

# School Board Records

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## Requirements of the Illinois Freedom of Information Act

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**With special recognition to  
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# Letting the Sunshine in: School Board Records

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The Illinois Compiled Statutes contain two major pieces of legislation designed to provide public access to units of local government in Illinois. These “sunshine laws” are:

- The Illinois Open Meetings Act (5 ILCS 120/1 et seq.), which provides public access to the meetings of public bodies;
- The Illinois Freedom of Information Act (5 ILCS 140/1 et seq.), which insures public access to records assembled, gathered, produced and disseminated by public bodies.

This pamphlet is intended as a practical guide for school boards and administrators in dealing with the myriad provisions of these two important laws.

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# Summary of Changes Since the Last Revision

Here are the major substantive changes to the Freedom of Information Act since this booklet was last revised.

- Creates “Public Access Counselor” in the Office of the Attorney General to review FOIA requests that are denied by a public body and to review denials by public bodies where exemptions are asserted under subsection (1)(c) (personal information) or (1)(f) (preliminary drafts). (Public Act 96-542)
- Public bodies may honor oral or written requests for inspection or copies and may not require that a request be submitted on a standard form or require that a requester specify a purpose for the request, except to determine whether the records are requested for a commercial purpose or whether to grant a request for a fee waiver. (Public Act 96-542)
- Every public body must designate one or more officials or employees to act as its Freedom of Information Officer or officers and those officers must successfully complete electronic training on compliance with this Act within six months after the effective date of the Act (1/1/2010), and thereafter must successfully complete an annual training program. (Public Act 96-542)
- Upon receipt of a request, it is to be delivered to the public body’s Freedom of Information Officer or designee. (Public Act 96-542)
- Public body must comply with or deny request within five business days. An extension of five or more days allowed in limited cases. (Public Act 96-542)
- Enhances fine for willful or intentional violations of the Act - \$2,500 - \$5,000. (Public Act 96-542)

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# THE ILLINOIS FREEDOM OF INFORMATION ACT

## AN OVERVIEW OF THE LAWS GOVERNING ILLINOIS SCHOOL RECORDS

The Illinois Freedom of Information Act is one of at least five state laws regulating school records and public access thereto:

1) The Freedom of Information Act<sup>1</sup> makes all school records open to public inspection and copying except where (a) other statutes expressly forbid public access; (b) a requested record falls under one of the exemptions provided by the FOIA, or (c) the requested record was created prior to July 1, 1984, and falls under the purview of the Local Records Act.<sup>2</sup>

2) The Local Records Act<sup>3</sup> governs the preservation and disposal of school records and requires public access to financial records created prior to July 1, 1984.

3) The Illinois Student Records Act<sup>4</sup> protects the privacy of individual students by strictly limiting disclosure of their school records. It also provides students and their parents with the right to inspect and to challenge the contents of those records.

4) The Illinois Personnel Records Review Act<sup>5</sup> provides an employee access and the right to challenge material in his/her personnel records, and prohibits public access without permission of the employee.

5) The Open Meetings Act<sup>6</sup> provides that the minutes of school board meetings must be made available for public inspection within seven days after the board has approved them. The minutes of closed meetings need not be made available for inspection until the board declares there is no longer a reason to keep them confidential.

Prior to July 1, 1984, when the Freedom of Information Act (FOIA) became effective, the Local Records Act was the primary statute governing the records of local governments. The Local Records Act still controls the preservation and disposal of records and provides public access to financial records created prior to the FOIA effective date.

Today, the FOIA is by far the most comprehensive statute governing government records and the most cumbersome for school officials to implement.

<sup>1</sup> 5 ILCS 140/1 *et seq.*

<sup>2</sup> The Local Records Act governs public access to financial records created before July 1, 1984 and the FOIA governs financial records – as well as other records – created after that date. Which law, if any, governs public access to non-financial records created prior to July 1, 1984 is subject to dispute. The Illinois Attorney General has concluded that the FOIA applies.

<sup>3</sup> 50 ILCS 205/1 *et seq.*

<sup>4</sup> 105 ILCS 10/1 *et seq.*

<sup>5</sup> 820 ILCS 40/0.01 *et seq.*

<sup>6</sup> 5 ILCS 120/1 *et seq.*

## The Local Records Act

Section 3a of the Local Records Act requires all records and reports “of the obligation, receipt and use of public funds” to be kept at the school district’s official place of business and made available for “public inspection during regular office hours except when in immediate use by persons exercising official duties which require the use of those records.” Section 3a also allows the school district to require a 24-hour advance written notice of the request to inspect, including a list of the records to be inspected. Section 3a also limits such disclosure where it would constitute an invasion of any person’s right to privacy.

Section 15 of the Local Records Act provides that Section 3a of the Act as it relates to the inspection of records “shall apply only as to records and reports prepared or received prior to” July 1, 1984.

The remaining provisions of the Local Records Act regarding such matters as disposal and preservation of records, etc., still retain their status as law and are not affected by the Freedom of Information Act.

## THE FREEDOM OF INFORMATION ACT — WHAT IT REQUIRES

### Coverage of the FOIA

School boards and all of their committees and subcommittees come within the coverage of the FOIA. The definition of the words “public records” is very broad and includes, but is not limited to: 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. Note, however, that an individual alderman/trustee is not included in the definition of a “public body” under the Act and, therefore, the personal records of an alderman/trustee are not subject to inspection and copying under the Act.<sup>7</sup> The same concept presumably applies to an individual school board member.

E-mail communications which have been prepared, or have been or are being used, received, possessed or under the control of a public body are treated as public records under the Act. E-mail messages produced on one’s personal computer in all likelihood will not constitute public records under the Act. However, if a school board member regularly uses his or her personal e-mail account to respond to board inquiries and conduct board business, those messages

<sup>7</sup> *Quinn v. Stone*, 211 Ill.App.3d 809, 570 N.E.2d 676 (1st Dist. 1991), *cert. den.*, 141 Ill.2d 559, 580 N.E.2d 133 (Ill. 1991)

would most likely constitute public records under the Act. Also, “personal” or “private” e-mails sent or received by school employees on a school’s computers should not be considered public records under the Act because they were not made or received pursuant to any law or ordinance or in connection with the official business of the school and, therefore, do not come under the control of the school.<sup>8</sup>

It is important for affected public officials to be conversant with the types of records that must be provided upon request and those that are exempt.

## Intent of the FOIA

Section 1 of the Illinois Freedom of Information Act indicates that:

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

... It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with the Act.

However, Section 1 also indicates what purposes the Act is *not* intended to cover or impose:

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

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

In other words, the Act does not require a public body to prepare and keep any new records (however, the furnishing of records located in two different places does not constitute the creation of a new record.<sup>9</sup>) The Act does not require a public body to prepare answers to questions,<sup>10</sup> and a public body is not required to prepare its records in a new

format merely to accommodate a request for certain information.<sup>11</sup>

Note that the Act says it is not intended to further the interests of a commercial enterprise. Although the legislative intent is not entirely clear on what this exception means, particularly in light of the addition of Section 3.1 to the Act, public bodies used to be able to refuse to give out information to a business when the only interest the business would have is to use the list for marketing purposes (e.g., a mass mailing to potential customers) or to expand its business.<sup>12</sup> However, the ability of public bodies to do that now is foreclosed by the legislature’s inclusion of commercial requests in Public Act 96-542. Now, a public body must respond to a request for records to be used for a commercial purpose within 21 working days after receipt. The response must provide the requester an estimate of the time to provide the records and the fees to be charged, and the public body may require the person to pay in full before copying the requested documents. Alternatively, the public body can deny the request pursuant to one or more of the exemptions set out in this Act, notify the requester that the request is unduly burdensome and extend an opportunity to the requester to attempt to reduce the request to manageable proportions, or provide the records requested.

In carving out exceptions, Section 1 of the Act goes on to emphasize that these are “limited exceptions” to the general right of the public to know, and that the Act should be construed in such a manner. Moreover, the FOIA pertains only to the availability of information and does not in any way protect the use of the information once received.<sup>13</sup>

The Act further provides in part that if a lawsuit is filed, the court must on motion of the plaintiff order the public body to provide an index of the public records to which access has been denied. The index must include certain specified information. Also, the Act makes it easy for the plaintiff to obtain an award of attorney’s fees against the public body. However, an attorney proceeding *pro se* (on his own behalf and not on behalf of a client) in an action under the Act is not entitled to an award of fees under the Act.<sup>14</sup>

Finally, the Act is to be construed as the exclusive statute on freedom of information unless another state statute creates any additional restrictions on disclosure of information (e.g., provisions relating to juvenile court proceedings and the School Student Records Act) or creates additional obligations for disclosure.

<sup>8</sup> *State of Florida v. City of Clearwater*, 863 So.2d 149 (Fla. 2003)

<sup>9</sup> *Hamer v. Lentz*, 132 Ill.2d 49, 547 N.E.2d 191 (Ill. 1989)

<sup>10</sup> *Kenyon v. Garrels*, 184 Ill.App.3d 28, 540 N.E.2d 11 (4th Dist. 1989)

<sup>11</sup> *AFSCME v. County of Cook*, 136 Ill.2d 334, 555 N.E.2d 361 (Ill. 1990)

<sup>12</sup> *See Healey v. Teachers Retirement System*, 200 Ill.App.3d 240, 558 N.E.2d 766 (4th Dist.), *cert. den.* 135 Ill.2d 556, 564 N.E.2d 837 (Ill. 1990)

<sup>13</sup> *Zientara v. Long Creek Township*, 211 Ill.App.3d 226, 569 N.E.2d 1299 (4th Dist. 1999)

<sup>14</sup> *Hamer v. Lentz*, 132 Ill.2d 49, 547 N.E.2d 191 (Ill. 1989)

## Presumption of Disclosure

P.A. 96-0542 added a provision to the Act (Section 1.2) creating a presumption that all records in the custody of a public body are open to inspection and copying. A public body that asserts a record is exempt from disclosure now has the burden of proving the exemption by clear and convincing evidence.

## Inspection and Copying

Section 3 of the Act requires public bodies to make available to any person for inspection or copying all public records except for those records expressly made exempt by Section 7 of the Act. If the person requesting a public record submits a written request, the public body must promptly provide such person with a copy of the public record requested (a certified copy must be provided if requested). A public body may not require that a request be submitted on a standard form or require the requester to specify the purpose for a request, except to determine whether the records are requested for a commercial purpose or whether to grant a request for a fee waiver.

The public body must comply with a request, extend the time for response, or deny the request within five business days after its receipt. If the written request is denied, the denial must be by letter. Failure to comply with a written request, extend the time for response, or deny a request within five business days after its receipt shall be considered a denial of the request. A public body that fails to respond to a request within the requisite periods set forth in the Act, but thereafter provides the requester with copies of the requested public records may not impose a fee for such copies.

One court found that even though a public body is late in responding to a request for records, once it produces all the records, the merits of a plaintiff's claim for relief in the form of production of information become moot.<sup>15</sup>

In the event the public body cannot fill the request within this five-business-day period, it may obtain an additional five business days if it can meet one of the following seven reasons:

- 1) the requested records are stored in whole or in part at another location;
- 2) the request requires the collection of a substantial number of records;
- 3) the request is couched in categorical terms and requires an extensive search;
- 4) the public body has failed to locate the requested records in its initial attempt and the search is continuing;
- 5) the requested records require examination and evaluation by a competent person in order to determine which,

if any, are exempt under Section 7 of the Act;

6) it would unduly burden or interfere with the operations of the public body to fill the request within the initial seven working days;

7) there is a need for consultation with another public body which has a substantial interest in the determination or in the subject matter of the request.

