



FRANCZEK RADELET

Attorneys and Counselors

300 South Wacker Drive | Suite 3400 | Chicago, IL 60606

Phone 312.986.0300 | Fax 312.986.9192 | franczek.com

THE NEW FREEDOM OF INFORMATION ACT (FOIA) REQUIREMENTS

Todd Faulkner
Brian P. Crowley
Dawn Spivey Moritz
Jacqueline F. Wernz

© Franczek Radelet 2010



THE NEW FREEDOM OF INFORMATION ACT (FOIA) REQUIREMENTS

On January 1, 2010, amendments to the Illinois Freedom of Information Act (the “new FOIA”) went into effect. The new FOIA includes significant changes from the previous version of the Illinois FOIA, and the Public Act that rewrote the law also made changes to the Illinois Open Meetings Act (the “OMA”).

I. SUMMARY OF CHANGES UNDER THE NEW FOIA

Significant changes under the new FOIA include the following, all of which are discussed in more detail below:

- Designated employee(s) or official(s) must be assigned as a school district’s “FOIA Officer” and must receive periodic training.
- The timeframe for responding to FOIA requests has been shortened to five business days, with a five business day extension permissible in certain circumstances.
- Copy charges that may be assessed under FOIA have been limited.
- The decision to deny a FOIA request based on one of two exemptions that school districts commonly use (the exemptions for “personal information” and “preliminary drafts, notes, recommendations, memoranda, and other records in which opinions are expressed or policies or actions are formulated”) is now subject to review by the Illinois Attorney General’s Office of the Public Access Counselor *before* a school district may deny a request.
- The new FOIA sets forth new procedures for appeal and review.
- Attorneys’ fees and damages provisions have been strengthened in favor of individuals making FOIA requests.

II. CHANGES TO THE FOIA BASICS

A. Display of FOIA Information on Website

The new FOIA maintains the requirement, also present in the previous version of FOIA, that a school district display at its administrative offices a brief description of its purpose, subdivisions, number of employees, and budget information, as well as the methods whereby the public may request information and public records. 5 ILCS 140/4(a)-(b). The new FOIA now also requires a school district that maintains a website to post the same information on its website. 5 ILCS 140/4(c).

B. Form of Requests

The previous version of FOIA did not prohibit school districts from requiring that requests be submitted using a standard form. Under the new FOIA, however, school districts may no longer require a standard form for individuals to use when submitting FOIA requests. The new FOIA clarifies that a request can be made in any written form, *e.g.*, delivery, mail, fax, e-mail, etc. A school district may still require that FOIA request be made in writing, although the law provides that the school district “*may* honor oral requests.” No signature is required under the law. 5 ILCS 140/3(c).

C. Interpretation of Documents

Under the previous version of FOIA, there was no indication whether a school district was required to provide a requester with interpretation or advice regarding the meaning or significance of public records that are produced. The new FOIA clarifies that the FOIA is not intended to require such interpretation from school districts. 105 ILCS 140/3.3.

III. FOIA OFFICERS

A. The new FOIA requires that a school district designate one or more employees or officials to respond to FOIA requests as its FOIA officer(s). 5 ILCS 140/3.5. Having one primary FOIA Officer who is responsible for compliance with FOIA is recommended for streamlining the process. Additional FOIA Officers, or “deputies,” however, could assist when the primary FOIA Officer is unavailable due to vacation, illness, or other work responsibilities. Any individual deemed a FOIA Officer, whether the primary officer or a deputy, must receive the same training.

B. There are a number of new requirements for FOIA officers:

1. Training

Initial training must be completed on or before July 1, 2010. FOIA Officers must also complete an annual training program. Subsequently,

persons newly designated as a FOIA Officer must complete training within 30 days after assuming the position, and must complete training annually thereafter. 5 ILCS 140/3.5(b).

2. Receipt of Requests

Although the new FOIA allows requesters of information to submit their request to any employee of a school district, the requests must then be forwarded by the receiving employee to the FOIA officer, who must facilitate the school district's response to the request. 5 ILCS 140/3.5(c).

3. Processing of Requests

FOIA officers must take the following actions upon receipt of a request:

- a. Note the date the school district receives each written request;
- b. Compute the day on which the period for response will expire and make a notation of that date on each written request;
- c. Maintain 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
- d. Create 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. 5 ILCS 140/3.5(a).

