School Board

Administrative Procedure - Access to and Copying of District Public Records

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A. Legal Citations and Definitions

The legal requirements contained in this procedure are followed by a citation to the controlling statute. Citations in parentheses indicate the location of a named law. For additional clarification regarding a requirement, the cited law should be reviewed.

Definitions are found in the Ill. Freedom of Information Act (FOIA) (5 ILCS 140/2). For easy reference, some definitions are re-printed in this procedure. The IASB reports on Ill. Public Access Counselor (PAC) opinions concerning FOIA on its **Recent Court and Agency Decisions** website, located at: www.iasb.com/policy-services-and-school-law/court-decisions-listing/.

B. FOIA Compliance

The District's Freedom of Information Officer (FOIA Officer) implements the Board policy (2:250, *Access to District Public Records*) and has the duties, without limitation, listed below:

1. Manages the District's compliance with FOIA including without limitation, performing the following duties specified in FOIA, 5 ILCS 140/3.5:
   a. Receives FOIA requests, ensures that the District responds to requests in a timely fashion, and issues responses to FOIA requests.
   b. Develops a list of documents or categories of records that will be immediately disclosed upon request. See exhibit 2:250-E2, *Immediately Available District Public Records and Web-Posted Reports and Records*.
   c. Upon receiving a request for a public record, (a) notes the date the District received the written request; (b) computes the day on which the period for response will expire and makes a notation of that date on the written request; (c) maintains 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 (d) creates 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.
2. Identifies other staff members to assist with FOIA compliance and delegates specific responsibilities to them. These individuals may include the information technology specialist and department heads.

3. Informs and/or trains staff members concerning their respective responsibilities regarding FOIA. This includes explaining the requirement that all FOIA requests must be immediately forwarded to the FOIA Officer, including those that are received via email.
4. Successfully completes the annual training program developed by the Ill. Public Access Counselor (PAC) in the Ill. Attorney General's office. Each newly appointed FOIA Officer must successfully complete the training program within 30 days after assuming the position.

C. Availability and Posting Requirements

Full access to the District's *public records* is available to any person as provided in FOIA. The FOIA Officer approves all requests for public records unless:

1. The requested material does not exist;
2. The requested material is exempt from inspection and copying by FOIA;
3. Complying with the request will be unduly burdensome after extending an opportunity to the requester to reduce the request to manageable proportions;
4. The request would require the District to open electronically attached files or hyperlinks to view or access details of a request, in which case the requester shall be notified within five business days that the entirety of the electronic request must appear within the body of the electronic submission; or
5. The District has a reasonable belief that the request was not submitted by a person, and the requester fails to verify orally or in writing that they are a person within 30 days of the District's request for such verification.

The FOIA Officer shall:

1. Prominently display on the District website, make available for inspection and copying, and send through the mail if requested, the following:
   a. A brief description of the District, and
   b. The methods for requesting information and District public records, directory information listing the FOIA Officer and where requests for public records should be directed, and any fees. 5 ILCS 140/4. This information must be copied and mailed if requested.
2. Maintain and make available for inspection and copying a reasonably current list of all types or categories of records under the District's control. 5 ILCS 140/5. The list below contains the categories of records kept by the District; some of the records within these categories are exempt and, therefore, will not be disclosed in response to a FOIA request.
   a. Board governance, including without limitation, Board meeting calendar and notices, Board meeting agendas and minutes, Board policy
   b. Fiscal and business management, including without limitation, levy resolution and certificate of tax levy, audit, line-item budget, grant documents, account statements, accounts payable list, contracts, legal notices, bidding specifications, requests for proposals
   c. Personnel, including without limitation, employee contact information, salary schedules, staff handbook, collective bargaining agreements, personnel file material
   d. Students and instruction, including without limitation, accountability documents, calendars, student handbooks, learning outcomes, student school records

D. Fee Schedule

The FOIA Officer establishes a fee schedule (from time-to-time as appropriate) that complies with 5 ILCS 140/6, including each of the following:

