

THE FREEDOM OF INFORMATION ACT: ENSURING OPEN GOVERNMENT IN ILLINOIS

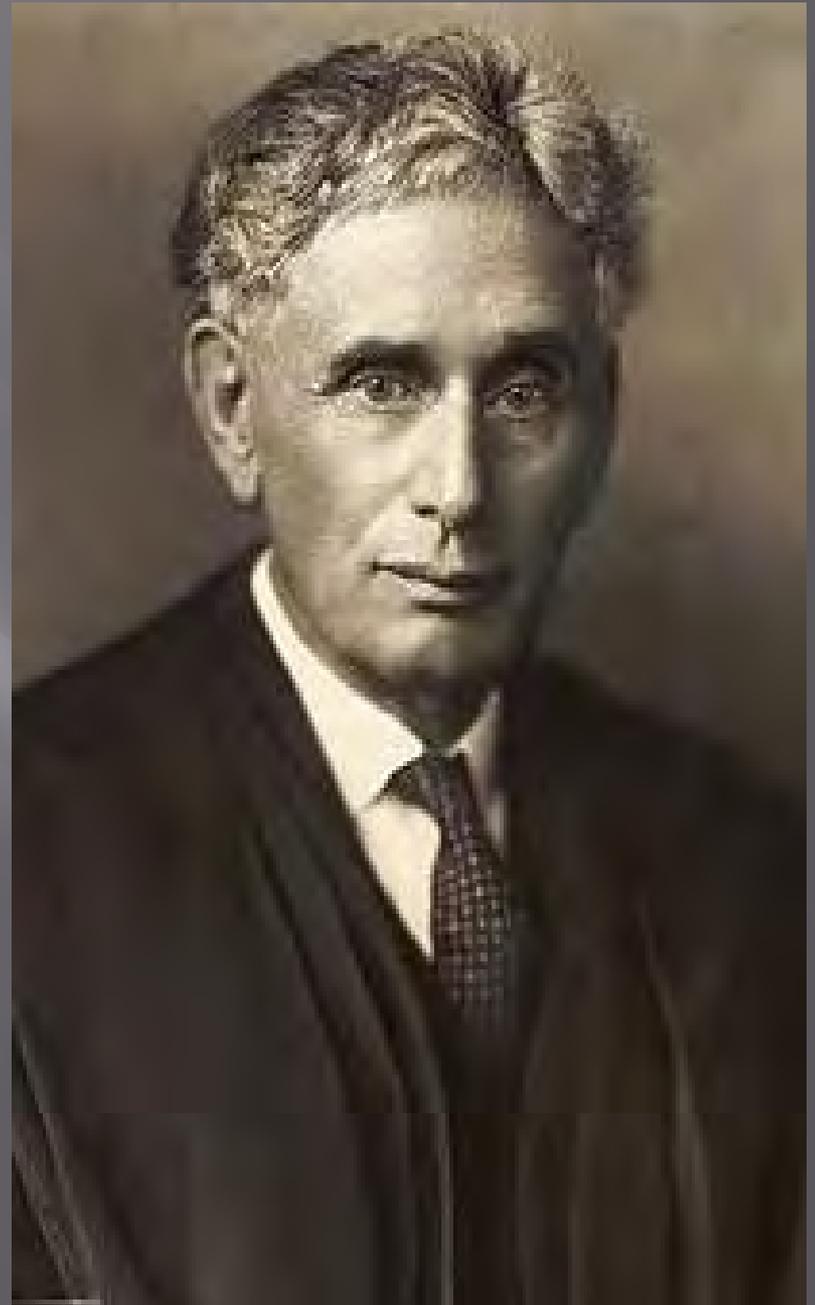
Matt Rogina
Assistant Attorney General
March 21, 2013

Introduction

"Sunlight is said to be the best of disinfectants[.]"

Justice Louis Brandeis

Justice Louis Brandeis, circa 1916. Courtesy of the Library of Congress website.



The Freedom of Information Act (5 ILCS 140/1 *et seq.*)

- The Freedom of Information Act (FOIA) originally became effective on July 1, 1984.
- Although various provisions of FOIA had been added or amended since its enactment, there was no comprehensive revision of the Act until 2010.
- [PA 96-542](#), effective January 1, 2010, revised FOIA to address numerous problems that had become apparent over the previous 25 years.

Public Access Counselor

- PA 96-542 also codified a non-judicial procedure for addressing issues concerning compliance with the Freedom of Information and Open Meetings Acts.
- It did so by creating within the Attorney General's office the Public Access Counselor, a position dedicated to resolving complaints without litigation.

The Purpose of FOIA

- “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.”

5 ILCS 140/1

Definition of “Public Body”

- ❑ All legislative, executive, administrative, or advisory bodies of the State
- ❑ State universities and colleges
- ❑ Counties
- ❑ Townships
- ❑ Cities
- ❑ Villages
- ❑ Incorporated towns
- ❑ School districts

“Public Body” cont.

and...

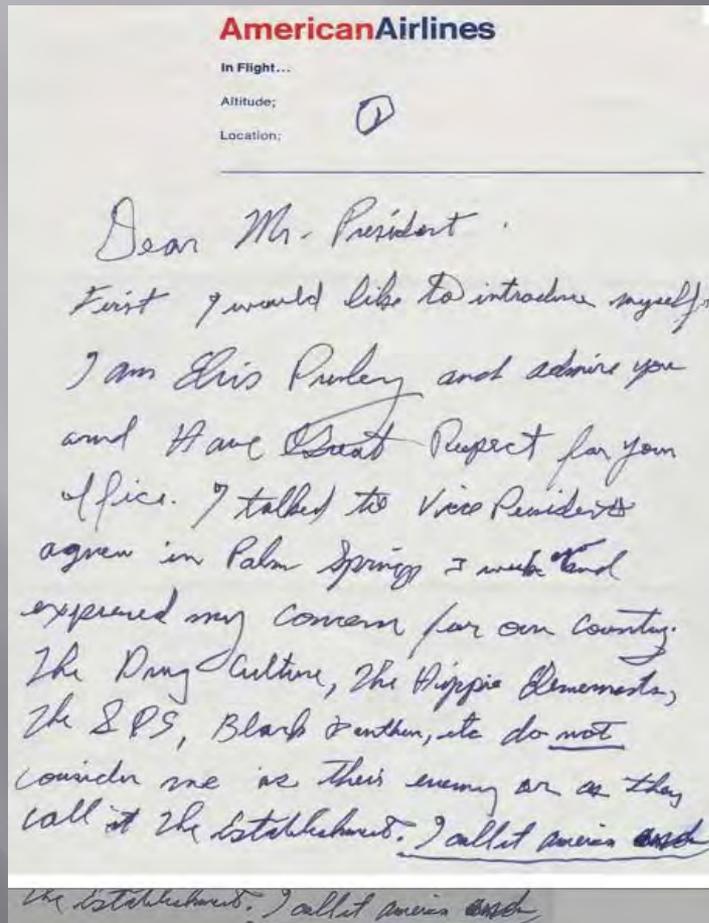
All other municipal corporations, boards, bureaus, committees, or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees thereof.