4. Designation of Records

The new FOIA requires that the FOIA officer develop a list of documents or categories of records that the school district must immediately disclose upon request. 5 ILCS 140/3.5(a). This requirement is in addition to the existing requirement that all school districts maintain a list of the types or categories of documents available upon request pursuant to FOIA. 5 ILCS 140/5.

IV. RESPONDING TO REQUESTS

A. Time for Response

The new FOIA requires a shorter time period in which school districts must respond to a FOIA request: 5 business days after receipt of the request. Under the previous version of the law, school districts had 7 working days after receipt of a request in which to respond to the request. 5

ILCS 140/3(d). A 21 business day period applies for responses to requests for documents made for commercial purposes. *See* Subsection C, below.

1. The new FOIA is silent on the issue of whether business days include days when a school district is closed for vacation. The Illinois Attorney General has opined that FOIAs submitted during such breaks are considered to have been “received” by the school district, but it is not clear that this interpretation will prevail.

B. Extensions of Time to Respond

The new FOIA similarly limits the number of days within which a school district may extend its time for response to a FOIA request. Under the new FOIA, school districts may extend the time to respond to a request by no more than 5 business days, unless the school district and requester reach agreement on a longer time frame. Thus, unless there is a written agreement with the requester, school districts are limited to a total of 10 business days to respond to most FOIA requests, assuming an extension is warranted. This is in contrast to the previous version of the FOIA, which allowed school districts to extend the time to respond to a request by 7 working days, which in turn allowed for a total of 14 working days for response time. 5 ILCS 140/3(e).

The deadline for response may be extended in the following seven circumstances, which remain unchanged under the new FOIA:

1. The requested records are stored in whole or in part at other locations than the office having charge of the requested records;
2. The request requires the collection of a substantial number of specified records;
3. The request is couched in categorical terms and requires an extensive search for the records responsive to it;
4. The requested records have not been located in the course of routine search and additional efforts are being made to locate them;
5. 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 the FOIA or should be revealed only with appropriate deletions;
6. The request for records cannot be complied with by the school district within the time limits prescribed without unduly burdening or interfering with the operations of the school district; or

7. 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 school district having a substantial interest in the determination or in the subject matter of the request. 5 ILCS 140/3(e).

C. Requests for Commercial Purposes

The new FOIA provides that school districts must 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.

“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 made for a “commercial purpose” when the main purpose of the request is:

1. To 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).

Although a school district generally may not require a requester to specify the purpose for a request, it may do so in order to determine whether the records are requested for a commercial purpose. 5 ILCS 140/3(c). It is a violation of the new FOIA for a person to knowingly obtain a public record for a commercial purpose without disclosing that it is for a commercial purpose, if requested to do so by the school district. 5 ILCS 140/3.1(c).

D. Failure to Timely Respond

Failure to timely respond to a FOIA request has always been considered a denial of the request. Under the new FOIA, if a school district fails to comply with a FOIA request within the required time frame, such failure is still considered a denial of the request. In addition, the school district may not later treat the request as unduly burdensome. The records would, therefore, have to be released, unless some other exemption applied. Further, if a school district fails to comply in a timely fashion with a FOIA request, but later complies and provides the requested copies, it may not charge the requester for those copies, no matter how many copies are made. 5 ILCS 140/3(d), (f).

V. COPYING AND CERTIFICATION FEES

- A. The previous version of FOIA allowed a school district to charge the requester reasonable fees for the actual costs of copying and reproduction. 5 ILCS 140/6. The new FOIA provides a number of new limitations on copying fees:

1. School districts may not charge for the first 50 pages of black and white, letter or legal sized copies, and may only charge 15 cents per page thereafter. If the copies are in color or on other sizes of paper, the school district may not charge more than the actual cost for reproducing the records.
 2. School districts may not include in the calculation of copying fees:
 - a. The costs of any search for and review of the records; or
 - b. “Personnel costs” associated with reproducing records in calculating fees.
 3. The cost for certifying a record may not exceed \$1.
- B. If documents are furnished in an electronic format, the school district may not charge the requester fees that would have been applicable had the copies been furnished in a paper format. Moreover, although a school district may charge for the cost of electronic materials, such as the disk, flash drive or other electronic medium, the school district may not charge for costs to search and review the material or “personnel costs” associated with reproducing the record in electronic form. 5 ILCS 140/6.
- C. Provisions regarding the reduction/waiver of fees for requests in the public interest remain the same.
- D. The new FOIA states that the imposition of a fee not consistent with its fee provisions is a denial of access to public records for purposes of judicial review. 105 ILCS 140/6.