It must be remembered, however, that the maximum time available to fill a written request is 10 business days. Whenever a public body extends the time by the additional five business days for one of the seven stated reasons, it must send a letter within the initial five-day period to the person making the request, stating the reason(s) for the delay and the date by which the records will be made available or the request denied.

## Burdensome Requests

In those cases where a person makes a request for all records falling within a category, the public body must fill the request unless to do so would unduly burden the public body and there is no way to narrow the request. In order to deny such a request, the burden on the public body must outweigh the public interest in the information sought. In addition, before a public body can rely upon this "burden" exemption, it must allow the person making the request an opportunity to confer with it in an effort to narrow the request to one that can be filled. Once again, if the public body relies upon this "burden" exemption, it must notify the requesting party and specify the reason(s) why it would be unduly burdensome for the public body to comply with the request.

Repeated requests for the same public records by the same person shall be deemed unduly burdensome. In one case, the court found that if one generally requests recorded information, that person may not request the same recorded information "soon thereafter," even if the person making the request asks for the recorded information in a different format.<sup>16</sup>

## Rules and Regulations

A public body may adopt rules and regulations, in conformity with the Act, setting forth the times and places where records will be made available and the persons from whom such records may be obtained. It is advisable for a public body to adopt rules and regulations that provide, among other things, that the actual cost of retrieval and review of records prepared or received prior to July 1, 1984, shall be charged in addition to the cost of reproducing and certifying them.

If a request for records is denied, the public body must notify the requester in writing of the decision to deny the

<sup>15</sup> *Duncan Publishing, Inc. v. City of Chicago*, 304 Ill.App.3d 778, 709 N.E.2d 1281 (1st Dist. 1999)

<sup>16</sup> *AFSCME v. County of Cook*, 136 Ill.2d 334, 555 N.E.2d 361 (Ill. 1990)

request, the reason for the denial, including a detailed factual basis for the application of any exemption claimed, and the names and titles or positions of each person responsible for the denial and must inform such person of the right to review by the Public Access Counselor; give the address and phone number for the Public Access Counselor and inform such person of his right to judicial review under Section 11 of the Act. Additional notice requirements, including direct written notice to the Public Access Counselor, apply if the denial of a record request is based on either the exemption regarding an invasion of personal privacy (Sec. 7(1)(c)), or the preliminary drafts, notes, recommendations or memoranda (Sec. 7(1)(f)).

### School District Directories

Section 4 of the Act requires all public bodies to prepare, prominently display at each of its offices, make available for public inspection and copying, and mail out if requested, each of the following two directories:

1) A brief description of the public body, including (a) a short summary of its purpose, (b) a block diagram of its functional subdivisions, (c) the total amount of its operating budget, (d) the number and location of all of its separate offices, (e) the approximate number of full- and part-time employees, and (f) the identification and membership of all boards, commissions and committees which operate in an advisory capacity relative to the operation of the public body, or which exercise control over its policies or procedures, or to which the public body is required to report and be answerable for its operations.

2) A brief description of how public records may be requested, a directory designating the Freedom of Information Officer or officers, the address where requests for public records should be directed, and any fees permitted to be charged to the public under Section 6 of the Act.

If the public body maintains a website, it must also post this information on the website.

### Cataloging of Public Records

Public bodies, must list (catalog) all types or categories of records under their control which were prepared or received after July 1, 1984. Records prepared or received prior to July 1, 1984, need not be so listed. However, once such a list has been prepared, it will, in all likelihood, also cover all records under a public body's control prior to July 1, 1984. This list of records must be made available to the public for inspection and copying, must be "reasonably" current, and must be "reasonably" detailed in order to assist the public in obtaining access to public records.

Public Act 96-0452 has created a new record list mandate as well. Freedom of Information Officer(s) must develop a list of documents or categories of records that the public body will immediately disclose upon request.

In the event the public body has stored its records in

computers, it must provide the public with a description of how such records may be obtained in a form comprehensible to persons lacking knowledge of computer language or printout formats. The definition of "public records" includes computer tapes within its scope and computer tapes must be made available to the public.<sup>17</sup>

Computer technology also raises other issues such as whether e-mail constitutes a public record within the meaning of the Act (as well as the issue of preservation of such e-mail under the Local Records Act). The Ohio Supreme Court has ruled that sometimes e-mail is not a public record (e-mail generated by individual co-workers containing racial slurs and not serving to document the business functions of the sheriff's department), but that e-mail that does "document the organization, functions, policies, decisions, procedures, operations or other activities of the office" would be considered a public record.<sup>18</sup> The Florida Supreme Court has also ruled that the personal e-mails of municipal employees were not "public records."<sup>19</sup>

### Fees and Costs

A public body is allowed to charge fees only to reimburse its actual cost for reproducing and certifying public records and for the use by the public of equipment of the public body to copy records. The public body is not allowed to charge for any staff time necessary to retrieve or review the records. Therefore, all salary costs associated with filling requests for public records must be absorbed by the public body. The allowable fees must be charged according to a standard scale of fees and such fee scale must be made public.

Public Act 96-0542 provides new limitations on copying charges. The first 50 pages for black and white, letter or legal sized copies must be provided at no charge. The remaining black and white copying charges are capped at 15 cents per page. For copies in color or in a size other than letter or legal, the public body may not charge more than its actual cost for reproducing the records. For electronic records, a public body may only charge for the actual cost of purchasing the recording medium, such as a disc or tape, but cannot charge for the costs of the search for or review of the records, or for the personnel costs associated with producing the records. Finally, the cost for certifying a copy of a record is capped at \$1.

It is a violation under the Act for a person to knowingly obtain a public record for a commercial purpose without disclosing that it is for a commercial purpose, if the public body requests such information.

If a requester asks for a document that is maintained in

<sup>17</sup> *AFSCME v. County of Cook*, 136 Ill.2d 334, 555 N.E.2d 361 (Ill. 1990)

<sup>18</sup> *State ex rel. Wilson-Simmons v. Lake County Sheriff's Department*, 82 Ohio St. 3d 37, 693 N.E.2d 789 (Ohio 1998)

<sup>19</sup> *State of Florida v. City of Clearwater*, 863 So.2d 149 (Fla. 2003)

an electronic format, the public body is required to furnish it in the electronic format specified by the requester, if feasible. If not feasible, the public body is to furnish it in the form in which it is maintained by the public body, or in paper format, at the option of the person making the request. The statutory fee applicable to providing paper copies cannot be charged for records furnished in electronic format.

Records are to be furnished without charge or at a reduced charge, as determined by the public body, if the person making the request states the specific purpose for the request and indicates that a waiver or reduction of the fee is in the public interest. A waiver or reduction of the fee is in the public interest if the principal purpose of the request is to obtain information regarding the health, safety and welfare or the legal rights of the general public and is not for the principal purpose of personal or commercial benefit. The words “commercial benefit” do not apply to requests made by news media when the principal purpose of the request is to access and disseminate information regarding the health, safety and welfare or the legal rights of the general public. In setting the amount of waiver or reduction, the public body may take into consideration the number of records requested and the cost of copying them.

If a public body knowingly charges a fee which exceeds its actual cost of reproduction and certification, such excessive fee is considered to be a denial of access to public records for the purpose of judicial review.

In those instances where someone such as an insurance company or an attorney requests a report and also requests “special service” beyond the requirements of the Act, such as that it be mailed within 24 or 48 hours, it should be legally permissible to charge a flat fee of \$5 or \$10 for such “special service.” If such a flat fee is to be charged, the preferred procedure would be to require the requester to submit a written request for “special service” and a statement that the requestor consents to the charge (e.g. \$5 or \$10) for such “special service.”

### Freedom of Information Officers

A public body must designate one or more officials or employees to act as Freedom of Information Officer(s). Unless the public records are furnished immediately, Freedom of Information Officers shall receive all requests submitted to the public body under the Act, ensure that the public body responds to requests in a timely fashion, and issue responses under the Act. The Freedom of Information Officer(s) are to develop a list of documents or categories of records that will be immediately disclosed by the public body, upon request. Following the receipt of any record request, Freedom of Information Officer(s) must:

1) Note the date of receipt by the public body.

2) Compute the timeline for a response, and make that notation on the written request.

3) Maintain a copy of the written request, including all documents submitted with the request, until the request is complied with or denied.

4) Maintain a file for all original written requests, a copy of the response, a record of any written communication with the requester, and a copy of “other communications.”

The designated Freedom of Information Officers must successfully complete an annual FOIA electronic training course prepared by the Public Access Counselor of the Illinois Office of the Attorney General. Not more than six months after January 1, 2010, all designated Freedom of Information Officers, must successfully complete training courses (to be developed by the Office of the Attorney General), and they must annually complete a refresher course thereafter. New Freedom of Information Officers, who are designated after January 1, 2010, must complete the training course within 30 days after assuming the position.

### Exemptions from Public Inspection

Under Section 7(1) of the Act, if any public record that is exempt from disclosure under Section 7 contains any material which is not exempt, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying. For example, if the public body has a pre-printed form which includes both exempt and non-exempt material, the public body would give the entire pre-printed form, including all pre-printed material even if it was located where the exempt material was originally inserted, and delete from it the exempt information. In the past it would have been permissible to give only the portion where the non-exempt information was contained.<sup>20</sup>

While reading and interpreting the exemptions contained in Section 7, it is important to remember that Section 1 specifically indicates that the Act is not intended to violate individual privacy or to allow the requests of a commercial enterprise to unduly burden public resources. Any school district claiming an exemption under Section 7 has the burden of proving the information sought to be protected falls within one of the exemptions.<sup>21</sup>

Section 7 contains a rather long list of exemptions (as well as exceptions to the exemptions) and it is not the intent of this chapter to cover or merely repeat each and every exemption and exception thereto. However, we would like to highlight some of the more important exemptions and exceptions applicable to school districts, including:

1) Information specifically prohibited from disclosure by federal or state law, e.g., certain student records or

<sup>20</sup> *Staske v. Champaign*, 183 Ill.App.3d 1, 539 N.E.2d 747 (1989), cert. den., 127 Ill.2d 636, 545 N.E.2d 131 (1989)

<sup>21</sup> *Wayne County Press, Inc., v. Isle*, 263 Ill.App.3d 511, 636 N.E.2d 65 (5th Dist. 1994)

records relating to juvenile court proceedings.

2) Private information, unless disclosure is required by another provision of the Act, a state or federal law or court orders. Private information includes a person's social security number, drivers license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, personal email addresses, home addresses and personal license plates.

3) Personal information that, if disclosed, would constitute a "clearly unwarranted invasion of personal privacy," unless disclosure is consented to in writing by the individual whose privacy is being invaded. Section 7 further states that disclosure of information that "bears on the public duties" of public employees and officials shall not be considered an invasion of personal privacy. The recent amendments to the Act define an unwarranted invasion of personal privacy to mean 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. This Section clearly is in need of judicial interpretation. For example, when is such an invasion "clearly unwarranted"? Also, in light of the intent of the Act expressed in Section 1, if the disclosure would not "clearly" be an invasion of privacy, would the Act require disclosure? The Illinois Supreme Court has already held that an employment contract included in a personnel file was not exempt under FOIA.<sup>22</sup>

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

a. interfere with pending or reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request;

b. interfere with active administrative proceedings conducted by the public body that is the recipient of the request;

c. create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing;

d. unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source or persons filing complaints with or providing information to administrative, investigative, law enforcement and penal agencies; provided, however, traffic accident reports, rescue reports, and identification of witnesses to traffic accidents may be released, except in a case where there is an ongoing criminal

investigation conducted by the agency that is the recipient of the request;

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

f. endanger the life or physical safety of law enforcement personnel or any other person; or

g. obstruct an ongoing criminal investigation by the agency that is the recipient of the request.

5) Records that relate to or affect the security of correctional institutions and detention facilities.