1. The fees, except when otherwise fixed by statute, must: (a) be reasonably calculated to reimburse the District's actual cost for reproducing and certifying public records and for the use, by any person, of its equipment to copy records, and (b) not exceed that maximum fee amount set by FOIA.
2. Statutory fees applicable to copies of public records when furnished in a paper format are not applicable to those records when furnished in an electronic format.
3. No fee is charged for the first 50 pages of black and white, letter, or legal sized copies furnished to a requester.
4. The fee for black and white, letter, or legal sized copies shall not exceed 15 cents per page.
5. If the District provides copies in color or in a size other than letter or legal, the fee may not be more than its actual cost for reproducing the records.
6. A fee reduction is available if the person requesting the record states a specific purpose for the request and indicates that a fee reduction is in the public interest by having as its principal purpose the general public's health, safety, welfare, or legal rights and is not for the principal purpose of personal or commercial benefit. In setting the reduction's amount, the FOIA Officer considers the amount of materials requested and the cost of copying them.
7. In accordance with 5 ILCS 140/6(a-5), if a *voluminous request* is for electronic records and the responsive records are:
    a. Not in a portable document format (PDF), the District charges up to $20 for not more than two megabytes of data, up to $40 for more than two but not more than four megabytes of data, and up to $100 for more than four megabytes of data.
    b. In a PDF, the District charges up to $20 for not more than 80 megabytes of data, up to $40 for more than 80 megabytes but not more than 160 megabytes of data, and up to $100 for more than 160 megabytes of data.
    c. In both a PDF and not in a PDF, the District separates the fees and charges the requester under both fee scales.
8. Unless the request is for a *commercial purpose* or a *voluminous request*, the costs of any search for and review of the records or other personnel costs associated with reproducing the records are not included in the fee calculation. 5 ILCS 140/6(a).

    *Section 6(a) states: "If a request is not a request for a commercial purpose or a voluminous request, a public body *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." (Emphasis added). This implies that a search and review fee may be charged when responding to a request for a commercial purpose or a voluminous request. However, Sec. 6(b) states that the search and review fee described in Sec. 6(f) may be charged *only to* someone making a commercial request. Sec. 6(f) contains the maximum amounts that may be charged for search and review but does not explain when they may be charged. The FOIA Officer will need to consult the Board Attorney.

When responding to a request for commercial purposes, as defined in 5 ILCS 140/2(c-10), the District charges:

a. Up to $10.00 for each hour spent by personnel in searching for or retrieving a requested record or examining the record for necessary reductions. No fee is charged

for the first eight hours spent by personnel in searching for or retrieving a requested record. 5 ILCS 140/6(f).

b. The actual cost of retrieving and transporting public records from an off-site storage facility when the public records are maintained by a third-party storage company under contract with the District. 5 ILCS 140/6(f).

Someone making a voluminous request may be charged the fees as described above upon the FOIA Officer's consult with the Board Attorney.

The FOIA Officer provides the requester with an accounting of all fees, costs, and personnel hours in connection with the request for public records under 7 and 8 above. 5 ILCS 140/6(a-5) and (f).

E. Response to FOIA Requests

The FOIA Officer must:

9. Comply with or deny a request for inspection or copying within five business days of receiving a records request, unless the time for response is extended. 5 ILCS 140/3. He or she may use forms prepared by the PAC available at: www.illinoisattorneygeneral.gov/Open-And-Honest-Government/PAC/FOIA-Officers/.
10. Redact any and all exempt portion(s) of requested records containing both exempt and non-exempt material and release the remaining material. 5 ILCS 140/7.
11. Comply with the Personnel Record Review Act (PRRA), 820 ILCS 40/.
    1. The response to a request for a disciplinary report, letter of reprimand, or other disciplinary action depends on the age and nature of the responsive record.
    2. If the responsive record is more than four years old and is not related to an incident or an attempted incident of sexual abuse, severe physical abuse, or sexual misconduct as defined in 105 ILCS 5/22-85.5(c), the request must be denied unless the release is ordered in a legal action or arbitration. 5 ILCS 140/7.5(q); 820 ILCS 40/8.
    3. If the responsive record is more than four years old and is related to an incident or an attempted incident of sexual abuse, severe physical abuse, or *sexual misconduct* as defined in 105 ILCS 5/22-85.5(c), the request cannot be denied. 820 ILCS 40/8.
        a. If the responsive record is four years old or less, it must be disclosed (regardless of its nature) and the employee must be notified in writing (first class mail) or by email, if available, on or before the day any such record is released, unless notice is not required under the PRRA. 5 ILCS 140/7.5(q); 820 ILCS 40/7. A notice to the employee is not required if:
            - The employee specifically waived written notice as part of a written, signed employment application with another employer;
            - The disclosure is ordered to a party in a legal action or arbitration; or
            - Information is requested by a government agency as a result of a claim or complaint by an employee, or as a result of a criminal investigation by such agency.
        b. A request for a performance evaluation(s) must be denied. 820 ILCS 40/11.