VI. RECORDS SUBJECT TO DISCLOSURE

A. Definition of a “Public Record”

The new FOIA expands the definition of “public record” to specifically include “electronic records” and to make clear that it covers any material pertaining to the transaction of school business, prepared, used, or received for or by a school district, or in the possession or control of that school district. 5 ILCS 140/2.

A public record is specifically defined as “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.” 5 ILCS 140/2.

B. Electronic Documents

The previous version of FOIA was silent on the issue of whether a school district must honor a request that documents be produced in a specific electronic format. Districts therefore had the discretion to provide electronic versions of documents, but could also provide only hard copies of documents. Under the new FOIA, electronic documents must be provided in the electronic format specified by the requester “if feasible.” 105 ILCS 140/6(a). School districts should always use caution when producing electronic documents to guard against inadvertent release of confidential information, metadata, tracked changes and other information which may not be readily apparent in electronic form, and which may be protected from disclosure under a FOIA exemption (*e.g.*, under the preliminary draft exemption with prior approval from the Office of the Attorney General).

C. Payroll Records

The new FOIA clarifies that certified payroll records submitted to a school district under Section 5(a)(2) of the Prevailing Wage Act, which requires contractors and subcontractors participating on public works to submit monthly a certified payroll to the public body in charge of the project, are public records subject to inspection and copying in accordance with FOIA. The only exception is that contractors’ employees’ addresses, telephone numbers, and social security numbers must be redacted by the school district before disclosure. 5 ILCS 140/2.10.

D. Settlement Agreements

The new FOIA clarifies that all settlement agreements entered into by or on behalf of a school district are public records subject to inspection and copying by the public, although information otherwise exempt from disclosure under Section 7 of the FOIA may be redacted. 5 ILCS 140/2.20.

E. Independent Contractors Holding Records

The new FOIA asserts that a public record that is not in the possession of a school district but is in the possession of a party with whom the school district has contracted to perform a governmental function on behalf of the school district, which directly relates to the governmental function and is not otherwise exempt under this Act, shall be considered a public record of the school district, for purposes of disclosure under the FOIA. 105 ILCS 140/7(2).

VII. RECORDS EXEMPT FROM DISCLOSURE

The new FOIA, like the previous version of the FOIA, includes a number of exemptions and exceptions from disclosure. Under the FOIA, a school district may not completely refuse to produce a document that contains some information that is exempt from disclosure, but which also includes non-exempt information. While a school district “may elect” to redact the exempt information from the document, it must make the non-exempt information available for inspection and copying. 5 ILCS 140/7(1).

Please note that the list of exemptions and exceptions below is not comprehensive, but rather is an attempt to highlight examples of exemptions more commonly used by school districts.

A. Exemptions:

1. Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law. 105 ILCS 140/7(1)(b). Under this exemption, teacher, principal and superintendent performance evaluations are exempt from disclosure, as a result of the recent passage of the Performance Evaluation Reform Act, Public Act 096-0861, which prohibits disclosure of such evaluations.
2. Private information, unless disclosure is required by another provision of FOIA, a state or federal law, or a court order. 105 ILCS 140/7(1)(c).

“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. 105 ILCS 140/2(c-5).

3. Personal information *if* such disclosure would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. 105 ILCS 140/7(1)(d).

“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. The definition does not include information that bears on the public duties of public employees and officials. 105 ILCS 140/7(1)(d).

PRE-APPROVAL is REQUIRED before a school district may deny a request based on this exemption (see below).

4. 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 school district. 105 ILCS 140/7(1)(f).

PRE-APPROVAL is REQUIRED before a school district may deny a request based on this exemption (see below).