What is a public record?

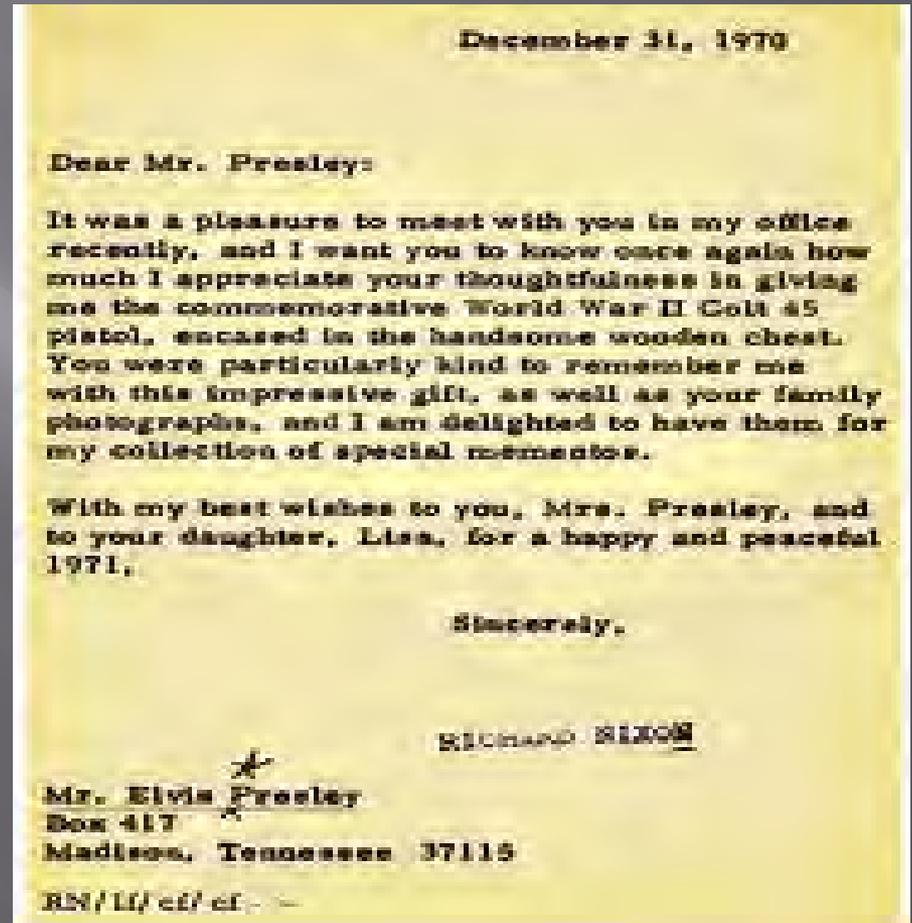


Richard Nixon and Elvis Presley in the Oval Office, December 21, 1970. Courtesy of the National Archives website.

What is a public record?



Handwritten letter from Elvis Presley to Richard Nixon, undated. Courtesy of the National Archives website.



Letter from Richard Nixon to Elvis Presley, December 31, 1970. Courtesy of the National Archives website.

Definition of “Public Records”

The definition of “public records” includes:

“[A]ll * * * 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, possessed or under the control of any public body.”

5 ILCS 140/2(c)

What is a public record?

If a public official sent or received communications on *personal electronic devices* during a meeting, those communications that pertain to the transaction of public business are public records subject to the requirements of FOIA. See Ill Att'y Gen. Pub. Acc. Op. No. 11-006, issued November 15, 2011.

What is a public record?

- ▣ FOIA does not require a public body to create records in order to respond to a FOIA request; rather a public body is required to make records within its possession or control available for inspection and copying.

Workmann v. Illinois State Bd. of Educ., 229 Ill. App. 3d 459, 464 (2nd Dist. 1992).

Hypothetical No. 1

- ▣ During a very long and contentious City Council meeting on a controversial housing program, two Council members begin texting each other on their *personal cell phones*. Several texts detail their thoughts and ideas about defunding the program. Shortly after, one Council member texts the following to other member: *"I need a drink!"* The two then text each other about which local hot spot to go after the meeting. The local newspaper FOIA's the texts.
- ▣ How should the City respond?

Choose your answer

Release the texts that only relate to the housing program.

Release all the texts because all communications made during a public meeting are public records and the public has a right to know where the council members go drinking after meetings.

Withhold all the texts because the communications were sent on the private devices of the Council members.

Record of Funds

“All records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public.”

5 ILCS 140/2.5



Prevailing Wage Act

Section 2.10 (5 ILCS 140/2.10) (West 2010) mandates that "[c]ertified 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 this Act; except that contractors' employees' addresses, telephone numbers, and social security numbers must be redacted by the public body prior to disclosure."



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 exempt from disclosure under Section 7 of this Act may be redacted.” 5 ILCS

140/2.20

Presumption of Openness

“Presumption. All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by *clear and convincing evidence* that it is exempt.”

5 ILCS 140/1.2

FOIA Requests

- ❑ In writing, directed to the Public Body.
- ❑ Oral requests *may* be honored.
- ❑ Standard form may *not* be required.
- ❑ Public Body *may not require* requester to specify a purpose, *except* to determine whether the request is for a commercial purpose.
- ❑ Forward immediately to FOIA officer.
See 5 ILCS 140/3(c)

Hypothetical No. 2

- ▣ A school board member submits a FOIA request to the School District for records that relate to a teacher that was the subject of an internal investigation. The investigation is now closed and no discipline was imposed on the teacher. The FOIA Officer for the District denies the request solely on the grounds that the information will be used to embarrass the teacher.
- ▣ Is this response proper under FOIA?

