



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB5557

Introduced 2/9/2024, by Rep. Tracy Katz Muhl

SYNOPSIS AS INTRODUCED:

5 ILCS 120/3.5

5 ILCS 140/9.5

Amends the Open Meetings Act and the Freedom of Information Act. Provides that the Public Access Counselor may investigate, gather data, and report on a public body for frequent violations of the Acts or for frequent violations of court orders for failure to comply with the Acts. Additionally allows the Public Access Counselor to, under the Freedom of Information Act, investigate, gather data, and report on a public body for failure to comply with that Act, for unreasonably denying a request under that Act, and for failure to adequately inform a requester why a request is denied under that Act. Provides that the Public Access Counselor may start an investigation after receiving a complaint from a person or sua sponte. Allows the Public Access Counselor to impose civil penalties if the Public Access Counselor's investigation finds that a public body has violated the provisions after a hearing with notice to the public body with an opportunity for the public body's representative to be heard. Provides that the Attorney General may enforce a penalty imposed by filing an action in circuit court. Requires the Attorney General to adopt rules to implement the provisions, including the procedures of the investigation and hearings and defining "frequent violation".

LRB103 38850 AWJ 68987 b

1 AN ACT concerning government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Open Meetings Act is amended by changing
5 Section 3.5 as follows:

6 (5 ILCS 120/3.5)

7 Sec. 3.5. Public Access Counselor; opinions.

8 (a) A person who believes that a violation of this Act by a
9 public body has occurred may file a request for review with the
10 Public Access Counselor established in the Office of the
11 Attorney General not later than 60 days after the alleged
12 violation. If facts concerning the violation are not
13 discovered within the 60-day period, but are discovered at a
14 later date, not exceeding 2 years after the alleged violation,
15 by a person utilizing reasonable diligence, the request for
16 review may be made within 60 days of the discovery of the
17 alleged violation. The request for review must be in writing,
18 must be signed by the requester, and must include a summary of
19 the facts supporting the allegation. The changes made by this
20 amendatory Act of the 99th General Assembly apply to
21 violations alleged to have occurred at meetings held on or
22 after the effective date of this amendatory Act of the 99th
23 General Assembly.

1 (b) Upon receipt of a request for review, the Public
2 Access Counselor shall determine whether further action is
3 warranted. If the Public Access Counselor determines from the
4 request for review that the alleged violation is unfounded, he
5 or she shall so advise the requester and the public body and no
6 further action shall be undertaken. In all other cases, the
7 Public Access Counselor shall forward a copy of the request
8 for review to the public body within 7 working days. The Public
9 Access Counselor shall specify the records or other documents
10 that the public body shall furnish to facilitate the review.
11 Within 7 working days after receipt of the request for review,
12 the public body shall provide copies of the records requested
13 and shall otherwise fully cooperate with the Public Access
14 Counselor. If a public body fails to furnish specified records
15 pursuant to this Section, or if otherwise necessary, the
16 Attorney General may issue a subpoena to any person or public
17 body having knowledge of or records pertaining to an alleged
18 violation of this Act. For purposes of conducting a thorough
19 review, the Public Access Counselor has the same right to
20 examine a verbatim recording of a meeting closed to the public
21 or the minutes of a closed meeting as does a court in a civil
22 action brought to enforce this Act.

23 (c) Within 7 working days after it receives a copy of a
24 request for review and request for production of records from
25 the Public Access Counselor, the public body may, but is not
26 required to, answer the allegations of the request for review.

1 The answer may take the form of a letter, brief, or memorandum.
2 Upon request, the public body may also furnish the Public
3 Access Counselor with a redacted copy of the answer excluding
4 specific references to any matters at issue. The Public Access
5 Counselor shall forward a copy of the answer or redacted
6 answer, if furnished, to the person submitting the request for
7 review. The requester may, but is not required to, respond in
8 writing to the answer within 7 working days and shall provide a
9 copy of the response to the public body.

10 (d) In addition to the request for review, and the answer
11 and the response thereto, if any, a requester or a public body
12 may furnish affidavits and records concerning any matter
13 germane to the review.

14 (e) Unless the Public Access Counselor extends the time by
15 no more than 21 business days by sending written notice to the
16 requester and public body that includes a statement of the
17 reasons for the extension in the notice, or decides to address
18 the matter without the issuance of a binding opinion, the
19 Attorney General shall examine the issues and the records,
20 shall make findings of fact and conclusions of law, and shall
21 issue to the requester and the public body an opinion within 60
22 days after initiating review. The opinion shall be binding
23 upon both the requester and the public body, subject to
24 administrative review under Section 7.5 of this Act.

25 In responding to any written request under this Section
26 3.5, the Attorney General may exercise his or her discretion

1 and choose to resolve a request for review by mediation or by a
2 means other than the issuance of a binding opinion. The
3 decision not to issue a binding opinion shall not be
4 reviewable.

5 Upon receipt of a binding opinion concluding that a
6 violation of this Act has occurred, the public body shall
7 either take necessary action as soon as practical to comply
8 with the directive of the opinion or shall initiate
9 administrative review under Section 7.5. If the opinion
10 concludes that no violation of the Act has occurred, the
11 requester may initiate administrative review under Section
12 7.5.

