

**The Illinois Freedom of Information Act (“FOIA”)**

To assist school districts in reviewing the new FOIA requirements (effective January 1, 2010), we have prepared the following side-by-side comparison of the requirements under the prior FOIA and the requirements under the amended FOIA.

| <b>Prior Freedom of Information Act</b>   | <b>Amended Freedom of Information Act</b>   |
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| <b>Designated Employees and Records</b>   | <b>Designated Employees and Records</b>   |
| Public bodies do not have to designate a particular FOIA officer to handle FOIA requests and responses.   | Public bodies must designate one or more employees or officials to act as their FOIA officer(s). 5 ILCS 140/3.5(a).   |
| Public employees do not need to complete any special FOIA training.   | Each designated FOIA officer must complete an initial and annual training course. 5 ILCS 140/3.5(b).  |
| Public bodies do not need to designate a particular employee to receive requests and facilitate responses, nor do they need to follow any particular protocol when processing requests. | FOIA officers must receive requests and facilitate the public body’s responses by taking the following particular actions: 1) noting the date the public body receives each written request; 2) computing the day on which the period for response will expire and noting that date on the written request; 3) maintaining an electronic or paper copy of each written request, including all documents submitted with the request until the request has been complied with or denied; and 4) creating a file for the retention of each original request, a copy of the response, a record of written communications with the requester, and a copy of other communications relating to the request. 5 ILCS 140/3.5(a). |
| Public bodies are not required to develop any lists or categories   | FOIA officers must develop a list of documents or categories of   |

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| of records to be disclosed.  | records that the public body must immediately disclose upon request. 5 ILCS 140/3.5(a)  |
| Public bodies are required to display at its administrative offices a brief description of itself (including its purpose, subdivisions, number of employees, and budget information) and the methods whereby the public may request information and public records. 5 ILCS 140/4(a)-(b). | Public bodies are required to display at its administrative offices a brief description of itself (including its purpose, subdivisions, number of employees, and budget information) and the methods whereby the public may request information and public records. Public bodies that maintain websites must also post this information on their website. 5 ILCS 140/4(a)-(c).   |
| <b>Submitting Requests</b>   | <b>Submitting Requests</b>  |
| Public bodies may require requests to be submitted using a standard form.  | Public bodies may not require a standard form for individuals to use when submitting FOIA requests. 5 ILCS 140/3(c).  |
| <b>Responding to Requests</b>  | <b>Responding to Requests</b>   |
| Public bodies must respond to a FOIA request within 7 working days of receipt of the request. 5 ILCS 140/3(d).   | Public bodies must respond to a FOIA request within 5 business days of receipt of the request. 5 ILCS 140/3(d).   |
| Public bodies may extend the time to respond to a request by 7 working days. 5 ILCS 140/3(e).  | Public bodies may extend the time to respond to a request by no more than 5 business days, unless the public body and requestor reach agreement on a longer time frame. 5 ILCS 140/3(e).  |
| Public bodies must respond to any and all types of requests within the 7-day time frame. 5 ILCS 140/3(d).  | Public bodies may respond to a request for records to be used for commercial purposes within 21 working days after receipt of the request, and may provide the records requested within a reasonable period of time thereafter. 5 ILCS 140/3.1<br>“Commercial purposes” means the use of any part of a public record or information derived from a public record in any form for sale, resale, or solicitation or advertisement for sales or services. Requests made by news media and non-profit, scientific, or academic organizations are not considered to be |