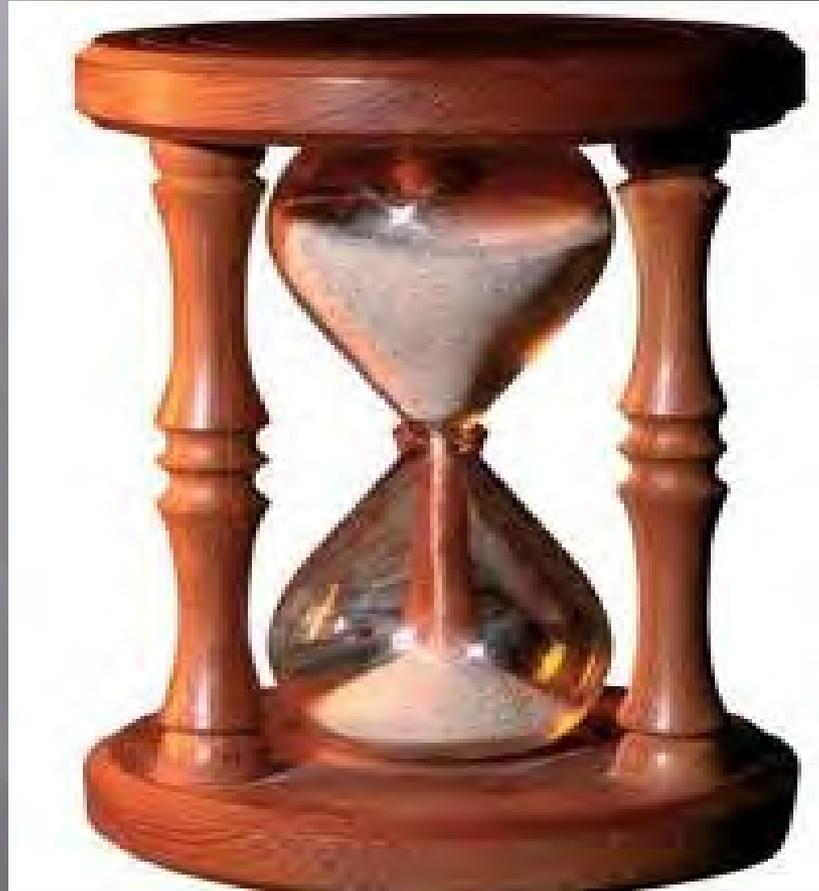
Choose Your Answer

Yes, because the board member is being a snoop and using FOIA for a malicious purpose.

Yes, because FOIA does not allow public officials to seek information on other public officials.

No, because the District cannot withhold records solely based on the identity of the requester.

Responding to a Request



Responding to a Request

- A public body must generally respond to a FOIA request within 5 business days after receipt of a written request.
- The time for response may be extended for an additional 5 business days for one of seven reasons specified in the Act.

See 5 ILCS140/3 (d),(e)

Responding to a Request

- If denying a request for public records, the public body shall **notify the requester in writing of:**
 1. The decision to deny the request,
 2. The reasons for the denial, including a detailed factual basis for the application of any exemption claimed, and
 3. The names and titles or positions of each person responsible for the denial.

Responding to a Request

In addition, each notice of denial by a public body shall:

1. Inform the requester of his or her right to seek review by the Public Access Counselor,
2. Provide the address and phone number for the Public Access Counselor, and
3. Inform the requester of his or her right to judicial review under section 11 of FOIA.

Responding to a Request

- ❑ Failure to respond to a request within the time permitted is considered a denial of the request.
- ❑ A public body that fails to respond to a request within the time permitted but then provides copies of the requested public records *may not impose a fee* for those copies.
- ❑ A public body that fails to respond to the request within the time permitted *may not treat the request as unduly burdensome*.

Responding to a Request

- Always refer to the specific text of the pertinent exemption(s) in determining whether a record, or certain information contained in a record, is exempted from disclosure.
- A record that contains both exempt information and non-exempt information is not exempt from disclosure.
- May elect to redact the exempt information, but must disclose the nonexempt information.

Exemptions

- ❑ To enable public bodies to maintain certain types of sensitive public records confidentially, FOIA provides a number of exceptions to the requirement that public records be made available for public inspection.
- ❑ The exemptions do not, however, prohibit the dissemination of information; rather, they merely authorize the withholding of information.
 - *Roehrborn v. Lambert*, 277 Ill. App. 3d 181, 186 (1st Dist. 1995), *appeal denied*, 166 Ill. 2d 554.

The exemptions can be categorized into the following six categories:

- 1. Personal Privacy**
- 2. Law Enforcement and Security**
- 3. Educational Matters**
- 4. Legal Proceedings**
- 5. Internal Operations**
- 6. Business and Finance**

**Information Prohibited from Disclosure
by Federal or State Law, Rules or
Regulations**

Exemption 7(1)(a)

Information Exempt Under Other Laws

Section 7(1)(a) of FOIA exempts from disclosure:

“Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.”

5 ILCS 140/7(1)(a)

Information Exempt Under Other Laws

- Section 7(1)(a) applies only when a law or rule implementing a law specifically prohibits the public body from releasing the information in question.
 - *Better Government Ass'n v. Blagojevich*, 899 N.E.2d 382, 389 (4th Dist. 2008).

Information Exempt Under Other Laws

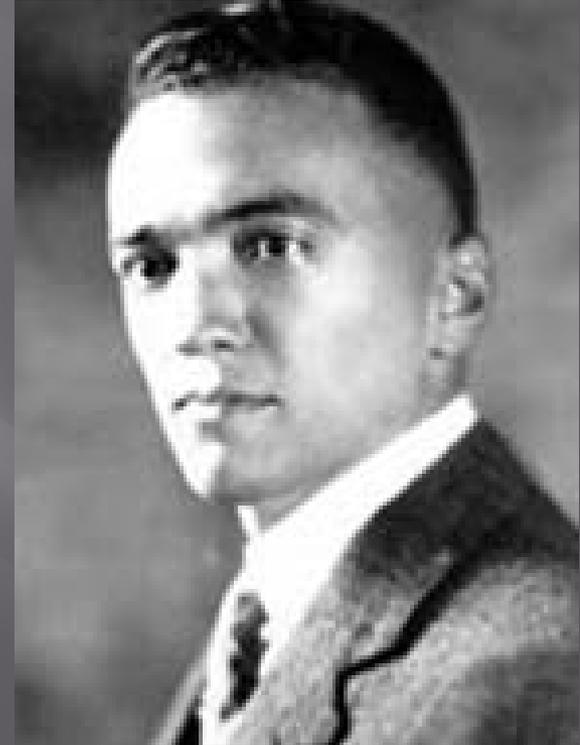
- ❑ The Illinois Code of Criminal Procedure (court ordered overhears, grand jury materials)
- ❑ The Illinois Juvenile Court Act (records concerning the arrest of a minor)
- ❑ The Illinois School Student Records Act (student records, parent/teacher communication)
- ❑ The Personnel Records Review Act (evaluations of employees)

Information Exempt Under Other Laws

- The Illinois School Student Records Act (student records, parent/teacher communication)
- The Personnel Records Review Act (evaluations of employees)
- The State Officials and Employees Ethics Act (records of any lawfully created State or local inspector general's office)

Information Exempt Under Other Laws

Records under court seal that were obtained through court ordered overhears and records that reflect the contents of the overhears, are prohibited from disclosure pursuant to section 108A-7 of the Criminal Code (725 ILCS 5/108A-7 (West 2010)). See 2011 PAC 18365 (Ill. Att'y Gen. PAC Req. Rev. Ltr. 18365, issued May 16, 2012 , at 5).