F. Extensions of Time to Respond

The District FOIA Officer may extend the time for a response for any of the reasons stated in 5 ILCS 140/3(e)(i-vii), **quoted below**:

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

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

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

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

(v) The requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure under 5 ILCS 140/7 or should be revealed only with appropriate deletions;

(vi) The request for records cannot be complied with by the public body within the time limits prescribed by 5 ILCS 140/3(d) without unduly burdening or interfering with the operations of the public body; or

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

If an extension of time for a response is needed, the FOIA Officer must perform one of the following actions within five business days after receipt of the request:

1. Notify the requester that the District is extending its time for response for no longer than five business days from the original due date, and identify the reason for the delay and the date on which a response will be made. 5 ILCS 140/3(e) and (f); or
2. Confer with the requester in an attempt to reach an agreement on an extended compliance date. The agreement must be in writing. 5 ILCS 140/3(e).

G. Unduly Burdensome Requests

Before invoking the *unduly burdensome* exemption, the FOIA Officer must confer with the requester in an attempt to reduce the request to manageable proportions. 5 ILCS 140/3(e) and (g). A request may be unduly burdensome due, for example, to the request's breadth. The FOIA Officer must explain to the requester in writing when a request continues to be unduly burdensome, specifying the reason why the request is unduly burdensome.

H. Requests for Commercial Purposes

A request is for *commercial purposes*, according to 5 ILCS 140/2(c-10), if:

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

The FOIA Officer responds to a request that appears to be for commercial purposes pursuant to 5 ILCS 140/3.1 by:

1. Asking the requester to identify if the record is for a commercial purpose. See exhibit 2:250-E1, *W*ritten Request for District Public Records. It is unlawful for a person to knowingly obtain a public record for a commercial purpose without disclosing that it is for a commercial purpose, if requested to do so by the District. 5 ILCS 140/3.1(c).
2. Responding to a request for records to be used for a commercial purpose within 21 working days after receipt. The response must be one of the following: (a) provide an estimate of the time required by the District to provide the records and an estimate of the fees, which the requester may be required to pay in full before copying the requested documents; (b) deny the request pursuant to one or more of the exemptions; (c) notify the

requester that the request is unduly burdensome and extend an opportunity to attempt to reduce the request to manageable proportions; or (d) provide the records requested.

3. Complying with a request, unless the records are exempt from disclosure, within a reasonable period considering the size and complexity of the request, and giving priority to records requested for non-commercial purposes.
4. Collecting a fee as described in subsection **D**. above.

I. Managing Requests from a Recurrent Requester

A request is from a *recurrent requester*, according to 5 ILCS 140/2(g), if:

> [A] person that, in the 12 months immediately preceding the request, has submitted to the same public body (i) a minimum of 50 requests for records, (ii) a minimum of 15 requests for records within a 30-day period, or (iii) a minimum of seven requests for records within a seven-day period. For purposes of this definition, requests made by news media and non-profit, scientific, or academic organizations shall not be considered in calculating the number of requests made in the time period in this definition when the principal purpose of the requests is (i) to access and disseminate information concerning new and current or passing events, (ii) for articles of opinion or features of interest to the public, or (iii) for the purpose of academic, scientific, or public research or education.

For purposes of this definition, one *request* may identify multiple records to be inspected or copied.

The District complies with a request from a recurrent requester within a reasonable period considering the size and complexity of the record, unless the records are exempt from disclosure. 5 ILCS 140/3.2(c).

The FOIA Officer responds to a request from a recurrent requester by:

1. Notifying the requester within five business days after receiving a request from a recurrent requester (5 ILCS 140/3.2(b)) that:
   a. The request is being treated as coming from a recurrent requester under 5 ILCS 140/2(g);
   b. The reasons the request is being treated as coming from a recurrent requester;
   c. The District will send an initial response within 21 business days after receipt of the request; and
   d. The proposed FOIA responses that may be asserted pursuant to 5 ILCS 140/3.2(a). These are the same responses that the District can provide within 21 business days after receipt of a request.
2. Responding within 21 business days after receipt of a recurrent request with one of the following (5 ILCS 140/3.2(a)):
   a. An estimate of the time required by the District to provide the records and an estimate of the fees, which the requester is required to pay in full before the District copies the requested documents;
   b. A denial pursuant to one or more of the exemptions;
   c. Notification that the request is unduly burdensome and extend an opportunity to attempt to reduce the request to manageable proportions; or
   d. The records as requested.