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|  | made for a “commercial purpose” when the main purpose of the request is to 1) access and disseminate information concerning news and current or passing events, 2) for articles of opinion or features of interest to the public, or 3) for the purpose of academic, scientific, or public research or education. 5 ILCS 140/2(c-10).   |
| A public body’s failure to timely respond to a FOIA request is considered a denial of the request. Public bodies do not waive their right to claim an exemption if they fail to timely respond. 5 ILCS 140/3(f). | If a public body fails to comply with a FOIA request within the required time frame, such failure is considered a denial of the request, but the body may not later treat the request as unduly burdensome. 5 ILCS 140/3(f).  |
| Public bodies may charge the requestor reasonably calculated fees for the actual costs of copying and reproduction. 5 ILCS 140/6(b).   | Public bodies may charge the requestor reasonably calculated fees for the actual costs of copying and reproduction. Public bodies may not, however, charge requesters for the first 50 pages of black and white, letter or legal sized copies, and may only charge 15 cents thereafter. If the copies are in color, the public body may not charge more than the actual cost for reproducing the records. 5 ILCS 140/6(b).  |
| <b>Records Subject to Disclosure/Exempt from Disclosure</b>  | <b>Records Subject to Disclosure/Exempt from Disclosure</b>   |
| Public records that contain information which if disclosed would constitute a clearly unwarranted invasion of personal privacy are exempt from disclosure. 5 ILCS 140/7(1)(b).                                   | Public records that contain “personal information,” the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, are exempt from disclosure. “Unwarranted invasion of personal privacy” includes 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. 5 ILCS 140/7(1)(c). |

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|  | <p>“Private information” is also exempt, unless disclosure is required by another provision of FOIA, a state or federal law, or a court order. 5 ILCS 140/7(1)(b).</p> <p>“Private information” is defined as 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 e-mail 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. 5 ILCS 140/2(c-5).</p>  |
| <p>Records exempted under the privacy exemption (<i>above</i>) include files and personal information maintained with respect to students receiving educational care, personnel files, and personal employee information. 5 ILCS 140(7)(1)(b).</p> | <p>Neither the “private information” exemption nor the “personal information” exemption explicitly includes files and personal information maintained with respect to students receiving educational care, personnel files or personal employee information. 5 ILCS 140(7)(1)(c).</p> <p>Only the following types of personnel records are explicitly exempt:</p> <ul style="list-style-type: none"> <li>Records relating to a public body’s adjudication of employee grievances or disciplinary cases, except for records relating to the final outcome of cases in which discipline is imposed. 5 ILCS 140/7(1)(n).</li> <li>Test questions, scoring keys, and other examination data used to determine the qualifications of an applicant for a license or employment. 5 ILCS 140/7(1)(q).</li> </ul> |
| <p>Public bodies need not disclose any records that are not in their possession. 5 ILCS 140/2(c).</p>  | <p>A public record not in the possession of a public body but in the possession of an independent contractor with whom the public</p>  |

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|   | body has contracted to perform a governmental function and that directly relates to the governmental function is considered a public record subject to disclosure, unless otherwise exempt under the Act. 5 ILCS 140/7(2).   |
| Drafts, notes, recommendations and memoranda pertaining to the financing and marketing transactions of the public body are exempt. 5 ILCS 140(7)(1)(q).               | There is no explicit exemption for drafts, notes, recommendations and memoranda pertaining to the financing and marketing transactions of the public body.<br><br>There is, however, a provision stating that all records relating to the obligation, receipt, and use of school districts' public funds are public records subject to inspection and copying. 5 ILCS 140/2.5. |
| The definition of public records does not expressly include payroll records.  | Certified payroll records submitted to a public body under Section 5(a)(2) of the Prevailing Wage Act are public records subject to inspection and copying in accordance with the provisions of the Act, except that contractors' employees' addresses, telephone numbers, and social security numbers must be redacted before disclosure. 5 ILCS 140/2.10.                    |
| The definition of public records does not expressly include settlement agreements.  | All settlement agreements entered into by or on behalf of a public body are public records subject to inspection and copying by the public, provided that information otherwise exempt from disclosure under the Act may be redacted. 5 ILCS 140/2.20.   |
| <b>Denying a Request</b>  | <b>Denying a Request</b>   |
| When denying a request, public bodies must state the reasons for the denial, and the specific exemption claimed to authorize the denial, if any. 5 ILCS 140/9(a)-(b). | When denying a request, public bodies must state the reasons for the denial, and must specify any exemption claimed to authorize the denial. In addition, the public body must also state the specific reasons for the denial, including a detailed factual basis and a citation to supporting legal authority. 5 ILCS 140/9(a)-(b).   |