5. Trade secrets and commercial or financial information relating to investments, under certain situations and with certain exceptions. 105 ILCS 1040/7(1)(g).
6. 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, including information prepared by or for the body in preparation for a bid. 105 ILCS 140/7(1)(h).
7. The following information pertaining to educational matters:
 - a. Test questions, scoring keys and other examination data used to administer an academic examination, 105 ILCS 140/7(1)(j)(i);
 - b. Information received by a primary or secondary school, college, or university under its procedures for the evaluation of faculty members by their academic peers 105 ILCS 140/7(1)(j)(ii);
 - c. Information concerning a school's adjudication of student disciplinary cases, but only to the extent that disclosure would unavoidably reveal the identity of the student, 105 ILCS 140/7(1)(j)(iii); and
 - d. Course materials or research materials used by faculty members, 105 ILCS 140/7(1)(j)(iv).
8. Certain construction related technical documents to the extent that disclosure would compromise security, as defined in the FOIA. 105 ILCS 140/7(1)(k).
9. Closed meeting minutes under the Open Meetings Act. 105 ILCS 140/7(1)(l).
10. Privileged communications with attorneys/auditors, as defined in the FOIA. 105 ILCS 140/7(1)(m).
11. Records relating to a school district's adjudication of employee grievances or disciplinary cases, except for records relating to the final outcome of cases in which discipline is imposed. 105 ILCS 140/7(1)(n).

12. Records relating to collective negotiating matters between school districts and their employees or representatives, except that any final contract or agreement shall be subject to inspection and copying. 105 ILCS 140/7(1)(p).
13. Test questions, scoring keys, and other examination data used to determine the qualifications of an applicant for a license or employment. 105 ILCS 140/7(1)(q).
14. Records, documents and information relating to real estate purchase or sale negotiations until those negotiations have been completed or otherwise terminated. 105 ILCS 140/7(1)(r).

B. Statutory Exemptions:

The new FOIA reorganized the exemptions, some of which may now be found in a new section titled “Statutory Exemptions.” Note that these specific statutory exemptions are in addition to the general exemption for “Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.” 105 ILCS 140/7(1)(b). Two statutory exemptions that may be used by school districts are the exemptions for:

1. Information prohibited from being disclosed by the Personnel Records Review Act. 105 ILCS 140/7.5(q). For instance, the Personnel Records Review Act restricts disclosure of disciplinary reports, letters of reprimand, or other records of disciplinary action which are more than four years old, 820 ILCS 40/8; and
2. Information prohibited from being disclosed by the Illinois School Student Records Act. 105 ILCS 140/7.5(r).

C. “Unduly Burdensome” Requests

1. The provisions that allow a school district to deny requests as “unduly burdensome” remain generally unchanged in the new FOIA. The new FOIA places one new limitation on school districts related to the use of the “unduly burdensome” exception: if a school district fails to comply with or respond to a FOIA request within the required time frame, the school district may not later treat the request as unduly burdensome. 5 ILCS 140/3(d).
2. Repeated requests from the same person for the same records that are unchanged or identical to records previously provided or properly denied under FOIA are deemed unduly burdensome under FOIA. Additionally, a request is “unduly burdensome” if the following conditions are met:

- a. The request is categorical in nature, *i.e.*, it calls for all records falling within a particular category; and
 - b. The request is incapable of being narrowed or reduced; and
 - c. The burden on the school district to produce the information outweighs the public interest in the information. 5 ILCS 140/3(g).
3. Before denying a request as unduly burdensome for the above reasons, the school district must give the requester an opportunity to reduce the request to manageable proportions. Denials based on the “unduly burdensome” exemption must be in writing, must specify the reasons why it would be unduly burdensome to respond, and must specify the extent to which compliance will so burden the operations of the school district. Such a response is treated as a denial of a request for information. 5 ILCS 140/3(g).
 4. The new FOIA also states that the FOIA is not intended “to allow the requests of a commercial enterprise to unduly burden public resources.” 105 ILCS 140/1. This may provide some additional protection against unduly burdensome commercial requests, but it is unclear how the provision will be interpreted on this issue.