J. Managing Voluminous Requests

A *voluminous request*, according to 5 ILCS 140/2(h), means:

> [A] request that:
>
> i. Includes more than five individual requests for more than five different categories of records or a combination of individual requests that total requests for more than five different categories of records in a period of 20 business days; or

ii. Requires the compilation of more than 500 letter or legal-sized pages of public records unless a single requested record exceeds 500 pages. *Single requested record* may include, but is not limited to, one report, form, email, letter, memorandum, book, map, microfilm, tape, or recording.

According to 5 ILCS 140/2(h), a *voluminous request* "does not include a request made by news media and non-profit, scientific, or academic organizations if the principal purpose of the request is: (1) to access and disseminate information concerning news and current or passing events; (2) for articles of opinion or features of interest to the public; or (3) for the purpose of academic, scientific, or public research or education."

The FOIA Officer responds to a voluminous request by:

1. Notifying the requester within five business days after receiving a voluminous request that:
    a. The District is treating the request as a voluminous request under 5 ILCS 140/3.6.
    b. The District is treating the request as voluminous for one of the following reasons:
        1) Includes more than five individual requests for more than five different categories of records or a combination of individual requests that total requests for more than five different categories of records in a period of 20 business days; or
        2) Requires the compilation of more than 500 letter or legal-sized pages of public records unless a single requested record exceeds 500 pages.
    c. The requester must respond to the District within 10 business days after this response is sent. The requester must specify whether the requester would like to amend the request in such a way that the District will no longer treat the request as a voluminous request.
    d. If the requester does not respond within 10 business days or if the request continues to be a voluminous request following the requester response, the District will respond to the request and assess any fees the District charges pursuant to 5 ILCS 140/6.
    e. The District has five business days after receipt of the requester's response or five business days from the last day for the requester to amend the request, whichever is sooner, to respond to the request.
    f. The District may request an additional 10 business days to comply with the request.
    g. The requester has the right to review the District's determination by the public access counselor whose address and phone number follows:

        Public Access Counselor

        Office of the Attorney General

        500 S. 2nd Street

        Springfield, Illinois 62706

        Phone: 1-877-299-3642
    h. If the requester fails to accept or collect the responsive records, the District will still charge the requester for its response pursuant to 5 ILCS 140/6 and the requester's failure to pay will be considered a debt due and owing to the District and may be collected in accordance with applicable law.
2. Providing the requester 10 business days from the date the District responded to amend the request in such a way that the District will no longer treat it as a voluminous request.
3. If a request continues to be a voluminous request following the requester's reply or the requester fails to reply, responding within the earlier of five business days after the District receives the requester's reply or five business days after the final day for the requester to reply to the District's notification. The District's response must:

a. Provide an estimate of the fees to be charged, indicating whether the District requires the person to pay in full before the District copies the requested documents;
b. Deny the request pursuant to one or more of the exemptions sent out in FOIA;
c. 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
d. Provide the records as requested.

The District may extend the time for responding by not more than five business days from the final date for the requester to reply to the District's notification for any of the reasons provided in 5 ILCS 140/3(e).

The requester and District may agree in writing to extend the time for compliance for a period to be determined by the parties.

K. Denials

The FOIA Officer will deny a FOIA request for any of the exemptions in 5 ILCS 140/7 or 7.5. He or she will comply with 5 ILCS 140/9 by:

1. Providing the requester with a written response containing: (a) the reasons for the denial, including a detailed factual basis for the application of any exemption claimed; (b) the names and titles or positions of each person responsible for the denial; and (c) information about his or her right to review by the Public Access Counselor (include the address and phone number for the Public Access Counselor), and to judicial review under 5 ILCS 140/11.
2. Specifying 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 when the denial is based on the grounds that the records are exempt under 5 ILCS 140/7.
3. Retaining copies of all denial notices in a single central office file that is open to the public and indexed according to the type of exemption asserted and, to the extent feasible, according to the types of records requested. 5 ILCS 140/9(b).

L. Consultation with the Board Attorney

The FOIA Officer may consult with the Board Attorney, as needed, for legal advice concerning compliance with FOIA, including without limitation:

1. Responding to specific requests,
2. Communicating with the Office of the Ill. Attorney General or PAC, or
3. During any judicial proceeding.

LEGAL REF.: 5 ILCS 140/, Freedom of Information Act.

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