J. Edgar Hoover, 1924.
Courtesy of the FBI website; version date 2006.

Information Exempt Under Other Laws

- ▣ The confidentiality provisions of the Juvenile Court Act are intended to safeguard the privacy of a juvenile who has been arrested and is the subject of a juvenile court proceeding, with the ultimate goal of rehabilitating that juvenile. *See* Ill Att'y Gen. Pub. Acc. Op. No. 12-012, issued August 14, 2012.

Information Exempt Under Other Laws

- While a general request for information that contains protected health information would be exempt under the Health Insurance Portability and Accountability Act, a request that is made pursuant to FOIA would instead be governed by FOIA.
- *See Abbott v. Texas Department of Mental Health & Mental Retardation*, 212 S.W. 3d 648, 653 (Tex. App. Ct. 2006).

Hypothetical No. 3

- ▣ The FOIA Officer for a Town gets a request for the personnel file of a police chief who was the subject of a sexual harassment lawsuit against the Town brought by a former employee. One year earlier, the Town entered into a settlement agreement with the employee, which contains a confidentiality clause. The personnel file includes the Chief's contract, salary information, evaluations, and the settlement agreement.
- ▣ How should the FOIA Officer respond?

Choose Your Answer

Deny everything, because its none of the public's business and disclosure of the records would simply embarrass the Chief and the former employee.

Disclose everything except the evaluations and settlement agreement because the confidentiality clause prohibits the release of the agreement.

Disclose everything *except* the evaluations.

Information Exempt Under Other Laws

A protective order cannot be the legal basis to withhold a settlement agreement from disclosure.

Carbondale Convention Center, Inc. v. City of Carbondale, 245 Ill.App.3d 474, at 479 (5th Dist. 1993).

"Private Information"

Exemption 7(1)(b)

Private Information

“Private information” is exempt from disclosure unless disclosure is required by another provision of the Freedom of Information Act, a State or federal law or a court order.

5 ILCS 140/7(1)(b)

Private Information - Exemption 7(1)(b)

ACKNOWLEDGEMENT OF SERVICE OBLIGATION

I, Elvis Aron Presley, HAVING BEEN INDUCTED INTO THE ARMED SERVICES OF THE UNITED STATES ON THIS 24th DAY OF March 19 58, FOR 2 YEARS ACTIVE DUTY, ACKNOWLEDGE THAT I HAVE BEEN INFORMED OF MY SERVICE OBLIGATION. I UNDERSTAND THAT UPON COMPLETION OF MY TERM OF ACTIVE DUTY I WILL, IF QUALIFIED, BE TRANSFERRED TO THE RESERVE AND REQUIRED TO SERVE THEREIN FOR A PERIOD WHICH, WHEN ADDED TO MY ACTIVE DUTY SERVICE, TOTALS 6 YEARS, UNLESS SOONER DISCHARGED IN ACCORDANCE WITH STANDARDS PRESCRIBED BY THE SECRETARY OF DEFENSE: THAT I WILL BE REQUIRED TO SERVE A PERIOD IN THE READY RESERVE WHICH, WHEN ADDED TO MY ACTIVE DUTY SERVICE TOTALS 5 YEARS: THAT I MAY THEN, UPON WRITTEN REQUEST, BE TRANSFERRED TO THE STANDBY RESERVE FOR THE REMAINDER OF MY OBLIGATED PERIOD OF SERVICE. I FURTHER UNDERSTAND THAT DURING MY SERVICE AS A MEMBER OF THE READY RESERVE I WILL BE REQUIRED TO ATTEND NOT LESS THAN 48 SCHEDULE DRILLS OR TRAINING PERIODS AND NOT MORE THAN 17 DAYS ACTIVE DUTY FOR TRAINING ANNUALLY, OR THAT IN LIEU THEREOF, WHEN AUTHORIZED, I MAY BE REQUIRED TO PERFORM 30 DAYS ACTIVE DUTY FOR TRAINING ANNUALLY, THAT FAILURE TO PERFORM REQUIRED TRAINING IN ANY YEAR CAN RESULT IN MY BEING ORDERED TO PERFORM ADDITIONAL ACTIVE DUTY FOR TRAINING FOR 45 DAYS FOR THAT YEAR, AND IN HAVING MY SERVICE IN THE READY RESERVE EXTENDED INVOLUNTARILY.


Pvt E-1 Elvis Aron Presley
US- 53 310 761

Signatures

Acknowledgement of service obligation signed by Elvis Presley, March 24, 1958. Courtesy of the National Archives website.

Private Information - Exemption 7(1)(b)

1-531

LINDBERGH CHARLES A. TECH. TRIP. AUG. 21 48 ✓
(Last name) (First name) (Social name) (Title) (PMG-File Serial No.)

United Air FIGHTER DESIGN. (Employed by) (Occupation) (Class of work) (Immediate superior)

AUG 14 (Date started service) (Date left service)

PM Form 27 3-2602 (Type of Ident. Card issued) (Serial No. of Ident. Card)

LINDBERGH HOTEL, BRISBANE, Q. (Present address)

(Previous address)

(Previous address)

(Sex) (Color of hair) (Eye color) (Date of birth) (Antecedent of ancestor)

(Sex) (Color of hair) (Eye color) (Date of birth) (Antecedent of ancestor)

(Sex) (Color of hair) (Eye color) (Date of birth) (Antecedent of ancestor)

(Name) (Street No.) (City) (State)

W. MARRIED (Color or Race) (Marital status)

214/2 (Date of Birth) (Place of Birth)

RELATIVE TO BE NOTIFIED IN CASE OF ACCIDENT

(Name) (Street No.) (City) (State)

W. (Name) (Street No.) (City) (State)

W. (Name) (Street No.) (City) (State)

Photograph (Full face) (None 2" x 2")

Fingerprints—Right Hand

Thumb	Index	Middle	Ring	Little

For Ident. Fingerprints—Left Hand (see reverse side)

PHI Form 51—Revised

Processed 2 SEP 1948

Biometric Identifiers

Fingerprint form for Charles A. Lindbergh, September 2, 1948. Courtesy of the National Archives website.