VIII. DENYING A REQUEST

A. Pre-approval for Denials Based on Certain Exemptions

1. The new FOIA requires that the school district seek pre-approval from the Public Access Counselor in the Attorney General’s office before denying a request based on two of the exemptions provided in the statute: the “personal information” or “preliminary draft” exemptions. 5 ILCS 140/9.5(b). A form for pre-approval of the use of exemption (7)(1)(c) or 7(1)(f) is available on the Illinois Attorney General’s website.
2. Notice that the school district will seek pre-approval must be provided to both the Public Access Counselor and the requester within the time period provided for responding to a request. The Attorney General must approve the denial before the request may be denied. Submission of a notice of intent to deny to the Public Access Counselor and the requester tolls the five-day clock for responding to requests until the Attorney General makes a determination.
3. The notice of intent to deny must include:
 - a. A copy of the request for access to records;

- b. The proposed response from the school district; and
 - c. A detailed summary of the school district's basis for exerting the exemption. 5 ILCS 140/9.5(b).
4. Within five working days after receipt of the notice of intent to deny, the Public Access Counselor will notify the school district and requester whether further inquiry is required. If a school district receives notice from the Public Access Counselor that the Public Access Counselor will be conducting further inquiry into the notice of intent to deny, the school district should cooperate with the Public Access Counselor's directives during his or her inquiry and investigation. Consult the school district's attorney during this process, as may be appropriate.
5. If further inquiry is required, the Public Access Counselor will begin an investigation, which may include:
- a. **Requests by the Public Access Counselor for production of documents.** A school district should provide the requested documents within 7 working days of receiving a request, unless it determines with counsel that the documents should not be produced. If the school district does not provide the documents within 7 working days, the Attorney General may subpoena the documents.
 - b. **Briefing of the issue by each party.** The school district is not required to submit a brief, but it may do so under the law. If the brief includes confidential information that the school district does not wish to be disclosed to the requester, the school district must provide a redacted copy to be provided to the requester. The requester may also submit a brief on the issue, and must provide a copy to the school district as well.
 - c. **Review of affidavits or records concerning any matter germane to the review, submitted by either party if they choose.**
6. The Attorney General must, within 60 days after receipt of the notice of intent to deny, examine the issues and the records, make findings of fact and conclusions of law, and issue a binding opinion to the requester and the school district. An extension of 21 days may be taken by the Attorney General. The Attorney General may also exercise discretion and choose to attempt to resolve the issue through some means other than a binding opinion, such as mediation.

A party that disagrees with a binding opinion issued by the Attorney General may seek administrative review of the opinion in the circuit courts for either Cook or Sangamon County. 5 ILCS 140/11.5. Further, a school district that discloses records in accordance with an opinion of the Attorney General is immune from liabilities based on that disclosure and is not liable for penalties under the FOIA. 5 ILCS 140/9.5(f).

B. Content of a Denial

The new FOIA requires more detail in a school district's denial than previously required. A school district must still state the reason for the denial and specify any exemption claimed to authorize the denial, as required under the previous version of FOIA. 5 ILCS 140/9(a)-(b). However, the, new FOIA also requires that the denial include:

1. Specific Reasons for the Denial

The school district 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).

2. Notification of Appeal Rights

The new FOIA requires the school district to inform the requester of his or her right to appeal to the Public Access counselor and to judicial review in each notice of a denial. 5 ILCS 140/9(a).

IX. APPEALS

A. In General

Under the new FOIA, no internal appeal process exists for school districts' denials of FOIA requests. Instead, requesters may appeal directly to the Public Access Counselor in the Office of the Attorney General or to circuit court. 5 ILCS 140/9(a); 5 ILCS 140/9.5(a)(g); 5 ILCS 140/11(a).

B. Request for Review to the Public Access Counselor of the Attorney General's Office

The new FOIA grants the Public Access Counselor the authority to investigate complaints regarding denials of FOIA requests, and grants the Attorney General the authority to render final decisions on such complaints. If a school district receives notice from the Public Access Counselor that the Public Access Counselor will be conducting further inquiry into a denial, the school district should cooperate with the Public Access Counselor's directives during his or her inquiry and investigation. Consult the school district's attorney during this process, as may be appropriate.

The review process is initiated when a requester files a request for review with the Office of the Public Access Counselor. The request for review must include:

1. A copy of the request for access to the records; and
2. Any responses from the school district. 5 ICLS 140/9.5(a).

The FOIA requires that the Public Access Counselor evaluate the request for review, determine whether further inquiry is warranted, and notify the school district and the requester whether further inquiry is warranted. 5 ILCS 140/9.5(c).

If further inquiry is required, the Public Access Counselor will forward a copy of the request to review to the school district within 7 working days after receipt of the request. The procedure for the investigation of a review of a denial is the same procedure used by the Public Access Counselor for a review of a notice of intent to deny. *See* Section VIII, Subsection A, Paragraphs 5-6, above. The rights of appeal for a party that disagrees with a binding opinion by the Public Access Counselor are also the same as that described above for binding opinions regarding a notice of intent to deny.

