registrants in programs of park districts, forest preserve districts, conservation districts, recreation agencies, and special recreation associations.

(ff) The names, addresses, or other personal information of participants and registrants in programs of park districts, forest preserve districts, conservation districts, recreation agencies, and special recreation associations where such programs are targeted primarily to minors.

Former (w) was deleted- There is no longer an exemption for information related solely to the internal personnel rules and practices of a public body.

(1.5) Any information exempt from disclosure under the Judicial Privacy Act shall be redacted from public records prior to disclosure under this Act.

**(2) A public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body, and that directly relates to the governmental function and is not otherwise exempt, is considered a public record of the public body.**

**![MC900441359[1]]()TIP:** Include in all product and services contracts a requirement that the contractor timely provide the local government with any information requested under FOIA.

**Sec. 7.5. Statutory Exemptions.**

Contains exemptions that are granted by other statutes, but is **NOT** a comprehensive list.

 (q) Information prohibited from being disclosed by the Personnel Records Review Act.

 (v) Names and information of people who have applied for or received Firearm Owner's Identification Cards under the Firearm Owners Identification Card Act.

(x) Information which is exempted from disclosure under Section 5-1014.3 of the Counties Code or Section 8-11-21 of the Illinois Municipal Code.

(y) Confidential information under the Adult Protective Services Act and its predecessor enabling statute, the Elder Abuse and Neglect Act, including information about the identity and administrative finding against any caregiver of a verified and substantiated decision of abuse, neglect, or financial exploitation of an eligible adult maintained in the Registry established under Section 7.5 of the Adult Protective Services Act.

(bb) Recordings made under the Law Enforcement Officer-Worn Body Camera Act, except to the extent authorized under that Act.

**Sec. 9 – Denial Requirements**

(a) If a FOIA request is denied, then the public body must notify the requester in writing of all of the following:

* the decision to deny the request
* the reasons for the denial, including a detailed factual basis for the application of any exemption claimed
* the names and titles or positions of each person responsible for the denial
* the right to review by the Public Access Counselor and the address and phone number for the Public Access Counselor
* the right to judicial review

(b) If an exemption is claimed, then the denial must include the specific reasons for the denial, including a detailed factual basis and a citation to supporting legal authority.

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

**Sec. 9.5. Public Access Counselor; opinions.**

(a) A person whose request to inspect or copy a public record is denied may, within 60 days, file a written request for review with the PAC.

 ***(b) The submittal of pre-denial letters to requesters and the Public Access Counselor when using the Sec. 7(1)(c) personal privacy exemption, or 7(1)(f) preliminary document or draft exemption has been ELIMINATED. Subsection (b) now reads:***

(b) A person whose request to inspect or copy a public record is made for a commercial purpose as defined in subsection (c-10) of Section 2 of this Act may not file a request for review with the Public Access Counselor. A person whose request to inspect or copy a public record was treated by the public body as a request for a commercial purpose under Section 3.1 of this Act may file a request for review with the Public Access Counselor for the limited purpose of reviewing whether the public body properly determined that the request was made for a commercial purpose.

(c) Once a request for a FOIA denial review is filed in writing to the PAC they determine if further action is warranted. If the allegation is unfounded, they notify requester and public body no further action shall be taken by the PAC. If warranted to review, then PAC forwards within 7 business days after receipt the request to the public body for specific records. The public body shall furnish copies of the requested records within 7 business days and fully cooperate. The Attorney General has subpoena powers with respect to any person or public body having knowledge of or records pertaining to the denial review. The PAC may not disclose records of the public body as part of the review process to the extent that the public body claims that those records are exempt to the extent claimed.

(d) Within the same 7 business days, the public body may answer the allegations in a letter, brief, or memorandum. The answer (may be redacted if necessary) is given to the requester and they may respond within 7 business days.

![C:\Users\kelliott\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.IE5\CHJCSROD\MC900441359[1].png]()**TIP:** **Because the public body’s appeal of the Public Access Counselor’s binding opinion is under administrative review, the public body will not be able to submit to the court any information or arguments not presented to the PAC. ATTORNEY ADVICE IS RESPONDING TO INQUIRIES FROM THE PAC IS CRUCIAL IN ENSURING A FULL AND COMPLETE RECORD FOR THE COURT TO REVIEW.**

(f) The PAC shall issue a binding opinion within 60 days after the request for review unless a request for extension of 21 business days is noticed. The binding opinion shall make findings of fact and conclusions of law and shall be issued to the requester and public body.

The binding opinion is subject to administrative review by either party.

The Attorney General has discretion to choose to resolve a request for review by mediation or other means. The decision not to issue an opinion is not reviewable.

If a violation occurred, the public body shall comply with the directive or initiate administrative review proceedings.

A public body that discloses records in accordance with an opinion of the Attorney General is immune from all liability and is not liable for penalties under FOIA.

(g) If the requester files a civil suit with respect to the same denial, then the PAC takes no further review action and notifies the public body.

(h) The Attorney General may issue advisory opinions with regard to FOIA compliance when requested in writing from the head of the public body or its attorney.

Reliance on the advisory opinion in good faith excuses liability for penalties under FOIA.

**Sec. 11. Court action for denial**

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

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

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

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

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

 (f) In any action considered by the court, the court shall consider the matter de novo, and shall conduct such in camera examination of the requested records as it finds appropriate to determine if such records or any part thereof may be withheld under any provision of this Act. The burden shall be on the public body to establish that its refusal to permit public inspection or copying is in accordance with the provisions of this Act. **Any public body that asserts that a record is exempt from disclosure has the burden of proving that it is exempt by clear and convincing evidence.**

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

1. If a person seeking the right to inspect or receive a copy of a public record prevails in a proceeding under this Section, the court **shall award such person reasonable attorneys' fees and costs.** In determining what amount of attorney's fees is reasonable, the court shall consider the degree to which the relief obtained relates to the relief sought.

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

**Sec. 11.5 Administrative Review.**

A binding opinion issued by the Attorney General shall be considered final for purpose of administrative review. An action for administrative review of a binding opinion shall be commenced in Cook or Sangamon County. An advisory opinion issued to a public body shall not be considered a final decision of the Attorney General for purposes of this Section.

![C:\Users\kelliott\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.IE5\CHJCSROD\MC900441359[1].png]() The appellate court in *The City of Champaign v. Madigan*, 2013 IL App (4th Dist.) 120662, held that attorney’s fees are not authorized in an action for administrative review of a PAC opinion. The Court stated “(w)hile section 11.5 of FOIA provides for administrative review of the Attorney General's opinion, it is a separate and distinct section from section [11(i).] Section 11.5 does not provide for attorney fees. Compare 5 ILCS 140/11.5 (West 2010), with 5 ILCS 140/11(i) (West 2010).”

526228/KE