Private Information

Other unique identifiers include:

- Social Security Numbers
- Employee Identification Numbers
- Personal Financial Information
- Passwords or Other Access Codes
- Medical Records
- Home or Personal Telephone Numbers
- Personal Email Addresses

5 ILCS 140/2(c-5)

"Clearly Unwarranted Invasion of Personal Privacy"

- **Exemption 7(1)(c)**

Personal Information

Section 7(1)(c) exempts “Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information[.]”

5 ILCS 140/7(1)(c)

Personal Information Cont.

- 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.



Personal Information

“The disclosure of information that bears on the *public duties of public employees* and officials shall not be considered an invasion of personal privacy.”

5 ILCS 140/7(1)(c)

Exempt Personal Information



Post-mortem photographs

Katz v. National Archives & Records Administration, 862 F.Supp.
476 (D.D.C. 1994), Ill Att'y Gen. Pub. Acc. Op. No. 10-003,
issued October 22, 2010

Hanging of Benito Mussolini in Milan, Italy, on April 29, 1945. Courtesy of
wikipedia.com; version date 2011.

Exempt Personal Information



Records that document a death or are generated immediately prior to a death (videotapes, audiotapes), *New York Times Co. v. National Aeronautics & Space Administration*, 782 F.Supp. 628 (D.D.C. 1991)

Exempt Personal Information

- ▣ Dates of birth
- ▣ Victim names
- ▣ Race
- ▣ Resumes of unsuccessful applicants
- ▣ Graphic descriptions of a violent crime

Exempt Personal Information

- ▣ Names of suspects that were not arrested
- ▣ Medical information from an emergency services report
- ▣ Names of third-party individuals in a law enforcement report
- ▣ Academic transcripts (if they are pre-employment)

INFORMATION NOT EXEMPT UNDER SECTION 7(1)(C)



Michael Jackson at the White House, May 14, 1984.
Courtesy of wikipedia.com; version date 2012.

A death certificate from the State of California, County of Los Angeles, Department of Health Services. The certificate is for Michael Jackson, son of Joseph and Katherine Jackson. He was born on 08/29/1958 in Inglewood, California. He was divorced on 06/25/2009. He was a musician and an entertainer. He died on 07/07/2009 at Ronald Reagan's Medical Center in Los Angeles, California. The cause of death is listed as "DECEASED". The certificate is stamped with "OFFICIAL COPY" and "NOT TO ESTABLISH LIABILITY".

STATE OF CALIFORNIA		CERTIFICATION OF VITAL RECORD	
COUNTY OF LOS ANGELES			
DEPARTMENT OF HEALTH SERVICES			
3052000065414		3200919927107	
CERTIFICATE OF DEATH		REASONING: [] OTHER: []	
1. NAME OF DECEASED MICHAEL	2. MIDDLE JOSEPH	3. LAST NAME JACKSON	
4. DATE OF BIRTH 08/29/1958	5. SEX M	6. PLACE OF BIRTH INGLEWOOD, CALIFORNIA	7. RACE BLACK
8. MARRIAGE STATUS IN	9. DATE OF MARRIAGE []	10. DATE OF DIVORCE 06/25/2009	11. HOURS OF SERVICE 1426
12. OCCUPATION MUSICIAN	13. TYPE OF DEATH NATURAL	14. MANNER OF DEATH []	15. CAUSE OF DEATH []
16. DECEASED'S RESIDENCE (Street and house or apartment) 4641 HAYVENHURST AVENUE ENCINO LOS ANGELES 91436 CA			
17. DECEASED'S USUAL RESIDENCE (Street and house or apartment) LATOYA JACKSON, SISTER 3000 WILSHIRE BLVD, SUITE 520, BEVERLY HILLS, CA			
18. NAME OF DECEASED'S SPOUSE (Last) WALTER JACKSON			
19. NAME OF DECEASED'S PARENT (Last) JOSEPH WALTER JACKSON			
20. NAME OF DECEASED'S PARENT (Last) KATHERINE ESTHER BRADSHAW			
21. DECEASED'S ADDRESS (Street and house or apartment) FOREST LAWN MEMORIAL PARK 6300 FOREST LAWN DRIVE, LOS ANGELES, CA 90068			
22. DECEASED'S CITY (City) TEMP			
23. DECEASED'S ZIP CODE (ZIP Code) 9173			
24. DECEASED'S SOCIAL SECURITY NUMBER (Social Security Number) []			
25. DECEASED'S MARITAL STATUS (Marital Status) []			
26. DECEASED'S OCCUPATION (Occupation) MUSICIAN			
27. DECEASED'S PLACE OF BIRTH (Place of Birth) LOS ANGELES			
28. DECEASED'S DATE OF BIRTH (Date of Birth) 08/29/1958			
29. DECEASED'S SEX (Sex) M			
30. DECEASED'S RACE (Race) BLACK			
31. DECEASED'S MARRIAGE STATUS (Marriage Status) []			
32. DECEASED'S DATE OF MARRIAGE (Date of Marriage) []			
33. DECEASED'S DATE OF DIVORCE (Date of Divorce) 06/25/2009			
34. DECEASED'S PLACE OF DEATH (Place of Death) RONALD REAGAN'S MEDICAL CENTER 157 WESTWOOD PLAZA DRIVE LOS ANGELES			
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Non-exempt Personal Information

- ❑ Dollar amount deducted from all employee paychecks for union dues
- ❑ Resumes, pending certificates, endorsements, applications for certificates and endorsements and deficiency letters
- ❑ Places of employment (outside employment)

Non-exempt Personal Information

- ❑ Names of people issued a ticket, citation or notice to appear
- ❑ Identifying information of an arrestee
- ❑ Transcripts (if through a tuition reimbursement).

Non-exempt Personal Information

- ❑ An individual's age, gender, height and weight
- ❑ Time cards, accrual sheets, vacation days, and the amount of sick time used
- ❑ Information relating to a decedent

Personal Information - Exemption 7(1)(c)

STATE OF NEW YORK—DEPARTMENT OF TAXATION AND FINANCE—BUREAU OF MOTOR VEHICLES

OPERATOR'S RENEWAL APPLICATION

FOR LICENSES EXPIRING SEPT. 30, 1958

FEE	Examined by	Fee <input type="checkbox"/> Check	Paid <input type="checkbox"/> M.O.	License Expires
\$3.00	(Do not write in above spaces)	By <input type="checkbox"/> E.M.O.		SEPTEMBER 30, 1961

1. PRINT Full Name Anna Eleanor Roosevelt

2. Give your present N. Y. operator's license number 125751

3. Give legal residence Hyde Park City or Post Office Hyde Park County Dutchess NY

4. Give name and address of employer ----

Are you self employed (Yes or No) ----

5. Date of Birth	6. Sex	7. Weight	8. Height	9. Color of Eyes	10. Color of Hair
Mo. <u>10</u> Day <u>11</u> Yr. <u>1884</u>	<u>Female</u>	<u>170</u> lbs.	<u>5ft. 10in.</u>	<u>Blue</u>	<u>Gray</u>