6) 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 thereof shall not be exempt when the record is publicly cited and identified by the head of the public body.

7) Trade secrets or 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. It is important to note that this exception only applies if information is furnished under a claim that it is proprietary and the release of the information would cause competitive harm.

8) Proposals and bids for any contract, grant or agreement, until an award or final selection is made. Information prepared by or for the body in preparation of a bid solicitation shall be exempt until an award or final selection is made.

9) Valuable formulae, computer geographic systems, designs, drawings and research data obtained or produced by any public body when disclosure could reasonably be expected to produce private gain or public loss. The exemption for "computer geographic systems" provided in this paragraph does not extend to requests made by news media as defined in Section 2 of this Act when the requested information is not otherwise exempt and the only purpose of the request is to access and disseminate information regarding the health, safety, welfare, or legal rights of the general public.

10) The following information relating to educational matters:

a. Test questions, scoring keys and other examination data used to administer an academic examination.

<sup>22</sup> *Stern v. Wheaton-Warrenville Community Unit Sch. Dist.* 200, 233 Ill.2d 396, 910 N.E.2d 85 (Ill. 2009)

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;

c. information concerning a school or university's adjudication of student disciplinary cases but only to the extent that disclosure would unavoidably reveal the identity of the student; and

d. course materials or research materials used by faculty members.

11) Architects' plans, engineers' technical submissions, and other construction related technical documents for projects not constructed or developed in whole or in part with public funds and the same for projects constructed or developed with public funds, including but not limited to power generating and distribution stations and other transmission and distribution facilities, water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings, but only to the extent that disclosure would compromise security.

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

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

14) 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.

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

16) Records relating to collective bargaining matters but not including the final contract or agreement which is entered into.

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

18) The records, documents and information relating to

real estate purchase negotiations until those negotiations have been completed or otherwise terminated. With regard to a parcel involved in a pending or actually and reasonably contemplated eminent domain proceeding under the Eminent Domain Act, records, documents and information relating to that parcel shall be exempt except as may be allowed under discovery rules adopted by the Illinois Supreme Court. The records, documents and information relating to a real estate sale shall be exempt until a sale is consummated.

19) Certain information relating to an intergovernmental risk management association, self-insurance pool or jointly self-administered health and accident cooperative or pool. This includes any insurance or self-insurance claims, loss or risk management information, records, data, advice or communications.

20) Information that would disclose or might lead to the disclosure of secret or confidential information, codes, algorithms, programs, or private keys intended to be used to create electronic or digital signatures under the Electronic Commerce Security Act.

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

22) Maps and other records regarding the location or security of generation, transmission, distribution, storage, gathering, treatment, or switching facilities owned by a utility, by a power generator, or by the Illinois Power Agency.

23) Information about students exempted from disclosure under Sections 10-20.38 or 34-18.29 of the School Code, and information about undergraduate students enrolled at an institution of higher education exempted from disclosure under Section 25 of the Illinois Credit Card Marketing Act of 2009.

## **Documents in the Possession of Contracting Parties**

Public Act 96-0542 adds a new provision to Section 7 of the Act which provides that public records shall also include those records in the possession of a party with whom a public agency has contracted to perform a governmental function on behalf of a public body and are not otherwise exempt

from disclosure. Section 11(j) provides for civil penalties to be imposed “upon the public body.” Thus, the public entity must ensure that the private party who contracts with a public agency to perform a governmental function complies with the requirements of the Act.

### Additional Statutory Exemptions

Section 7.5 of the amended Act compiles various exemptions to disclosure found in statutes other than the Act and provides that to the extent provided for by the statutes the information is exempt from inspection and copying. Below are the statutory exemptions that may relate to school districts:

1) All information determined to be confidential under Section 4002 of the Technology Advancement and Development Act.

2) Library circulation and order records identifying library users with specific materials under the Library Records Confidentiality Act.

3) Information and records held by the Department of Public Health and its authorized representatives relating to known or suspected cases of sexually transmissible disease or any information the disclosure of which is restricted under the Illinois Sexually Transmissible Disease Control Act.

4) Information the disclosure of which is exempted under Section 30 of the Radon Industry Licensing Act.

5) Firm performance evaluations under Section 55 of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act.

6) Information the disclosure of which is restricted and exempted under Section 50 of the Illinois Prepaid Tuition Act.

7) Information the disclosure of which is restricted and exempted under the State Officials and Employees Ethics Act, and records of any lawfully created State or local inspector general’s office that would be exempt if created or obtained by an Executive Inspector General’s office under that Act.

8) Information contained in a local emergency energy plan submitted to a municipality in accordance with a local emergency energy plan ordinance that is adopted under Section 11-21.5-5 of the Illinois Municipal Code.

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

10) Information prohibited from being disclosed by the Illinois School Student Records Act.

### Denials of Requests for Records

In the event that requested disclosure of public records is denied, each public body must notify the requester in

writing of:

a) the decision to deny the request;

b) the reasons for the denial, including a detailed factual basis for the application of any exemption(s) claimed;

c) the names and titles or positions of “each person responsible for the denial;” (whether this is more inclusive than merely the person or persons who actually makes the decision to deny is unclear); and

d) the requester’s right to review by the Public Access Counselor; to include the address and phone number for the Public Access Counselor, and the requester’s right to judicial review under Section 11 of the Act. Any person denied access to inspect or copy public records may file suit for injunctive or declaratory relief.

If the request is denied on the basis of one of the exemptions contained in Section 7 of the Act, the notice of denial must specify the exemption claimed to authorize the denial and the specific reasons for the denial, including a detailed factual basis and a citation to supporting legal authority.

Copies of all notices of denials must be retained in a single central office file that is open to the public and indexed according to the type of exemption asserted (i.e., as listed in Section 7) and to the extent feasible, according to the type of records requested, (e.g., board meeting minutes, preliminary investigative reports, etc.).

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

Finally, it must be remembered that Section 10-16 of The School Code requires the Superintendent to report to the board at each regular meeting any requests made of the district under the FOIA and the status of the district’s response.

### The Role of the Public Access Counselor

Whenever a person’s request to inspect or copy a public record is denied by a public body, that person may file a request for review with the Public Access Counselor (a new position established in the Office of the Attorney General effective as of January 1, 2010) not later than sixty (60) days after the date of the final denial. The request for review must be: (i) in writing, (ii) signed by the requester, and must include: (iii) a copy of the request for access to records and any responses from the public body. See 15 ILCS 205/7 for more on the Public Access Counselor.

If a public body asserts that the records requested are exempt under either subsection (1)(c) or (1)(f) of Section 7 of the Act, then the public body must, within the time periods for responding to a request, provide written notice to both the requester and the Public Access Counselor (PAC) of its intent to deny the request in whole or in part. The written notice must include: (i) a copy of the request; (ii) the

public body's proposed response; and (iii) a detailed summary of the public body's basis for asserting the exemption.

Upon receipt of a written notice of intent to deny, the PAC must determine whether further inquiry is warranted. Within five working days of receipt of such a written notice, the PAC must notify the public body and the requester whether further inquiry is needed. In the event the PAC decides that further inquiry is necessary, all the procedure set forth in the Act regarding review of denials, and the production of documents become applicable to the inquiry and resolution of the notice of intent to deny. The public body's time for response or compliance under the Act is tolled until the PAC concludes his or her inquiry.

Upon receipt of a request for review, the PAC must determine whether further action is required. Should the PAC determine that the alleged violation is unfounded, he or she must advise both the requester and the public body and no further action may be taken. In all other cases, the PAC must forward a copy of the request for review to the public body within seven working days after receipt and must specify the records or other documents that the public body must furnish. Within seven working days after receipt of the request for review from the PAC, the public body must provide copies of the requested records and fully cooperate with the PAC.

In the event the public body fails to provide the specified records, the attorney general may issue a subpoena to any person or public body having knowledge of or records pertaining to a request for review of a denial of access to records under the Act. To the extent that records or documents produced by a public body contain information that the public body claims is exempt from disclosure under Section 7 of the Act, then the PAC may not further disclose that information.

Within seven working days after a public body receives a copy of a request for review and for production of records from the PAC the public body may, but it is not required to, answer the allegations of the request for review. If the public body decides to answer, the answer may be by letter, brief, or memorandum. If there is an answer by the public body, then the PAC must forward a copy of the answer to the person submitting the request for review, with any alleged confidential information redacted from the copy. Then the requester may, but is not required to, respond in writing to the answer within seven working days and must supply a copy of the response to the public body.

If the PAC does not extend the time by no more than 21 business days by sending written notice to the requester and the public body that includes a statement of the reasons for the extension in the notice, or decides not to issue a binding opinion, the Attorney General must examine the issues and the records, and must make findings of fact and conclusions of law, and must issue to the requester and the public body an opinion in response to the request for review with-

in 60 days after its receipt. The opinion is binding upon both the requester and the public body, and is subject to administrative review under Section 11.5 of the Act. The attorney general also has the option to resolve a request for review by mediation or by means other than the issuance of a binding opinion. Any decision not to issue a binding opinion is not reviewable.

If a public body receives a binding opinion concluding that it violated the Act, the public body must either take immediate necessary action to comply with the directive of the opinion or it must initiate administrative review under Section 11.5 of the Act. On the other hand, if the opinion concludes that no violation has occurred, the requester may initiate administrative review. If a public body discloses records in accordance with the attorney general's opinion, the public body is immune from all liabilities by reason of such disclosure and it is not liable for penalties under the Act.

In the event that a requester files suit under Section 11 with respect to the same denial that is the subject of a pending request for review, the requester must notify the PAC, and the PAC may not take any further action with respect to the request for review and must so notify the public body.

Finally, the attorney general may also issue advisory opinions to public bodies regarding compliance with the Act. Furthermore, a review may be initiated upon receipt of a written request from the head of the public body or its attorney, which request must contain sufficient accurate facts from which a determination can be made. The PAC may request additional information from the public body in order to assist in the review. Any public body that relies in good faith on an advisory opinion of the attorney general in responding to a request is not liable for penalties under the Act, so long as the facts upon which the opinion is based have been fully and fairly disclosed to the PAC.

## **Enforcement of the Act**

The FOIA provides for civil remedies for enforcement of the Act. As noted above, any person denied access to inspect or copy any public record may file a suit for injunctive or declaratory relief. At the time of the writing of this pamphlet, no time limit is provided within which such a suit may be brought.

If the court determines the Act was violated, it may enjoin withholding of the records and order disclosure, and the burden is on the public body to establish that its refusal was legitimate. Any public body that asserts that a record is exempt from disclosure has the burden of proving that it is exempt by "clear and convincing evidence." In the event of non-compliance with its order, the court may enforce the order through its contempt-of-court powers.

If a person seeking the right to inspect or receive a copy of a public record "prevails" in a proceeding under the Act, the court must award such person reasonable attorney's fees and costs. As to any such proceeding filed on or after

January 1, 2010, in determining what amount of attorney's fees is reasonable, the court must consider the degree to which the relief obtained relates to the relief sought.

No corresponding right for a school district to recover attorney's fees is included under the Act. The refusal by a school district to furnish a lost record is not a violation of the Act and such refusal does not entitle the plaintiff to an award of attorney's fees.<sup>23</sup>

Finally, a binding opinion issued by the attorney general is considered a final decision of an administrative agency, for purposes of administrative review under the Administrative Review Act (735 ILCS 5/Art. III). An action for review of a binding opinion of the attorney general must be commenced in Cook or Sangamon County. No advisory opinion issued to a public body is to be considered a final decision of the attorney general for purposes of administrative review.