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| <p>Public bodies may deny requests based on any exemption without first notifying any other governmental entity.</p>   | <p>Public bodies must notify the Office of the Attorney General before denying any request pursuant to FOIA’s exemptions for personal information OR for drafts and notes in which opinions are expressed. The Attorney General may review such denials. 5 ILCS 140/9.5(b).</p>   |
| <p>Each notice of a denial by a public body must inform the requestor of his or her right to appeal to the head of the public body. 5 ILCS 140/9(a).</p>   | <p>Each notice of a denial by a public body must inform the requestor of his or her right to appeal to the Public Access Counselor and his or her right to judicial review. 5 ILCS 140/9(a).</p>  |
| <p><b>Appeals</b></p>  | <p><b>Appeals</b></p>   |
| <p>Requesters may appeal a denial to the head of a public body. If the denial is affirmed, then the requester may appeal the decision to the circuit court for the county where the public body is located. 5 ILCS 140/9(a); 5 ILCS 140/11(a)-(c).</p> | <p>No internal appeal process exists for public bodies’ denials of FOIA requests. Instead, requesters may appeal directly to the Public Access Counselor in the Office of the Attorney General or to the circuit court. 5 ILCS 140/9(a); 5 ILCS 140/9.5(a), (g); 5 ILCS 140/11(a).</p>  |
| <p>The Office of the Attorney General is not involved in the FOIA request review process, nor is it entitled to review any documents relevant to a FOIA request.</p>   | <p>The Public Access Counselor in the Office of the Attorney General must review and render final decisions on complaints made to the Office by a requester. As part of the review process, the Counselor may compel a public body to provide it with the documents relevant to the disputed request. Within 7 working days after receipt of the request to review such documents, the public body must provide copies of the requested documents to the Counselor. Within that same 7 day timeframe, the public body also may, but is not required to, answer the allegations of the request for review by letter, brief, or memorandum. In such case, the Counselor shall forward a copy of the answer to the requester with any alleged confidential information redacted from the copy. The requester</p> |

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|   | <p>may, but is not required to, respond in writing within 7 working days and must provide a copy of the response to the public body. In addition to the above, a requester or public body may also furnish affidavits or records concerning any matter germane to the review.</p> <p>The Attorney General may choose to resolve a request for review by mediation or by a means other than the issuance of a binding opinion. If issuing a binding opinion, the Attorney General shall examine the issues and the records, shall make findings of fact and conclusions of law, and shall issue to the requester and the public body a binding opinion within 60 days after its receipt of the request for review. (The Counselor may extend the time for issuing the Opinion by an additional 21 business days by sending written notice to the requester and the public body explaining the reasons for the extension). The opinion can be appealed for administrative review in accordance with the Illinois Administrative Review law.<br/>5 ILCS 140/9.5(a), (c)-(f).</p> |
| <p>No other agency or governmental entity is authorized to issue opinions and/or guidance to a public body to assist it in responding to FOIA requests.</p>   | <p>Public bodies may seek non-binding opinions from the Public Access Counselor in the Office of the Attorney General and may rely on those opinions when responding to requests.<br/>5 ILCS 140/9.5(h).</p>  |
| <p>In an appeal to the circuit court, the public body has the burden of proving that its refusal to permit the public inspection or copying is in accordance with the provision of the Act.<br/>5 ILCS 140/11(f).</p> | <p>In an appeal to the circuit court, the public body has the burden of proving that its refusal to permit the public inspection or copying is in accordance with the provision of the Act. Any public body asserting that a record is exempt from disclosure must prove that it is exempt by clear and convincing evidence.<br/>5 ILCS 140/11(f); 5 ILCS 140/1.2.</p>  |
| <p>In the case of an appeal, a court may award attorney's fees and</p>  | <p>A court must award attorneys' fees and costs to the requester if</p>   |

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| costs to the requester if he or she substantially prevails.<br>5 ILCS 140/11(i). | he or she prevails. 5 ILCS 140/11(i).   |
| The court is not required to impose any fines or other awards.                   | A court must impose a \$2,500 -\$5,000 fine on any public body which the court determines willfully and intentionally failed to comply with FOIA, or otherwise acted in bad faith.<br>5 ILCS 140/11(j). |

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