11. ANSWER EACH OF THE FOLLOWING QUESTIONS "YES" OR "NO": HAVE YOU EVER HAD: epilepsy? no a "stroke"? no excessively high blood pressure? no diabetes? no Bright's disease? no fainting spells? no any heart ailment? no (a) Are you crippled in any manner? no (b) Have you defective hearing? yes (c) SINCE YOUR LAST LICENSE WAS ISSUED have you had any mental illness? no Been confined to any hospital, public or private institution for mental illness? no Suffered any physical disability? no Suffered a physical deformity or the loss of leg, arm, hand or foot? no

12. If you have answered "Yes" to any part of Question 11, give full particulars, including dates and your present condition: slightly defective hearing no change

ANSWER ADDITIONAL QUESTIONS AND AFFIX SIGNATURE ON OTHER SIDE

RESTRICTIONS:	(Do not write in this space)

MV 2 (4-57) 7,650M (7 OMO 11)

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUREAU OF MOTOR VEHICLES

OPERATOR'S LICENSE

NOT VALID UNTIL DATED AND NUMBERED BY ISSUING OFFICE

(Do not write in this space)

EXPIRES SEPTEMBER 30, 1961

Anna Eleanor Roosevelt (Print or Type Full Name)	Sex Female
Street and No. Hyde Park	Color of Eyes Blue
(Give Legal Residence)	
Zone No. State NY	Color of Hair Gray
Date of Birth Mo. 10 Day 11 Yr. 1884	Weight Lbs. 170
	Height Ft. 10 In.

SPACES ABOVE TO BE FILLED IN BY APPLICANT

RESTRICTED TO OPERATE WITH: _____


 Sign Your Name Above in Full — Not Initials

ANY ALTERATION EXCEPT ADDRESS VOIDS THIS LICENSE. THIS LICENSE IS RENEWABLE WITHOUT TESTS WITHIN ONE YEAR AFTER IT EXPIRES. YOU MUST LIST CHANGES OF ADDRESS ON OTHER SIDE. MV 2

NOTIFY THIS BUREAU IN WRITING WITHIN TEN DAYS OF ANY CHANGE OF RESIDENCE OR CHANGE OF LICENSE NUMBER AND PLATE NUMBER, IF ANY.

Driver's license information

Eleanor Roosevelt's application to renew her driver's license. Courtesy of the National Archives website.

Hypothetical No. 4

- ▣ A school board member submits a FOIA request for records that relate to an internal investigation of a Superintendent that had an affair with another teacher, which resulted in that teacher getting a promotion. As a result of the affair, the Superintendent resigned. The FOIA Officer for the District denies the request on the grounds that the records are an invasion of privacy for the Superintendent.
- ▣ Is this the proper response?

Choose Your Answer

Yes, because it nobody's business but the Superintendent and the teacher.

No, because the investigation relates to the public duties of the Superintendent and the public interest in disclosure outweighs the Superintendent's privacy interest.

Yes, because the Superintendent resigned and is no longer an employee.

- ▣ **Exemptions That Specifically Apply**
- ▣ **to Law Enforcement or Administrative Enforcement Proceedings**

- ▣ **Exemptions Under 7(1)(d)**

Law Enforcement

Exempts information that

- Interferes with a criminal or administrative investigation
- Discloses the identity of an individual that provided information to a public body

Law Enforcement

Exempts information that

- Deprives an individual of a fair trial
- Jeopardizes the life and safety of an individual

Law Enforcement

Dear Sir:

Proceed immediately to the back platform of the train. Watch the east side of the track. Have your package ready. Look for the first LARGE, RED, BRICK factory situated immediately adjoining the tracks on the east. On top of this factory is a large, black watertower with the word CHAMPION written on it. Wait until you have COMPLETELY passed the south end of the factory - count five very rapidly and then IMMEDIATELY throw the package far east as you can.

Remember that this is your only chance to recover your son.

Yours truly,
GEORGE JOHNSON

Certain pieces of evidence, such as lab test results, financial records, and other pertinent records could possibly taint a prospective jury. *2011 PAC 17636 (Ill. Att'y Gen. PAC Req. Rev. Ltr. 17636, issued April 3, 2012, at 2).*

Evidence from Leopold and Loeb case

Ransom note written by Leopold and Loeb, 1924. Courtesy of wikipedia.com; version date 2007.

Hypothetical No. 5

- ▣ A police department receives a FOIA request for a videotape where a murder suspect confesses to the crime. The prosecution is still pending, but the confession was recently ruled inadmissible. In the FOIA request, the requester argues that since the videotape was played in open court and ruled on, it should now be made available to the public?
- ▣ How should the OAG respond?

A. Deny the request its entirety, explaining to the requester that regardless of the fact that the video was played in court, the release of the videotaped confession would deprive the defendant of a fair trial.

B. Deny the request on the basis that it would be an invasion of privacy for the defendant.

C. Release the videotape since the confession has been thrown out and has no bearing on the trial.

Arrest Reports and Criminal History Records

Under section 2.15(a) of FOIA, police departments must make arrest reports public no later than 72 hours after the arrest.

5 ILCS 140/2/15(a).

Arrest Reports and Criminal History Records

Arrest reports must include:

(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;

Arrest Reports and Criminal History Records

(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. 5 ILCS 140/2.15(a)(i)(ii)(iii)(iv), (v), (vi)

Arrest Reports and Criminal History Records

Misc.

POLICE DEPARTMENT
CITY OF MONTGOMERY

Date 12-1-55 19

Complainant J.F. Blake (wm)
Address 27 No. Lewis St. Phone No. _____
Offense Misc. Reported By Same as above
Address _____ Phone No. _____
Date and Time Offense Committed 12-1-55 6:06 pm
Place of Occurrence In Front of Empire Theatre (On Montgomery Street)
Person or Property Attacked _____
How Attacked _____
Person Wanted _____
Value of Property Stolen _____ Value Recovered _____

Details of Complaint (List, describe and give value of property stolen)

We received a call upon arrival the bus operator said he had a colored female sitting in the white section of the bus, and would not move back.
We (Day & Mixon) also saw her.
The bus operator signed a warrant for her. Rosa Parks, (cf) 634 Cleveland Court.
Rosa Parks (cf) was charged with chapter 6 section 11 of the Montgomery City Code.