C. Request for an Advisory Opinion by a School District

The new FOIA grants the Attorney General authority to issue advisory opinions upon receipt of a written request from the head of a school district or its attorney. 5 ILCS 140/9.5(h). Advisory opinions are not for pending FOIA requests, but rather provide an opportunity for a school district to seek guidance from the Public Access Counselor as to how to comply with the FOIA. The written request must contain sufficient accurate facts from which a determination can be made, and the Public Access Counselor has authority to request additional information from the school district in making its determination.

A school district that in good faith relies upon an advisory opinion of the Public Access Counselor in responding to a request is not liable for penalties under the FOIA, so long as the facts upon which the opinion was based were fully and fairly disclosed to the Public Access Counselor.

D. Appeal to Circuit Court

The new FOIA continues to allow a requester to appeal a denial of access to inspect or copy a public record to file a lawsuit for injunctive or declaratory relief in state circuit court. 5 ILCS 140/11. If such a suit is filed with respect to the same denial that is the subject of a pending request for review with the Public Access Counselor, the requester must notify the Public Access Counselor, who must then take no further action with respect to the request for review and so notify the school district.

As with the previous version of FOIA, a school district has the burden of proving that its refusal to permit inspection or copying is in accordance with the law. 5 ILCS 140/11(f). Under the new FOIA, however, the school district must now meet that burden with clear and convincing evidence—a higher standard than before. 5 ILCS 140/11(f); 5 ILCS 140/1.2.

Moreover, whereas the previous version of FOIA allowed a circuit court discretion to award attorney's fees and costs to the requester in the case of an appeal, if the requester substantially prevails, the new FOIA mandates that the circuit court award attorneys' fees and costs to the requester. 5 ILCS 140/11(i).

Similarly, although the previous version of FOIA did not require the circuit court to impose any fines or other awards, the new FOIA requires a court to impose a \$2,500 - \$5,000 fine on any school district which the court determines willfully and intentionally failed to comply with FOIA, or otherwise acted in bad faith. 5 ILCS 140/11(j).

X. CHANGES TO THE OPEN MEETINGS ACT

Public Act 096-0542 made three major changes to the OMA:

A. OMA Officer

Every school district must designate employees, officers, or members to receive training on compliance with the OMA. Each school district must submit a list of designated OMA Officers to the Public Access Counselor. The OMA Officer has no specific responsibilities other than the requirement to obtain training from the Attorney General's office. Naming the Superintendent as the OMA Officer would make sense, in that the Superintendent participates at most meetings of the school district, which are subject to the FOIA, including most closed session meetings. 5 ILCS 120/1.05.

B. OMA Officer Training

Every designated OMA Officer must complete required training. As with FOIA Officers, OMA Officers must complete both an initial and an annual training course with the Attorney General's office. Initial training must be completed by July 1, 2010. OMA Officers must also complete an annual training program. Subsequently, persons newly designated as an OMA Officer must complete training within 30 days after assuming the position and must complete training annually thereafter. 5 ILCS 120/1.05.

C. Public Access Counselor Oversight:

The Attorney General's Public Access Counselor has two new roles with respect to the OMA:

1. **Request for Review:** A person who believes a violation of the OMA has occurred may file a request for review with the Public Access Counselor. Upon receipt of a request for review, the Public Access Counselor will determine if further action is warranted. If further action is warranted, the Public Access Counselor will conduct an investigation and may issue a binding opinion, which may be appealed to the circuit court of Cook or Sangamon County. The right to review by the Public Access Counselor is distinct from the right of any person, including the State's Attorney of the county in which alleged noncompliance has occurred, to bring a civil action in circuit court alleging a violation of the OMA. 5 ILCS 120/3.5.
2. **Advisory Opinions:** The Public Access Counselor may also issue advisory opinions to school districts regarding compliance with the OMA, upon written request from a school district or its attorney. A school district that relies in good faith on an advisory opinion of the Public Access Counselor is not liable for penalties under the OMA, so long as the facts upon which the opinion is based have been fully and fairly disclosed to the Public Access Counselor. 5 ILCS 120/7.5.