## Court Interpretations

The Illinois Act is modeled after the Federal Freedom of Information Act (FFOIA)<sup>24</sup> and shares several key provisions with the Federal Act, including exemptions from disclosure relating to personal privacy, investigatory records and trade secrets. The legislative history of the Illinois Act clearly indicates that the Act's sponsors intended that interpretations of the FFOIA by federal courts will serve as a guide to understanding the provisions of the Illinois Act.

Also, other states have adopted acts similar to the Illinois Act. Thus, by examining judicial treatment and interpretation of similar provisions in the Federal Act and other state acts, it is possible to gain some insight into the intent of the Illinois Act and how Illinois courts might rule thereon.

In interpreting such laws, courts generally have broadly construed in favor of disclosure. In one case, the appellate court held that a settlement agreement reached in a contract suit was not exempt from disclosure despite the fact that one of the parties requested and was granted a "gag order" by the court.<sup>25</sup> In addition, an Illinois appellate court has held that the Act is constitutional and does not violate the constitutional guarantees of freedom of the press.<sup>26</sup>

When hearing cases arising under the Federal Act, courts have also imposed strict procedural requirements on agencies seeking to avoid disclosure. These measures include placing the burden of proof on the agency opposing

disclosure<sup>27</sup> and requiring the agency opposing disclosure to provide "particularized and specific justification for exempting information from disclosure" with all objections indexed to the material sought to be exempted from disclosure.<sup>28</sup>

In imposing strict procedural requirements on agencies opposing disclosure, the Court in *Cuneo* recognized the difficulty faced by plaintiffs seeking the release of public records arising from the fact that they are without access to the material sought and unable to oppose the factual characterization of the material by the agency opposing disclosure.<sup>29</sup>

The U.S. Supreme Court attempted to clarify the scope of the Federal Act by stating that two requirements must be satisfied for requested materials to qualify as "agency records."<sup>30</sup> First, an agency must "either create or obtain" the requested materials, which includes materials produced outside the agency both by private and governmental organizations (e.g., studies and trade journal reports). Second, the Court said the agency must be in control of the requested materials at the time the FFOIA request is made, meaning that the materials have come into the agency's possession in the legitimate conduct of its official duties.

To this effect, the court held that a transition staff was not an agency within the provisions of the FFOIA and records created by a transition staff are not subject to disclosure. The court explained that an entity qualifies as an agency only if it has authority to perform specific government functions.<sup>31</sup>

Similarly, the Court held that persons or institutions receiving grants from a branch of the federal government do not automatically become agencies for the purposes of the FFOIA. In making this determination, the Court looked to whether the contractors or grantees were subject to "day to day control" by a federal agency and whether they "became the functional equivalent of the agency, making its decisions for it."<sup>32</sup>

Furthermore, the U.S. Supreme Court held that an agency's "presubmission review" regulation violated the Federal FOIA because it provided that information submitted to it in support of an application was not considered part of the agency's files pending a determination by it as to whether any such information would be exempt from disclosure under the FFOIA and that, if the agency determined that any such information was discoverable, the applicant was given the option of withdrawing the information.<sup>33</sup>

<sup>23</sup> *Workmann v. Illinois State Board of Education*, 229 Ill.App.3d 459, 593 N.E.2d 141 (2nd Dist. 1992)

<sup>24</sup> 5 U.S.C. 552 (1976)

<sup>25</sup> *Carbondale Convention Center, Inc. v. City of Carbondale*, 245 Ill.App.3d 474, 614 N.E.2d 539 (5th Dist. 1993)

<sup>26</sup> *City of Monmouth v. Galesburg Printing*, 144 Ill.App.3d 224, 494 N.E.2d 896 (3rd Dist. 1986)

<sup>27</sup> *Conoco, Inc. v. U.S. Dept. of Justice*, 521 F.Supp. 1301 (D.Del. 1981)

<sup>28</sup> *Cuneo v. Schlesinger*, 484 F.2d 1086, 1090 (D.C. Cir. 1973) and *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973)

<sup>29</sup> *Cuneo v. Schlesinger*, 484 F.2d at 1091

<sup>30</sup> *U.S. Dept. of Justice v. Tax Analysts*, 492 U.S. 136; 109 S.Ct. 2841 (1989)

<sup>31</sup> *Illinois Institute for Continuing Legal Education v. United States Dept. of Labor*, 545 F.Supp. 1229 (N.D. Ill. 1982)

<sup>32</sup> *Forsham v. Califano*, 587 F.2d 1128 (D.C. Cir. 1978)

<sup>33</sup> *Teich v. Food and Drug Administration*, 751 F.Supp.243 (D.D.C. 1990)

Federal courts also have pointed out that mere possession of a record by an agency official does not cause the record to become an agency record subject to disclosure. Rather, there must be some nexus between the record and the agency's work in order for the record to become an "agency record." Note, however, that the Illinois definition of public records is very liberal and is not limited to records required to be kept by law. Thus the requirement of disclosure may be broader in Illinois.

Both the FFOIA and the Illinois Act contain an exemption from disclosure for information which would constitute a "clearly unwarranted invasion of personal privacy." This provision has been interpreted by federal courts as requiring a balancing of the public interest served by disclosure against the potential invasion of personal privacy. One federal court held that the disclosure of public employees' names and home addresses violates the Privacy Act, stating that federal employees have privacy interests in their names and home addresses that must be protected and that the relevant public interest in disclosure, though not nothing, is outweighed.<sup>34</sup>

A Federal appellate court has upheld the Federal Trade Commission's refusal to disclose the names and addresses of those individuals who had filed complaints with the Commission about "cramming" — the shady practice of putting bogus charges on a person's bill. The Court held that "[C]ompelling disclosure of the identity of consumers' complaints about cramming would not further the core purpose ["to expose what the government is doing, not what its private citizens are up to"] of the FOIA."<sup>35</sup>

However, because Illinois does not have a similar Privacy Act, the names of public employees would be discoverable but their addresses are most likely exempt from disclosure. Illinois has adopted the same balancing test for the Illinois Act.<sup>36</sup>

Courts have found that records containing a detailed synopsis of an individual's career, family relationship and financial status represent the type of information that the exemption was intended to protect.<sup>37</sup>

The Illinois Supreme Court considered a FOIA request from the Family Life League seeking a list of the physicians, hospitals and other service providers who had furnished

abortion services under the Illinois Medicaid program. The Court rejected the department's claim that release of such information would constitute an unwarranted invasion of the providers' and recipients' rights to privacy based upon the department's speculation that such release would result in improper harassment and reluctance of women to continue using such services. However, the Court did find that because a special computer program had to be developed by the department in order to segregate confidential information out of these records, the department would be allowed reasonable time to perform this task and that plaintiffs would have to pay the reasonable expenses of the preparation of these records.<sup>38</sup>

Issues similar to those involved in the *Family Life League* case include the following:

- information relating to state pension payments by former legislators subject to disclosure even though records contained exempt material where information could be separated and agency could charge fees reasonably calculated to reimburse agency for actual costs of producing records.<sup>39</sup>

- names and addresses of traffic accident witnesses exempted under the Illinois Act.<sup>40</sup>

Several courts have also held that the "personal privacy" exemption is not applicable to corporations.<sup>41</sup>

One question that will have to be resolved in Illinois is whether the motive of the person making the request can be considered.<sup>42</sup> In one case, the U.S. Supreme Court stated that "the identity of the requesting party has no bearing on the merits of his or her FOIA request."<sup>43</sup>

One Illinois court has held that the names and addresses of persons who have previously made requests under the FOIA are not subject to disclosure to a subsequent individual requesting such information under the FOIA, and thus the names and addresses were properly redacted.<sup>44</sup>

A third exemption from disclosure found in both the Federal and Illinois Acts relates to trade secrets. For information to fall within this exemption, it must be shown that it is: (a) commercial or financial; (b) obtained from a person;

<sup>34</sup> *Federal Labor Relations Authority v. Department of Treasury*, 884 F.2d 1446 (D.C. Cir. 1989)

<sup>35</sup> *The Lakin Law Firm, P.C. v. Federal Trade Commission*, 352 F.3d 1122 (7th Cir. 2003)

<sup>36</sup> *Margolis v. Director, Illinois Department of Revenue*, 180 Ill.App.3d 1084, 536 N.E.2d 827 (1st Dist. 1989), cert. den. 126 Ill.2d 560 (1989) and *Blumenfeld, Ltd. v. Department of Professional Regulation*, 263 Ill.App.3d 981, 636 N.E.2d 594 (1st Dist. 1993)

<sup>37</sup> *Columbia Packing Co., Inc. v. U.S. Dept. of Agriculture*, 417 F.Supp. 651 (D. Mass. 1976); see also, *Bahlman v. Brier*, 462 N.Y.S.2d 381 (N.Y.Sup.Ct. 1983) and *Blumenfeld, Ltd. v. Department of Professional Regulation*, 263 Ill.App.3d 981, 636 N.E.2d 594 (1st Dist. 1993)

<sup>38</sup> *Family Life League v. Illinois Department of Public Aid*, 112 Ill.2d 449, 493 N.E.2d 1054 (Ill. 1986)

<sup>39</sup> *Hamer v. Lentz*, 132 Ill.2d 49, 547 N.E.2d 191 (Ill. 1989)

<sup>40</sup> *Staske v. City of Champaign*, 183 Ill.App.3d 1, 539 N.E.2d 747 (4th Dist. 1989)

<sup>41</sup> *Robertson v. Dept. of Defense*, 402 F.Supp. 1342 (D.D.C. 1975); *Ferguson v. Kelly*, 455 F.Supp. 324 (N.D.Ill.1978)

<sup>42</sup> See e.g., *Goodstein v. Shaw*, 463 N.Y.S.2d 162 (N.Y.Sup.Ct. 1983); and *News-Press Publishing Co., Inc. v. Good*, 388 So.2d 276 (Fla.App. 1980); *Warden v. Bennett*, 340 So.2d 977 (Fla.App. 1976); and *Williams v. I.R.S.*, 345 F.Supp 591 (D.C.Del. 1972)

<sup>43</sup> *Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 109 S.Ct. 1468 (1989)

<sup>44</sup> *Chicago Alliance for Neighborhood Safety v. The City of Chicago*, 348 Ill.App.3d 188, 808 N.E.2d 56 (1st Dist. 2004)

and (c) privileged or confidential.<sup>45</sup> In one case, the Court held that the factors to be considered by an agency in exercising its discretion in applying this exemption are whether disclosure would aid the agency in performing its functions, whether harm to producers and the public would result from release of the information, and whether alternatives to full disclosure could serve the public equally well.<sup>46</sup> State courts also have interpreted similar provisions.<sup>47</sup>

Another exemption appearing in the Illinois Act as well as the Federal Act and similar state acts is the exemption for “preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated ...” This exception is intended to encourage frank and open dialogue on matters of governmental concern in order to make an informed policy decision, which decision, of course, would be available for public review.<sup>48</sup> Other cases related to preliminary materials are as follows:

- court placed the burden of proof on the Department of Corrections to show that preliminary draft regarding drugs to be used for lethal injections under the Illinois death penalty statute was exempt from disclosure;<sup>49</sup>
- a county sheriff’s opinionated letter to the city regarding plaintiff’s liquor license application was ruled exempt;<sup>50</sup>
- a staff analysis of an arbitrator was ruled exempt;<sup>51</sup>
- arrest records and traffic tickets were ruled not exempt;<sup>52</sup>
- police “use of force” forms found exempt;<sup>53</sup>
- correspondence with consultants ruled exempt.<sup>54</sup>

Finally, conflicts have arisen concerning exemptions where disclosure is positively prohibited by another state or federal law. In one case, the prohibition on disclosure of certain student records under the Illinois School Code did not prohibit disclosure of masked and scrambled student

records where individual identifying information was deleted.<sup>55</sup>

The state and federal Acts exempt from disclosure investigatory records compiled for administrative law enforcement purposes where disclosure would interfere with pending or reasonable contemplated enforcement proceedings.<sup>56</sup> However, a request seeking work attendance and sick leave records for a public agency’s assistant bureau chief in order to substantiate a “tip” that the official had been taking unaccrued sick leave and improperly using sick leave time to take paid vacations was proper and the records were not exempt under the FFOIA.<sup>57</sup>

## COMPLYING WITH THE FOIA

### Initial Preparations

In order to comply with the Freedom of Information Act, school districts must do the following:

- Develop rules and regulations, which involve a number of important local decisions;
- Maintain directories required by the Act;
- Catalog and index school district records.