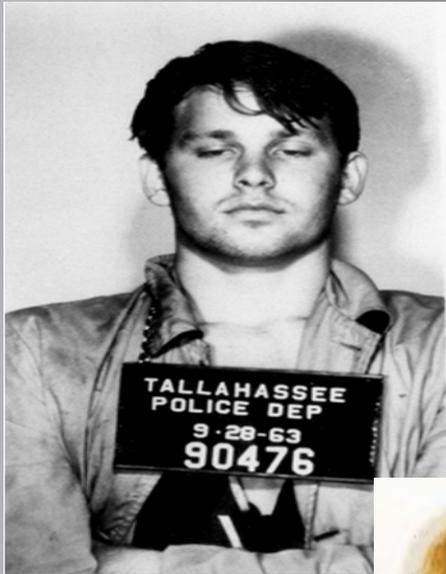
Warrant #14254

THIS OFFENSE IS DECLARED:
UNFOUNDED
CLEARED BY ARREST
EXCEPTIONALLY CLEARED
INACTIVE (NOT CLEARED)

Officers J. B. Day
D. W. Mixon

Police report on Rosa Parks, Montgomery, Alabama, December 1, 1955. Courtesy of the National Archives website.

Arrest Reports and Criminal History Records



Arrest photographs

Jim Morrison in Tallahassee, Florida, on September 28, 1963. Courtesy of wikipedia.com; version date 2011. Vladimir Lenin in St. Petersburg, Russia, in December 1895. Courtesy of wikipedia.com; version date 2010. Bill Gates in Albuquerque, New Mexico, on December 13, 1977. Courtesy of wikipedia.com; version date 2012.

Arrest Reports and Criminal History Records



Pre-Decisional, Deliberative Communication

Exemption 7(1)(f)

Deliberative Process/Preliminary Documents

Also exempted from disclosure under FOIA are:

“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.”

5 ILCS 140/7(1)(f)

Deliberative Process/Preliminary Documents

The purpose of the deliberative process privilege is to allow agencies to “explore possibilities, engage in internal debates, or play devil's advocate without fear of public scrutiny.”

Assembly of the State of California v. United States Department of Commerce, 797 F.Supp.1554, 1556 E.D. Cal. 1992), *aff'd*, 968 F.2d 916 (9th Cir. 1992).

Deliberative Process/Preliminary Documents

16
14

OR

Tele. Room _____
Holmes _____
Gandy _____

*(business with me pls)
jpc*

(C-47)

UPI-132
(RECORD)
WASHINGTON--THE GOVERNMENT HAS DROPPED INVESTIGATIONS IT HAD BEEN CONDUCTING INTO COMPLAINTS THAT A POPULAR ROCK-AND-ROLL RECORD HAS OBSCENE LYRICS.
THE COMPLAINTS CHARGED THAT THE RECORD "LOUIE LOUIE" AS RECORDED ON THE WANE LABEL BY THE KINGSMEN, HAD OFF-COLOR LYRICS WHICH COULD BE DETECTED WHEN THE 45 R.P.M. PLATTER WAS PLAYED AT 33-1/3 RPM.
INVESTIGATIONS OF THE RECORD WERE STARTED BY THE FEDERAL COMMUNICATIONS COMMISSION (FCC), THE POST OFFICE AND JUSTICE DEPARTMENTS AFTER COMPLAINTS WERE RECEIVED FROM ABOUT A HALF DOZEN PERSONS, INCLUDING INDIANA GOVERNOR MATTHEW E. WELSH.
ALL THREE GOVERNMENTAL AGENCIES DROPPED THEIR INVESTIGATIONS BECAUSE THEY WERE UNABLE TO DETERMINE WHAT THE LYRICS OF THE SONG WERE, EVEN AFTER LISTENING TO THE RECORDS AT SPEEDS RANGING FROM 16 RPM TO 78 RPM.
2/12--S419PES

*Limax Music
N.Y., N.Y. - 145*

1145-2961-A

NOT RECORDED
170 MAR 4 1964

EEB 13 4 10 58 10
4125
57 MAR 5 1964

Any final determination is not exempt under section 7(1)(f)

FBI communication regarding the popular song "Louie Louie," March 5, 1964. Courtesy of the FBI website.

Other provisions and exemptions within FOIA

Trade Secrets

Section 7(1)(g) of FOIA exempts from inspection and copying "[t]rade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested."

5 ILCS 140/7(1)(g)

Bid Information

Section 7(1)(h) of FOIA exempts from disclosure “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.” 5 ILCS

140/7(1)(h)

Disciplinary Cases

Exemption 7(1)(n) of FOIA (5 ILCS 140/7(1)(n) (West 2010)) allows a public body to withhold “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.”

5 ILCS 140/7(1)(n)

Hypothetical No. 6

- ▣ A fire lieutenant is the subject of an internal investigation by the Fire Department for drinking during his shift hours. The matter is brought to his supervisor who commences an internal investigation. The lieutenant resigns before any discipline is imposed. A local newspaper FOIA's the City for the internal investigatory records. How should the City respond?

- ▣ A. Deny the request in its entirety because an adjudication was commenced by the City

- ▣ B. Disclose the records because the investigation related to the lieutenant's public duties and the investigation did not result in a formal adjudicatory procedure.

- ▣ C. Deny it because the lieutenant resigned before any formal discipline could be imposed.

Unduly Burdensome

Section 3(g) of FOIA (5 ILCS 140/3(g) (West 2010)) provides that “[r]equests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information.”

Hypothetical No. 7

You are the FOIA Officer for a City that has a population of more than 100,000. A civil rights group that is studying racial profiling in the City requests all speeding tickets issued since 2003. The police department informs you that on average, the City issues 3,000 tickets per year and that most tickets are maintained in paper format. The City would be required to go back and produce 27,000 tickets and then redact private information on each ticket. How should the City respond?

Choose Your Answer

The City should immediately deny the request in its entirety, as the request is clearly unduly burdensome.

The City should provide all records regardless of time and expense because the public interest outweighs the burden on the City.

The City should reach out to the requester and attempt to narrow the request a more manageable portion.

Commercial Purpose Requests



Other Statutory Exemptions

- In addition to the exemptions previously noted, several existing exemptions have been revised, consolidated or deleted.
- Statutory exemptions referring to other statutes have been consolidated in section 7.5.

5 ILCS 140/7.5



Commercial Purpose Requests

“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.”

5 ILCS 140/2(c-10)

Commercial Purpose Requests

Excepted from the definition of “commercial purpose” are “requests made by news media and non-profit, scientific, or academic organizations * * * when the principal purpose of the request is

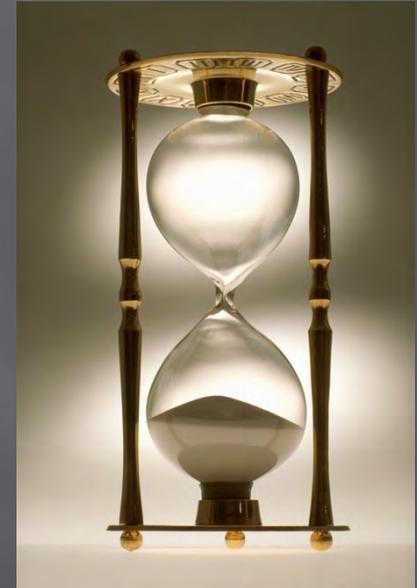
- ▣ to access and disseminate information concerning news and current or passing events,
- ▣ for articles of opinion or features of interest to the public or
- ▣ for the purpose of academic, scientific, or public research or education.”



Commercial Purpose Requests

The general time periods for compliance with or denial of a request to inspect or copy records do not apply to requests for records made for a commercial purpose. Such requests are subject to section 3.1 of the Act.

5 ILCS 140/3.1



Commercial Purpose Requests

A public body must respond to a request for records to be used for a commercial purpose within 21 working days after receipt. (5 ILCS 140/3.1 (West 2010)).

Copying Fees

- Subject to the collection of the requisite fee (if applicable), a public body is required to furnish copies of public records to a requestor.
- The fee for black and white, letter or legal sized copies may not exceed 15 cents per page. No fees may be charged for the first 50 pages of black and white, letter or legal sized copies requested by a requestor.

Copying Fees

- ❑ A public body may only charge the requester for the actual cost of purchasing the recording medium, such as a disc, diskette, tape, or other medium.
- ❑ Statutory fees applicable to copies of public records when furnished in a paper format shall not be applicable to those records when furnished in an electronic format, unless the General Assembly otherwise provides.



Record held by an agent

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 under this Act, shall be considered a public record of the public body, for purposes of this Act.

5 ILCS 140/7(2) (West 2010).

Copying Fees Cont.

- 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.

5 ILCS 140/6(f)



Recurrent Requesters

Public Act 97-579 also created new guidelines for dealing with persons who submit frequent requests for information to the same public body, or “recurrent requesters,” by adding section 3.2 of FOIA.

5 ILCS 140/3.2

Recurrent Requesters

- A **Recurrent Requester** (defined in section 2(g)) is a person who, in the 12 months immediately preceding the request, has submitted to the same public body:
 - A minimum of 50 requests for records
 - A minimum of 15 requests for records within a 30-day period
 - A minimum of 7 requests for records within a 7-day period
- In general, news media and non-profit, scientific, or academic organizations are excluded from this categorization.

Recurrent Requests

- Within 5 business days after receiving a request from a recurrent requester, a public body must notify the requester that:
 - The request is being treated as a recurrent request,
 - The reasons why the request is being treated as a recurrent request, and
 - The public body will send an initial response within 21 business days after receipt, in accordance with subsection 3.2(a) of FOIA.

Recurrent Requests

A public body must respond to a request for records from a recurrent requester within **21** working days by:

1. Providing the records;
2. Advising when the records will be furnished and the cost;
3. Denying the request if the records are exempted from disclosure; or
4. Advising that the request is unduly burdensome and must be narrowed.



Recurrent Requests Cont.

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

5 ILCS 140/3.2(c)

Limited Review of Commercial Denials

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 FOIA may file a request for review with the Public Access Counselor *only for the limited purpose* of reviewing whether the public body properly determined that the request was made for a commercial purpose.

5 ILCS 140/9.5(b)



Attorney's Fees

If a person seeking the right to inspect or receive a copy of a public record substantially prevails in a judicial enforcement proceeding, the court *shall* award such person reasonable attorney's 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.

5 ILCS 140/11(i)



Civil Penalties

Additionally, if the court determines that a public body willfully and intentionally failed to comply with FOIA, 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 FOIA.

5 ILCS 140/11(j)



Request for Review

- ▣ Section 9.5 (a) (5 ILCS 140/9.5(a) (West 2011 Supp.)) states that “[a] person whose request to inspect or copy a public record is denied by a public body, except the General Assembly and committees, commissions, and agencies thereof, may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the date of the final denial.”

Further Inquiry

Section 9.5(c) of FOIA (5 ILCS 140/9.5(c) (West 2011 Supp.)) provides that "upon receipt of a request for review, the Public Access Counselor shall determine whether further action is warranted."





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Resources

- [Ensuring Open and Honest Government](#)
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ENSURING OPEN AND HONEST GOVERNMENT

OMA and FOIA Public Site

FOIA Officers, OMA Designee, and OMA Public Body Members must register before taking the training on the FOIA/OMA Portal. If you are a member of the public interested in accessing the training program, click on the public training link.



Register as a FOIA Officer, OMA Designee, or a OMA Public Body Member



Continue to the OMA/FOIA Portal

If you are a member of the general public and are interested in accessing the same training program that the FOIA/OMA officers are taking, click this link: [General Public Training](#) This training is not recorded and can be accessed as often as you like.

Public Access Counselor



It is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business.
- Illinois Open Meetings Act, 5 ILCS 120/1.

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- [Annual Report 2006](#)
- [Annual Report 2005](#)

ENSURING OPEN AND HONEST GOVERNMENT

Freedom of Information Act & Open Meetings Act:
Electronic Training**New Training Requirement for 2012**

Pursuant to Section 1.05 (b) of OMA, each elected and appointed member of a public body subject to OMA must successfully complete the electronic training between January 1, 2012, and January 1, 2013. Those persons who become members of a public body after January 1, 2012, must complete the electronic training not later than 90 days after the member takes the oath of office or otherwise assume responsibilities as a member of a public body. A member who completes the training and files a copy of the certificate of completion with the public body is not required to subsequently complete this training under subsection (b). The Public Access Counselor in the Attorney General's Office is responsible for developing these training programs.

Pursuant to Section 3.5(b) of FOIA, all FOIA Officers must successfully complete this electronic training curriculum within 30 days after assuming the position. Thereafter, FOIA officers must successfully complete the electronic training each year that he or she continues to serve as a FOIA officer. The Public Access Counselor in the Attorney General's Office is responsible for developing these training programs.

Pursuant to Section 1.05 of OMA, all OMA Designees must successfully complete the electronic training on an annual basis. When a public body designates an additional employee, officer or member to receive this training, that person must successfully complete the electronic training within 30 days after that designation. The Public Access Counselor in the Attorney General's Office is responsible for developing these training programs.

[Register as a FOIA Officer, OMA Designee, or a OMA Public Body Member](#)
[Login to the FOIA/OMA Portal](#)

If you are a member of the general public and are interested in accessing the same training program that the FOIA/OMA officers are taking, click this link: [General Public Training](#) This training is not recorded and can be accessed as often as you like.

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Contact Information

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