### District Rules and Regulations

The FOIA authorizes school districts to adopt rules and regulations that are in conformity with the Act, setting forth the times and places where records will be made available and the persons from whom such records may be obtained. It is essential that such rules and regulations be written and adopted, because there are some important decisions each district must make.

It is suggested that the school board’s policy regarding the FOIA should be general and authorize the superintendent to draw up rules and regulations that specify in some detail the procedures for compliance. The school board must also designate the individual or individuals who will serve as the Freedom of Information Officer or officers.

Here are some major items that should be included in the rules and regulations:

- 1) Designate the Freedom of Information Officers — those individuals who will handle requests for records. Each district probably will want to designate two or more individuals who will receive and process requests for records.
- 2) Establish times when records may be requested, such as during normal office hours.

<sup>45</sup> *National Park and Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); *Consumers Union of U.S. v. Veterans Administration*, 301 F.Supp. 796 (S.D.N.Y. 1969)

<sup>46</sup> *Doctors Hospital of Sarasota, Inc. v. Califano*, 455 F.Supp 476 (M.D. Fla. 1978)

<sup>47</sup> *See Belth v. Insurance Dept. of New York*, 406 N.Y.S.2d 649 (N.Y.Sup.Ct. 1977); *Uribe v. Howie*, 19 Cal.App.3d 194, 96 Cal.Rptr. 493 (Cal.Ct.App. 1971)

<sup>48</sup> *N.L.R.B. v. Sears*, 421 U.S. 132 (1975)

<sup>49</sup> *Hoffman v. Illinois Department of Corrections*, 158 Ill.App.3d 473, 511 N.E.2d 759 (1st Dist. 1987)

<sup>50</sup> *Carrigan v. Harkrader*, 146 Ill.App.3d 535, 496 N.E.2d 1213 (3rd Dist. 1986), cert. den., 113 Ill.2d 558 (Ill. 1986)

<sup>51</sup> *Kheel v. Ravitch*, 462 N.Y.S.2d 182 (N.Y.Sup.Ct. 1982)

<sup>52</sup> *Johnson Newspaper Corp. v. Stainkamp*, 463 N.Y.S.2d 122 (N.Y.Sup.Ct. 1983)

<sup>53</sup> *Gannett Co. Inc. v. James*, 447 N.Y.S.2d 781 (N.Y.Sup.Ct. 1982)

<sup>54</sup> *Sea Crest Const, Corp. v. Stubing*, 442 N.Y.S.2d 130 (N.Y.Sup.Ct. 1981)

<sup>55</sup> *Bowie v. Evanston Community Consolidated School District No. 65*, 128 Ill.2d 373, 538 N.E.2d 557 (1989)

<sup>56</sup> *See e.g., Moorfield v. U.S. Secret Service*, 611 F.2d 1021 (5th Cir. 1980), cert. den. 449 U.S. 909 (1980); *Griffith Laboratories U.S.A. v. Metropolitan Sanitary District*, 168 Ill.App.3d 341, 522 N.E.2d 744 (1988)

<sup>57</sup> *Dobronski v. Federal Communications Commission*, 17 F.2d 273 (9th Cir. 1994)

3) Establish the place where requests may be made, presumably the central administrative office.

4) Set forth the time deadlines for handling requests. Because these rules will serve as a guide for staff members dealing with requests for records, statutory deadlines should be recited in the rules.

5) Set forth the choice of responses that can be made to a request for records.

i. Immediately grant the request whenever possible. For example, a request to examine the current district budget probably can be accommodated on the spot.

ii. Grant the request within five business days.

iii. Delay granting the request for five additional business days. A written response is required with this option, so the required content for such a response should be made a part of the rules (see Appendix B).

iv. Deny the request. Again, a written response is required for this option, and the content of such a response should be made part of the rules (see Appendix C).

6) A schedule of fees for copying. The rules should make it clear that the fees are based on actual costs. Costs incurred in retrieving the documents cannot be charged.

7) The right of a person who is denied access to a public record to file a request for review with the Public Access Counselor.

8) Procedures for retaining denials of requests for records. All notices of denials must be retained, indexed and made available for public inspection. The rules, therefore, should state where these notices will be kept and how they will be indexed. An index might begin with the types of school district records that are automatically exempt under the Act, such as student records, staff evaluation records, and minutes of closed meetings.

## Preparing Directories

As explained earlier, each district must develop and publicize two directories — one describing the district and one describing how citizens may obtain public records. These directories should be updated as necessary and should be included in the list of records maintained by the district (see below).

Copies of both directories must be prominently displayed at the board of education office and at each school office. They also must be available for copying and mailed out upon request. Sample directories are provided in Appendix F and Appendix G.

## Cataloging and Indexing of Public Records

The Act requires that public bodies list all types or categories of records under their control which are prepared or

received after July 1, 1984. The Act calls for a catalog of “all types or categories of records” under the school district’s “control.”

Note that the Act requires the list to be by “type” or “category” of records and not listing every individual record. Suggested below are different types or categories that a school district might establish to cover the records that it has under its control and which are subject to inspection under the Act unless an exemption applies. This list is by no means meant to be exhaustive and is merely for reference or descriptive purposes. Obviously, the number of types or categories will vary from school district to school district.

The type of records is meant to be a broad general category and the category is a sub-part of the type. For example, one type of record is a financial record. Under “financial records” may be the following categories: (a) budgets; (b) levy resolution and certificate of tax levy; (c) audit; (d) bills; (e) receipts for revenue; (f) vouchers; (g) cancelled checks; (h) water bills; (i) sewer bills; (j) real estate tax receipts; (k) salary schedules; (l) utility bills; (m) etc. This gives you examples of categories that could be listed under the general type “financial record.”

Other general types could include, for example, the following: (1) administrative memoranda; (2) board minutes; (3) board resolutions; (4) correspondence received by school district; (5) correspondence from school district; (6) bidding specifications; (7) board policies; (8) administrative rules and regulations; (9) personnel code; (10) personnel files; (11) office equipment; (12) insurance; (13) capital equipment; (14) real estate; (15) legal notices; (16) newspaper articles; (17) consulting contracts; (18) contracts for capital equipment; (19) contracts for office supplies; (20) contracts for maintenance and repairs; (21) professional consultant contracts; (22) pension fund records; (23) hospitalization records; (24) worker’s compensation records; (25) training records; (26) official bonds; (27) etc. Again, this list is not meant to be exhaustive.

While the district need not catalog its records to the same degree as it lists expenses in its annual budget, such may be used as a convenient starting point for determining what categories and types of records it may wish to list. Another good source for ideas in cataloging would be the suggested school record retention schedule usually available from the local record commission or the regional superintendent of education. Of course, the district also should rely on its past experience by reviewing the records it currently have on hand and dividing them into what will appear to it to be meaningful categories. There is a great deal of latitude in determining what the categories or types of records will be and consequently what the list would contain, but keep in mind the statutory mandate that the list must be “reasonably current” and must be “reasonably detailed” in order to assist individuals in obtaining access to public records.

Finally, note that the catalog need not cover records prepared or received prior to July 1, 1984. Thus, if a particular type or category of record has been discontinued prior to the effective date of the Act, it should not be included in the listing. The catalog of records must be available for public inspection and copying.

## Responding to Requests

A school district is in compliance with the FOIA when it has (a) designated and trained Freedom of Information Officer(s), (b) established rules and regulations for responding to requests for records, (c) created and have on display at each office the two directories required by the Act, and (d) established a catalog of records received or prepared after July 1, 1984. Let's assume that Anytown School District 1 meets these requirements and then let's suppose that the following written request is hand-delivered to the district office on June 1:

June 1, 2010  
Mrs. Alice Rose  
Secretary Board of Education  
School District 1  
Anytown, Illinois

Dear Mrs. Rose:

May I please inspect and have copies of the following School District records:

1. Certified copy of the Minutes of the School Board Meeting held on April 17, 2010.
2. Reading scores of all fifth grade students in the District.
3. School Board policy on student testing.
4. The names, salaries, titles and dates of employment of all past and present employees of the District during the past five years.

Sincerely,  
Robin Jones

Mrs. Rose or the staff member receiving the request should immediately deliver the request to the district's Freedom of Information Officer. It should then be explained to Mrs. Jones that the district's Freedom of Information Officer will get back to her within the next five business days either with the requested records and/or with an appropriate response. The person receiving the request may want to take Mrs. Jones's telephone number so that she can be contacted when the records are ready for her to pick up.

Next, the district's Freedom of Information Officer should examine each item requested and prepare a response to the request:

**Item 1:** So long as the board meeting on April 17 was open to the public, Item number 1 can be easily furnished to Mrs. Jones within the next five business days (assuming the minutes have been approved by the school board). If, however, part of the meeting was closed, only the minutes of the

open part of the meeting may be given to Mrs. Jones. Reference to the minutes of the closed meeting should be included in the response letter with a statement that access to those minutes is denied.

If the minutes requested have not been approved, the Freedom of Information Officer may deny the request until the minutes have been approved. She would, of course, notify Mrs. Jones of the delay and the reason within five business days of June 1.

**Item 2:** The reading scores of individual fifth grade students are, of course, student records specifically prohibited from disclosure by the Illinois School Student Records Act and the Federal Family Educational and Privacy Rights Act.

**Item 3:** The board policy should be given to Mrs. Jones within five business days of June 1.

**Item 4:** This information falls within the Act's definition of "public records" and must generally be furnished to Mrs. Jones. If the school district employs any number of employees, however, such request could require the collection of a large number of records and, therefore, meet one of the seven reasons which would allow an additional five working days to fill the request.

After making this determination and copying the records which are readily available (i.e., the board minutes and the policy), Mrs. Jones can be contacted to come and pay any fee due for them and pick them up. Since some of the records are to be denied and others to be delayed, thereby requiring a written response, the Freedom of Information Officer could send the following reply:

June 3, 2010

Dear Mrs. Jones:

In accordance with your written request for school district records received on June 1, 2010, the following items are available for you to pick up at the Board of Education office:

(1) Certified copy of the minutes of the Board of Education meeting held on April 17, 2010. I call to your attention that a portion of this meeting was closed to the public to discuss the dismissal of an employee. The minutes of this closed portion of the meeting are permitted to be kept confidential by the Illinois Open Meetings Act and the Illinois Freedom of Information Act and are not included with the minutes being furnished to you for that reason. There is a one dollar charge for certification of the Board minutes.

(2) Board Policy Number 234 on Student Testing. These records consist of six pages.

Your request for the reading scores of individual fifth grade students in the district is hereby denied. These scores are student records which are exempt from disclosure under the Illinois School Student Records Act and The Federal Family Educational and Privacy Rights Act. Section 7(a) of the Illinois Freedom of Information Act exempts from inspection and copying information which is specifically prohibited from disclosure by feder-

al or state law.

The undersigned, as the district's Freedom of Information Officer, is responsible for the denial of both the minutes of the closed portion of the April 17, 2010 Board meeting and the student test scores. You are hereby further notified that you have the right to appeal this decision to the State of Illinois Public Access Counselor, PAC, who may be contacted within 60 days of this notice at the Office of the Illinois Attorney General, 100 W. Randolph Street, 12th Floor, Chicago, Illinois 60601, (312) 814-3000, who under the Illinois Freedom of Information Act, will review the request and denial and make a decision pursuant to the procedures of the Office of the PAC. Details regarding the process that the PAC will follow may be obtained from that Office. You may also have other rights under Section 11 of the Freedom of Information Act.

Finally, your request for the names, salaries, titles and dates of employment of all past and present district employees for the past five years cannot be filled within five business days of June 1, 2010. Because the District normally employs between 150 and 200 employees, this request requires the collection of a large number of records, most all of which are stored in the Board offices. These records will be made available to you no later than Wednesday, June 21, 2010. I will notify you prior to that date of the fee for these records.

Very truly yours,  
Freedom of Information Officer  
School District #1

Except in cases where records are furnished immediately, upon receiving a request for a public record, the Freedom of Information Officer must:

- 1) note the date the public body receives the written request;
- 2) compute the day on which the period of or response will expire and make a notation of that date on the written request;
- 3) maintain an electronic or paper copy of a written request, including all documents submitted with the request until the request has been complied with or denied; and
- 4) create a file for the retention of the original request, a copy of the response, a record of written communications with the requester, and a copy of other communications.

## **SOME QUESTIONS AND ANSWERS ABOUT THE FOIA**

### **What is a "public body" covered by the Freedom of Information Act?**

Public body means *all* legislative, executive, administrative, or advisory bodies of the state, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State,

any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees *thereof*, and a School Finance Authority created under Article 1E of the School Code. "Public Body" does not include a child death review team or the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act.

While there is substantial doubt as to what constitutes a subsidiary body, clear examples would be committees or bodies established by action of the school board. For example, Section 10-22.31 of The School Code, which authorizes joint agreements for the provision of special education services, authorizes the designation of a governing body under the joint agreement. Such governing body, in the author's opinion, is clearly a subsidiary body under both FOIA and the Open Meeting Act. Also, all subcommittees of a board of education and all committees established by such a board are subject to the Act. A committee, however, which is not established by the board and does not report to the board, but which is established to advise a school's administrators, probably is not subject to the Act.

### **What about records kept by individual school officials or employees?**

The Act does not require disclosure of personal material belonging to officials or employees. However, the Act does cover records and materials that officials and employees must prepare or maintain as part of their official duties. As a practical guide, if the school board or superintendent has authority to compel another official or employee to disclose the records in question, they are probably covered by the Act and subject to disclosure.

### **Which public records must be made available?**

The term "public records" means all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.

Although the Act provides numerous exemptions from disclosure, none of those exemptions is based on the form a record might take. Exemptions are based on content. Note that a district is not required to create new records to comply with requests for information. The Act applies to existing records or to records that might become established by law or by the school board or superintendent.

### **Who may request records?**

Any individual, corporation, partnership, firm, organization or association, acting individually or as a group.

### **Must requests for records be submitted in writing?**

No, records also may be requested in person and the district may honor an oral request or it may require that the request be put in writing. It may not be possible to fill a request while the party waits. Moreover, the five-day time limit and the appeal procedures are tied to written requests. Therefore, it is advisable to reduce an oral request to writing, either by a form that the requesting person fills out or by a memorandum completed by a staff member (see Appendix E). However, although the law allows for the district to require that a request be put in writing, the law states that no person can be required to submit a request using a particular form.

### **When is a request for records “unduly burdensome?”**

A “burdensome” request would be one requiring more than five business days to fill. In such cases, the district must invoke the additional five days by notifying the requesting party by letter and by citing one of the seven reasons provided in the Act. An “unduly burdensome” request would probably be one that is so broad or general that district employees cannot reasonably comply without disrupting the work of the district or without excessive cost. Court decisions interpreting the Federal Freedom of Information Act have tried to apply a balancing test, weighing the burden of the request against the public’s need to see the records. The Illinois law requires the district to meet with the requesting person in an attempt to reduce the request to manageable size. If that fails, the request may be denied as being “unduly burdensome.” Repeated requests for the same records by the same person can likewise be considered unduly burdensome.

### **How should a district make public records “available for inspection”?**

Providing the requesting party with the exact location of the requested records is probably sufficient under the Act. That means the Freedom of Information Officer would have to first find the exact location, which might be a binder or a file drawer. However, in order to preserve the integrity of its records, the district should pull the records, identify and itemize them, and provide the records for inspection under staff supervision.

Records stored electronically are another matter. To make them “available for inspection” probably will mean setting up whatever equipment is necessary, such as a computer, tape player or micro-film viewer.

### **What if the requested record is on a computer file, film, audio or video tape, or some form other than on paper?**

If the information meets the legal definition of a public

record and is not exempt under Section 7 of the Act, the district must find a way to provide for inspection and, if requested in writing, to provide a copy. Keep in mind that the requesting person may be required to pay a copying fee based on the actual cost of reproduction. Reproduction of a tape or a film would probably be more substantial than reproducing a paper record. Also keep in mind that some documents in the form of film, tapes, books and computer software are protected by copyrights or patents and are, therefore, exempted from copying under Section 7. Finally, the Act requires the district to help individuals understand how information may be obtained from computerized records and how to comprehend computer print outs. When a person requests a copy of a record maintained in an electronic format, the district must furnish it in the electronic format specified by the requester, if feasible. If it is not feasible to furnish the public records in the specified electronic format, then the district must furnish it in the format in which it is maintained by the district, or in paper format at the option of the requester. The district may charge the requester for the actual cost of purchasing the recording medium, whether disc, diskette, tape, or other medium. The district may not charge the requester for the costs of any search for and review of the records or other personnel costs associated with reproducing the records.

### **What is meant by “copying?”**

Where a request is submitted in writing, the district is obligated to provide a duplicate copy of the record. Also, where requested, the district must certify the copy as being an accurate reproduction of the original record. The Act also states that records must “be made available for copying,” presumably relating to individuals who request records in person. It would probably be unwise to turn original records over to anyone other than a responsible employee or to permit inspection of an original record without the supervision of a responsible employee. On the other hand, the district probably would err in requiring a fee for copying where the individual merely wants to “inspect.”

This may be the best reason for getting all requests in writing or reducing requests to writing. The Freedom of Information Officer must determine the volume of records desired and whether the person wants copies or merely wants to inspect. Presumably, the district is under no obligation to provide copies where the request is not in writing, but it would appear to make no sense not to provide copies. By getting the request in writing, the district can invoke the five-day time period if necessary for large requests. This is certainly preferable to turning records over to private citizens to make their own copies. Keep in mind also that a citizen might ask to see numerous records and then (a) request copies of a few pages or (b) make hand-written notes from the records. Individual needs must be determined at the outset.

**What is a “certified copy?”**

In filling a written request for a certified copy of a record, the district is required to certify that the copy is a true reproduction of the original. This can be accomplished by indicating on the copy or on an attached form that “I hereby certify this to be a true and correct copy of a record

maintained by \_\_\_\_\_ School District No. \_\_\_\_\_, County of \_\_\_\_\_, State of Illinois.” This statement would be accompanied by a date and signature of the board of education secretary or the secretary’s designated representative.

# Appendix A

## Policy

### Verbatim Records of Closed Meetings

Pursuant to Public Act 93-0523, the **[insert name of governmental entity]** adopts the following policy concerning verbatim records of closed meetings:

1. A verbatim record of all closed meetings of the **[insert name of governmental entity]** shall be kept in the form of an audio/video **[pick one]** recording. The **[insert name of governmental entity]** shall provide the recording device and only one recording device will be allowed. Individuals shall not be allowed to bring their own recording device to closed meetings.
2. The **[insert name of designated party, most likely the clerk or secretary, whichever is applicable]**, or his or her designee if he or she is unavailable, will be responsible for operating the recording device for all closed meetings of the board of **[insert name of governmental entity]**. Each committee of the Board of **[insert name of governmental entity]** shall designate in writing the individual responsible for recording closed meetings and submit such designation to the **[Clerk/Secretary]** of the **[insert name of governmental entity]**.
3. The **[clerk/secretary, whichever is applicable]**, shall maintain the audio/video **[pick one]** tapes in a safe and secure location under lock and key. Access to non-released tapes shall be limited to **[fill in names or titles of persons allowed access]** unless otherwise directed in writing by the governing body of **[insert name of governmental entity]**. Individuals allowed access shall sign a log indicating the date and time they listened to a particular tape. Individuals allowed access shall listen to a tape only under supervision. No copies of any non-released tape shall be made.
4. The verbatim record of a closed meeting may be destroyed eighteen (18) months after the completion of the meeting if the board of **[insert name of governmental entity]** approves the destruction of the particular recording and if it approves written minutes for the particular closed meeting that contain the following, as required by Section 2.06 of the Open Meetings Act:
  - (1) the date, time and place of the meeting;
  - (2) the members of the public body recorded as either present or absent; and
  - (3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.
5. The **[insert name of designated party]** shall, on a periodic basis, but not less frequently than quarterly, inspect the recordings to check their quality and completeness, and report on any problems to the board of **[insert name of governmental entity]**.
6. Unless the board of **[insert name of governmental entity]** has determined that a recording no longer requires confidential treatment, or otherwise consents to disclosure, the verbatim recordings of closed meetings made pursuant to Paragraph 1 above shall not be either open for public inspection or subject to discovery in any administrative proceeding other than one brought to enforce the provisions of the Open Meetings Act. In a civil action brought to enforce the provisions of the Open Meetings Act, a recording will be made available to the court for *in camera* examination for the purpose of determining whether a violation of the Open Meetings Act exists. A recording will be made available to the Public Access Counselor when required by law. In the case of a criminal proceeding, a recording will be made available to the court for *in camera* examination for the purpose of determining what portion, if any, must be made available to the parties for use as evidence in the prosecution.

# Appendix B

## Sample Form for Extending Time for Disclosure

Dear (individual involved):

We have been unable to fill your request dated \_\_\_\_\_ requesting:

(the records requested)

for the reason or reasons checked below:

- The requested records are stored in another location.
- The request requires the collection of a large number of records.
- The request is categorical in nature and requires an extensive search.
- We have failed to locate the requested records in our initial attempt and the search is continuing.
- The requested records require examination by a competent person in order to determine which, if any, are exempt under Section 7 of the Act.
- It would unduly burden or interfere with the operations of this school district to fill the request within the initial seven working days.
- There is a need for consultation with another public body which has a substantial interest in the determination or in the subject matter of the request.

With respect to the records you have requested, such records will be available to you by \_\_\_\_\_\* or we will make a decision denying your request by such date. Such date will be within seven additional working days from \_\_\_\_\_\*\*.

School District No.: \_\_\_\_\_

By: \_\_\_\_\_  
Freedom of Information Officer

Date: \_\_\_\_\_

\* Here insert the date of the tenth business day after the request for records was received.

\*\* Here insert the date of the fifth business day after the request for records was received.

# Appendix C

## Sample Form for Denial Letter

Dear (individual involved):

You are hereby notified that your request for the disclosure of:

(records requested)

is hereby denied and the reason for such denial is as follows:

(reason for denial, citing the exemptions under the Act)\*

This decision to deny disclosure of the records requested has been made by \_\_\_\_\_,  
FOIA Officer for the \_\_\_\_\_ School District.

You are hereby further notified that you have the right to appeal his decision to the State of Illinois Public Access Counselor, PAC, who may be contacted within sixty (60) days of this notice at the Office of the Illinois Attorney General, 100 W. Randolph Street, 12th Floor, Chicago, Illinois 60601, (312) 814-3000, who under the Illinois Freedom of Information Act, will review the request and denial and make a decision pursuant to the procedures of the Office of the PAC. Details regarding the process that the PAC will follow may be obtained from that Office. You may also have other rights under Section 11 of the Freedom of Information Act.

School District No.: \_\_\_\_\_

By: \_\_\_\_\_  
Freedom of Information Officer

Date: \_\_\_\_\_

\* A school district that finds itself having to deny access to exempt records frequently may want to print a form either that lists here all of the exemptions applicable under the Act. The employee handling the request can then simply check the appropriate exemption being involved in each situation.

# Appendix D

## Sample Letter of Disclosure with Deletion of Exempt Material

Dear (individual involved):

Pursuant to your written request of \_\_\_(date)\_\_\_, enclosed you will find copies of the records you have requested. Please note that pursuant to Section 7(1) of the Freedom of Information Act, certain material originally contained in such records has been deleted because such material is exempt material under Section 7 or 7.5 of the Act.

By: \_\_\_\_\_  
Freedom of Information Officer

Date: \_\_\_\_\_

**Where the deleted material has been specifically requested the deletion may represent a denial. Therefore, it would be advisable to attach a letter of denial (see Appendix C).**

# Appendix E

## Sample Employee Memorandum Regarding Oral Request for Records

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the hour of \_\_\_\_\_ . M., the following individual(s) appeared in person at the office of the Board of Education and asked to inspect the following records:

Individual(s) making the request:

(here insert names)

Records sought to be inspected:

(here insert records requested)

The above records were presented to such individual(s) for inspection at \_\_\_\_\_ . M. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, except for:

(here insert any records not presented)

The reason(s) for not providing the above records (or portion of records) was:

(here insert reason – such as the fact that the records were exempt records, or that they could not be immediately located and a search would continue, or that no such records existed)

Of the records requested, copies of the below records were provided to or made by the individual(s) making the request:

(here insert records copied)

Date and Time of Memorandum: \_\_\_\_\_

Signature of Employee: \_\_\_\_\_

Title of Employee: \_\_\_\_\_

Witness: \_\_\_\_\_

# Appendix F

## Sample School District Information Directory

### Community Unit School District No. 1

Community Unit School District No. 1 is a school district located in Anytown, One County, Illinois. The district is organized under the laws of the State of Illinois for the purpose of providing its residents with schools for grades K-12 for the education of all eligible persons in the district.

The District operates the following schools (all located in Anytown):

1. Main Street School, for grades K-6, located at 111 W. Main Street.
2. Central School, for grades K-6, located at 15 N. Pembroke Street.
3. Liberty Junior High School, for grades 7-8, located at 15 E. Liberty Drive.
4. Westbrook High School, for grades 9-12, located at 25 S. Rock Road.

and maintains its Administrative office at 25 S. Rock Road in Anytown.

The District is governed by a seven-member Board of Education. The Board's office is located in Westbrook High School, 25 S. Rock Road, Anytown, Room Number 106. Current members of the Board of Education are:

1. Alexander Jones, President
2. Robert Doe, Vice President
3. William Cone, Secretary
4. Martha Redd
5. Alice Fox
6. Michael Washburn
7. Frederick Higgins

Members of committees of the School Board are as follows:

Committees	Member	Title
------------	--------	-------

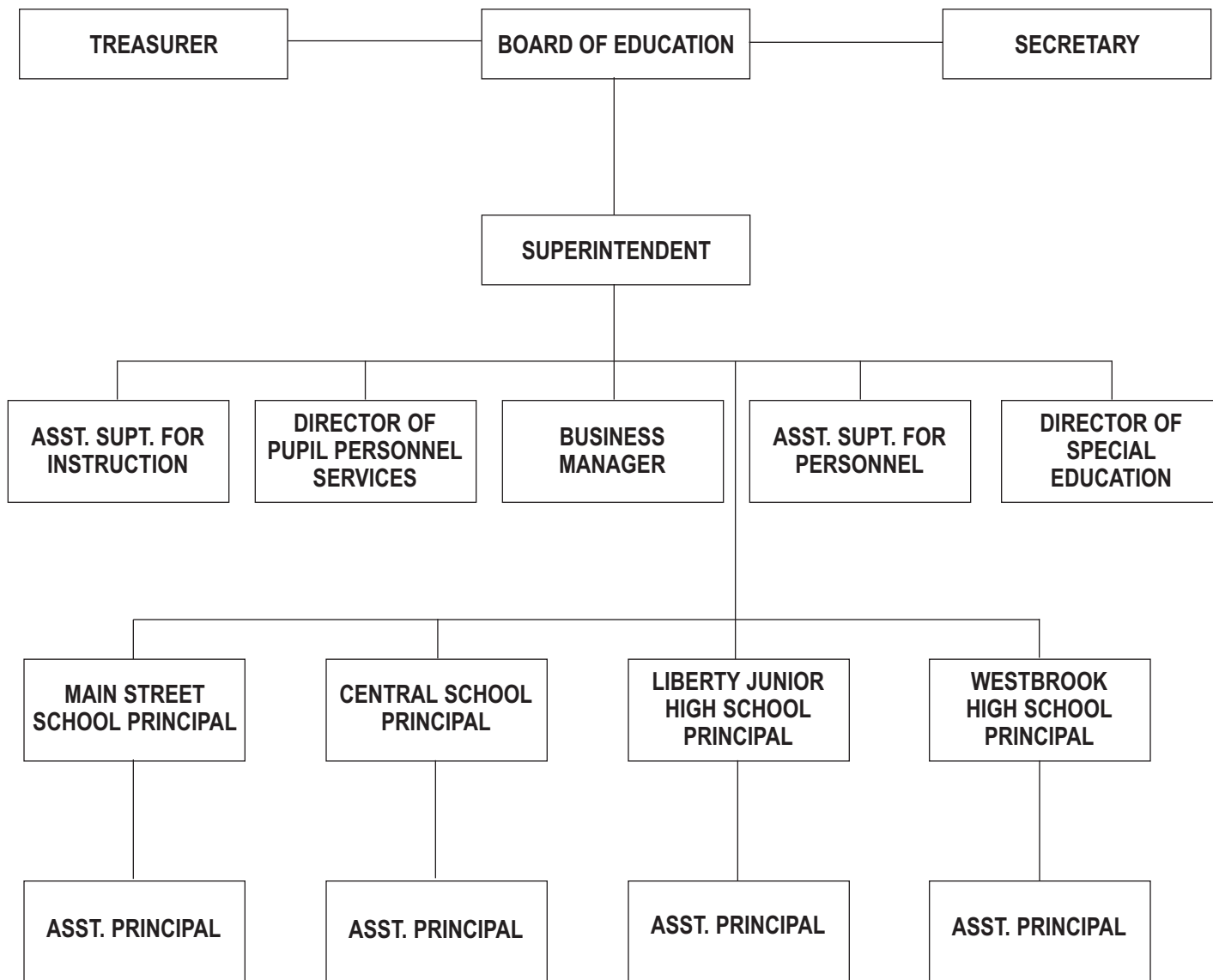
(here list the members of all committees of the Board.)

The approximate amount of the operating budget of the District is \$3,126,500.00. The District currently employs 178 full and part-time employees.

*(continued)*

The block of the functional subdivisions  
of the School District is as follows:

**Sample Block Diagram of Functional Subdivisions**



# Appendix G

## Sample School District Records Directory

### Community Unit School District No. 1

Any person requesting records of Community Unit School District No. 1 may make such a request in person, orally or in writing, at the board of education office in Westbrook High School, 25 South Rock Road, Anytown, Room Number 106. Such request should be made to the district's Freedom of Information Officers, Mr. William Cone, school board secretary, at such address; and if he is not present, such request may be made to Mrs. Alice Rose, administrative secretary.

Alternatively, any person may mail a written request to either Mr. Cone or Mrs. Rose specifying in particular the records requested to be disclosed and copied. All written requests should be addressed to the board of education office at the above address. If you desire that any records be certified, you must indicate that in your request and specify which records must be certified.

The fees for copies of records are as follows:

First 50 pages are at no cost

\*15 cents per page (actual cost) if school district employee copies records

12 cents per page (actual cost) if individual requesting records makes copies using school district's equipment

8 cents per page (actual cost) if individual requesting records makes copies using his or her own equipment

\$1 per certificate (actual cost) if the copies are to be certified

\*Each school district must establish fees based on its own calculations of actual cost.

**This directory must be "prominently" displayed at the school district's main office and at each school. It also must be available for public inspection and copying and mailed to persons requesting it.**

# Appendix H

## Electronic Attendance Request

I hereby request to electronically attend the meeting of the \_\_\_\_\_ school board on \_\_\_\_\_, 20\_\_ at \_\_\_\_ p.m.

I am eligible to participate electronically because of [check one]:

- 1) personal illness or disability \_\_\_\_
- 2) employment purposes or business of the public body \_\_\_\_
- 3) a family or other emergency \_\_\_\_

During the meeting, I will be at the following location:

\_\_\_\_\_

and reachable at the following phone number: \_\_\_\_\_

\_\_\_\_\_  
Signature of member

\_\_\_\_\_  
Date

OR

Request received by \_\_\_\_\_  phone  e-mail  fax  other

\_\_\_\_\_  
Signature of [clerk][recording secretary]

\_\_\_\_\_  
Date

# Appendix I

## Sample Resolution

**Please Review This Matter with Your Local Attorney**

[RESOLUTION] NO.

A [RESOLUTION] DEFINING MEETING AND ADOPTING  
PROCEDURES FOR ELECTRONIC ATTENDANCE AT MEETINGS

WHEREAS, on January 1, 2007, Public Act 94-1058, amending the Open Meetings Act, takes effect and amends the definition of a “meeting” to mean “Any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business,” and it permits attendance of members of the public body at public meetings by a means other than physical presence;

WHEREAS, to permit attendance by a means other than physical presence, the (governmental unit) must adopt rules that conform to the requirements and restrictions of the Open Meetings Act, 5 ILCS 120/7;

WHEREAS, the corporate authorities of the (governmental unit) desire to permit attendance of members of the public body by means other than physical presence in compliance with the Open Meetings Act;

WHEREAS, the corporate authorities of the (governmental unit) find that it is necessary that any existing resolutions or policies be amended to conform with the term “meeting” to include electronic gatherings as defined in Section 120/1.02 of the Open Meetings Act.

NOW, THEREFORE, BE IT [ORDAINED] [RESOLVED] by the Board of Education of School District No. \_\_\_\_, \_\_\_\_\_ County, Illinois as follows:

Section 1. Recitals. The preliminary paragraphs set forth above are incorporated herein as part of this Resolution.

Section 2. Electronic Attendance at Meetings Rules. The board of education hereby adopts the Electronic Attendance at Meetings Rules, attached hereto, that permits a member of the public body to attend any meeting of a public body as defined in the Open Meetings Act via electronic means.

Section 3. Effective Date. This [Resolution] shall be in full force and effect after its passage and approval.

Section 4. Severability. In the event that any section, clause, provision, or part of this Resolution shall be found and determined to be invalid by a court of competent jurisdiction, all valid parts that are severable from the invalid parts shall remain in full force and effect.

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

APPROVED by the school board president and attested by the clerk, on this \_\_ day of \_\_\_\_\_, 20 \_\_.

\_\_\_\_\_  
SCHOOL BOARD PRESIDENT

**ATTEST:**

\_\_\_\_\_  
SECRETARY

*(continued)*

## ELECTRONIC ATTENDANCE AT MEETINGS RULES

**Section 1. Rules Statement.** It is the decision of the board of education of School District No. \_\_\_\_, \_\_\_\_\_ County, Illinois that any member of the board may attend any open or closed meeting of the Board via electronic means (such as by telephone, video or internet connection) provided that such attendance is in compliance with these rules and any applicable laws.

**Section 2. Prerequisites.** A member of the board may attend a meeting electronically if the member meets the following conditions:

- (a) The member should notify the [clerk] [recording secretary] at least [duration of time] before the meeting, unless impractical, so that necessary communications equipment can be arranged. Inability to make the necessary technical arrangements will result in denial of a request for remote attendance.
- (b) The member must assert one of the following three reasons why he or she is unable to physically attend the meeting,
  - (1) The member cannot attend because of personal illness or disability; or
  - (2) The member cannot attend because of employment purposes or the business of the [local government entity]; or
  - (3) The member cannot attend because of a family or other emergency.

**Section 3. Authorization to Participate.**

- (a) The [clerk] [recording secretary], after receiving the electronic attendance request, shall inform the board of the request for electronic attendance.
- (b) After establishing that there is a quorum is physically present at a meeting where a member of the [board] desires to attend electronically, the presiding officer shall state that (i) a notice was received by a member of the [board] in accordance with these Rules, and (ii) the member will be deemed authorized to attend the meeting electronically unless a motion objecting to the member's electronic attendance is made, seconded, and approved by two-thirds of the members of the [board] physically present at the meeting. If no such motion is made and seconded or if any such motion fails to achieve the required vote by the members of the [board] physically present at the meeting, then the request by the member to attend the meeting electronically shall be deemed approved by the [board] and the presiding officer shall declare the requesting member present. After such declaration by the presiding officer, the question of a member's electronic attendance may not be reconsidered.

**Section 4. Adequate Equipment Required.** The member participating electronically and other members of the [board] must be able to communicate effectively, and members of the audience must be able to hear all communications at the meeting site. Before allowing electronic attendance at any meeting, the [board] shall provide equipment adequate to accomplish this objective at the meeting site.

*(continued)*

**Section 5. Minutes.** Any member attending electronically shall be considered an off-site attendee and counted as present electronically for that meeting if the member is allowed to attend. The meeting minutes shall also reflect and state specifically whether each member is physically present or present by electronic means.

**Section 6. Rights of Remote Member.** A member permitted to attend electronically will be able to express his or her comments during the meeting and participate in the same capacity as those members physically present, subject to all general meeting guidelines and procedures previously adopted and adhered to. The member attending electronically shall be heard, considered, and counted as to any vote taken. Accordingly, the name of any member attending electronically shall be called during any vote taken, and his or her vote counted and recorded by the [clerk] [recording secretary] and placed in the minutes for the corresponding meeting. A member attending electronically may leave a meeting and return as in the case of any member, provided the member attending electronically shall announce his or her leaving and returning.

**Section 7. (Optional) Committees, Boards and Commissions.** These rules shall apply to all committees, boards and commissions established by authority of the [board of education].]

These rules are effective this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
SCHOOL BOARD PRESIDENT

**ATTEST:**

\_\_\_\_\_  
SECRETARY

# Appendix J

## Written Request for Inspection or Copying of Public Records

*[This form is optional. Request may be made in writing by personal delivery, mail, fax, email or other means.]*

**FOIA OFFICER**

\_\_\_\_\_ School District

- 1. Name of person making request: \_\_\_\_\_
- 2. Address of person making request: \_\_\_\_\_
- 3. Telephone number of person making request: \_\_\_\_\_
- 4. Date of request: \_\_\_\_\_
- 5. Is request for commercial purposes? (yes/no) (if yes, see Appendix N)  
(It is a violation of the Freedom of Information Act for a person to knowingly obtain a public record for commercial purposes without disclosing that it is for a commercial purpose)
- 6. Are you requesting a fee waiver (yes/no) If yes, state reason: \_\_\_\_\_

Describe in detail below the public records you are requesting and state whether you wish to inspect and/or copy such records. Also, please state whether such public records are to be certified. If you wish to receive the records in a specific electronic format, please describe.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The school district will respond to the above request within five working days from the above date unless one or more of the seven reasons for an extension of time provided for in Section 3(e) of the Act are invoked by the school district.

\_\_\_\_\_  
Signature of person making request

### [ROUTING OF REQUEST - FOR OFFICE USE ONLY]

FOR COMPLETION BY FOIA OFFICER:

- Date received: \_\_\_\_\_
- Date response time expires: \_\_\_\_\_
- Copy of request and attachments filed: \_\_\_\_\_
- File folder # for this request: \_\_\_\_\_
- And date created: \_\_\_\_\_

## Appendix K

### **Notice to Requestor and to Public Access Counselor of intent to deny all or part of request based on FOIA exemption 7(1)(c) (Personal Information) or 7(1)(f) (Preliminary Documents)**

Dear Public Access Counselor and Requester:

The undersigned is a FOIA Officer for the \_\_\_\_\_ School District. We are in receipt of the attached request received on the date noted, and intend to deny the request because the documents sought fall under the exemption to FOIA for 7(1)(c) Personal Information/7(1)(f) Preliminary Documents.

The proposed denial letter is attached.

A summary of the district's basis for the proposed denial is as follows:

Sincerely,

\_\_\_\_\_  
FOIA Officer

# Appendix L

## Notice to Meet and Confer to Reduce Categorical Request to Manageable Proportions

Dear (individual involved):

You are hereby notified that your written request dated \_\_\_\_\_ calling for all records falling within \_\_\_\_\_ has been determined to be unduly burdensome pursuant to Section 3(g) (category of records requested) of the Freedom of Information Act, that there is no way to narrow your request and the burden on the School District outweighs the public interest in the information requested.

We hereby extend to you an opportunity to meet and confer with the undersigned in an attempt to reduce your request to manageable proportions. Please call me at \_\_\_\_\_ between the hours of \_\_\_\_\_ and \_\_\_\_\_ in order to schedule a conference.

Dated: \_\_\_\_\_

\_\_\_\_\_  
FOIA Officer

# Appendix M

## Denial Letter — Unduly Burdensome

Dear (individual involved):

You are hereby notified that your request for all the school district's financial records is hereby denied because to comply with your request would be unduly burdensome for the following reason(s):

(set forth why it would be unduly burdensome, such as this is a repeated request for the same records by the same person).

After meeting and conferring with you on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, we were unable to reduce your request to manageable proportions and it appears from your explanation as to why you are requesting these records, that the burden on the school district outweighs the public interest in the information being sought.

\_\_\_\_\_  
(NAME OF SCHOOL DISTRICT)

By: \_\_\_\_\_  
FOIA Officer

# Appendix N

## Response to Request for Records to be Used for a Commercial Purpose

The undersigned has determined/you have informed us that your request for school district records, received \_\_\_\_\_, 20\_\_\_\_, is a request for a commercial purpose.

Accordingly, I provide you with the following information:

- I estimate that the records sought can be ready for you within \_\_\_\_ days of the date of this notice. The copying charge is estimated as \$\_\_\_\_\_. Please remit this amount. Copying will not proceed until payment is received.
- The request is denied because the records are exempt under Section \_\_\_\_\_ of the Freedom of Information Act.
- The request in its current form is unduly burdensome. Please contact me for discussion as to whether we can reduce the request to manageable proportions.
- The records you requested are ready for pick up/attached.

\_\_\_\_\_  
FOIA Officer

\_\_\_\_\_ School District

# Appendix O

## Safe Harbor Letter

Notice to Public Access Counselor requesting advisory opinion on release of information.

Dear Public Access Counselor:

The undersigned is the school board president or school board attorney for the \_\_\_\_\_ School District. We are in receipt of the attached request received on the date noted, and request an advisory opinion on the inspection of the records in said request.

The facts associated with such request are as follows:

or

I believe the following records are exempt from disclosure based upon the following facts:

Sincerely,

\_\_\_\_\_

cc. Requester

# Appendix P

## Resolution Setting Forth Provisions for Compliance with the Illinois Freedom of Information Act

WHEREAS, the Freedom of Information Act took effect on July 1, 1984 (5 ILCS 140/1 *et seq.*) and was substantially amended by PA 96-0542 effective January 1, 2010; and

WHEREAS, such Act is intended to provide the public with greater access to the records of public bodies; and

WHEREAS, it is necessary for the \_\_\_\_\_ School District to establish practices and procedures ensuring its full compliance with said Act, so that the public policy stated therein can be carried out effectively and efficiently with respect to the records of the school district.

BE IT RESOLVED by the board of education of School District No. \_\_\_\_, \_\_\_\_\_ County, Illinois, as follows:

SECTION 1: The \_\_\_\_\_ and \_\_\_\_\_ are hereby designated as the FOIA Officer to whom all initial requests for access to the records of the School District are to be referred. Such requests are to be made at the administrative offices of the school district at \_\_\_\_\_, Illinois, between the hours of 9 a.m. and 4:30 p.m., Monday through Friday. In the event that the \_\_\_\_\_ is not available during the times described above, the \_\_\_\_\_ is designated as the Deputy FOIA Officer to whom such initial requests are to be made. Except in instances when records are furnished immediately, the FOIA Officer, or his designees, shall receive requests submitted to the school district under the Freedom of Information Act, ensure that the school district responds to requests in a timely fashion, and issue responses under the Act. The FOIA Officer shall develop a list of documents or categories of records that the school district shall immediately disclose upon request.

SECTION 2: Upon receiving a request for a public record, the FOIA Officer shall:

- (1) note the date the school district receives the written request;
- (2) compute the day on which the period for response will expire and make a notation of that date on the written request;
- (3) maintain an electronic or paper copy of a written request, including all documents submitted with the request until the request has been complied with or denied; and
- (4) create a file for the retention of the original request, a copy of the response, a record of written communications with the requester, and a copy of other communications.

SECTION 3: The FOIA Officers and Deputy FOIA Officer shall, within six (6) months after January 1, 2010, successfully complete an electronic training curriculum to be developed by the Public Access Counselor of the State of Illinois and thereafter successfully complete an annual training program. Whenever a new Freedom of Information Officer is designated by the school district, that person shall successfully complete the electronic training curriculum within thirty (30) days after assuming the position.

*(continued)*

SECTION 4: Any records which are the subject of a request under the Freedom of Information Act shall be retrieved from such place as they are stored, by the FOIA Officer, or by an employee of the school district acting under the direction of the FOIA Officer. In no event shall records be retrieved by the party requesting them or by any person who is not employed by the school district.

SECTION 5: If copies of records are requested, the fees for such copies, whether certified or not, shall be as determined from time to time by the FOIA Officer pursuant to Section 6(b) of the Freedom of Information Act. The school board secretary shall maintain a written schedule of current fees in the administrative offices. The fees so charged shall reflect the actual cost of copying the records, and the cost of certifying copies, if certification is requested.

SECTION 6: In the event that a request to inspect school district records is denied by the FOIA Officer, the denial may be appealed to the Public Access Counselor of the State of Illinois.

SECTION 7: The Superintendent shall prepare: (a) a School District Information Directory; (b) a block diagram of the functional Subdivisions of the school district; (c) a School District Records Directory; and (d) a Records Catalogue, all of which shall be as required by the Act. This information shall be posted on the School District's website and available in the office of each school.

SECTION 8: THIS RESOLUTION shall be in full force and effect immediately upon its passage and approval as required by law.

PASSED this \_\_\_ day of \_\_\_\_\_, 20\_\_, by the school board of the School District of \_\_\_\_\_, County of \_\_\_\_\_, Illinois, by a roll call vote as follows:

AYES: \_\_\_\_\_ NAYS: \_\_\_\_\_ ABSENT: \_\_\_\_\_

APPROVED this \_\_\_ day of \_\_\_\_\_, 20\_\_, by the President of the \_\_\_\_\_ School District of \_\_\_\_\_, County of \_\_\_\_\_, Illinois.

\_\_\_\_\_  
School Board President

ATTEST:

\_\_\_\_\_  
School Board Secretary