13 (f) If the requester files suit under Section 3 with
14 respect to the same alleged violation that is the subject of a
15 pending request for review, the requester shall notify the
16 Public Access Counselor, and the Public Access Counselor shall
17 take no further action with respect to the request for review
18 and shall so notify the public body.

19 (g) Records that are obtained by the Public Access
20 Counselor from a public body for purposes of addressing a
21 request for review under this Section 3.5 may not be disclosed
22 to the public, including the requester, by the Public Access
23 Counselor. Those records, while in the possession of the
24 Public Access Counselor, shall be exempt from disclosure by
25 the Public Access Counselor under the Freedom of Information
26 Act.

1 (h) The Attorney General may also issue advisory opinions
2 to public bodies regarding compliance with this Act. A review
3 may be initiated upon receipt of a written request from the
4 head of the public body or its attorney. The request must
5 contain sufficient accurate facts from which a determination
6 can be made. The Public Access Counselor may request
7 additional information from the public body in order to
8 facilitate the review. A public body that relies in good faith
9 on an advisory opinion of the Attorney General in complying
10 with the requirements of this Act is not liable for penalties
11 under this Act, so long as the facts upon which the opinion is
12 based have been fully and fairly disclosed to the Public
13 Access Counselor.

14 (i) The Public Access Counselor may investigate, gather
15 data, and report on a public body for frequent violations of
16 this Act or for frequent violations of court orders for
17 failure to comply with this Act. The Public Access Counselor
18 may start an investigation after receiving a complaint from a
19 person or sua sponte.

20 If the Public Access Counselor finds that a public body
21 has frequently violated this Act or has frequently violated
22 court orders for failure to comply with this Act, the Public
23 Access Counselor may impose a civil penalty of \$1,000 for the
24 first finding of a violation of this Act after investigation
25 under this Section and \$2,000 for the second and each
26 subsequent finding of a violation. A civil penalty may only be

1 imposed after a hearing with notice to the public body and an
2 opportunity for the public body's representative to be heard.
3 The Attorney General may enforce a penalty imposed by filing
4 an action in circuit court.

5 The Attorney General shall adopt rules to implement this
6 subsection, including the procedures of the investigation and
7 hearings and defining "frequent violation".

8 (Source: P.A. 99-402, eff. 8-19-15.)

9 Section 10. The Freedom of Information Act is amended by
10 changing Section 9.5 as follows:

11 (5 ILCS 140/9.5)

12 Sec. 9.5. Public Access Counselor; opinions.

13 (a) A person whose request to inspect or copy a public
14 record is denied by a public body, except the General Assembly
15 and committees, commissions, and agencies thereof, may file a
16 request for review with the Public Access Counselor
17 established in the Office of the Attorney General not later
18 than 60 days after the date of the final denial. The request
19 for review must be in writing, signed by the requester, and
20 include (i) a copy of the request for access to records and
21 (ii) any responses from the public body.

22 (b) A person whose request to inspect or copy a public
23 record is made for a commercial purpose as defined in
24 subsection (c-10) of Section 2 of this Act may not file a

1 request for review with the Public Access Counselor. A person
2 whose request to inspect or copy a public record was treated by
3 the public body as a request for a commercial purpose under
4 Section 3.1 of this Act may file a request for review with the
5 Public Access Counselor for the limited purpose of reviewing
6 whether the public body properly determined that the request
7 was made for a commercial purpose.

8 (b-5) A person whose request to inspect or copy a public
9 record was treated by a public body, except the General
10 Assembly and committees, commissions, and agencies thereof, as
11 a voluminous request under Section 3.6 of this Act may file a
12 request for review with the Public Access Counselor for the
13 purpose of reviewing whether the public body properly
14 determined that the request was a voluminous request.

15 (c) Upon receipt of a request for review, the Public
16 Access Counselor shall determine whether further action is
17 warranted. If the Public Access Counselor determines that the
18 alleged violation is unfounded, he or she shall so advise the
19 requester and the public body and no further action shall be
20 undertaken. In all other cases, the Public Access Counselor
21 shall forward a copy of the request for review to the public
22 body within 7 business days after receipt and shall specify
23 the records or other documents that the public body shall
24 furnish to facilitate the review. Within 7 business days after
25 receipt of the request for review, the public body shall
26 provide copies of records requested and shall otherwise fully

1 cooperate with the Public Access Counselor. If a public body
2 fails to furnish specified records pursuant to this Section,
3 or if otherwise necessary, the Attorney General may issue a
4 subpoena to any person or public body having knowledge of or
5 records pertaining to a request for review of a denial of
6 access to records under the Act. Records or documents obtained
7 by the Public Access Counselor from a public body for the
8 purpose of addressing a request for review under this Section
9 may not be disclosed to the public, including the requester,
10 by the Public Access Counselor. These records, while in the
11 possession of the Public Access Counselor, are exempt under
12 this Act from disclosure by the Public Access Counselor.

13 (d) Within 7 business days after it receives a copy of a
14 request for review and request for production of records from
15 the Public Access Counselor, the public body may, but is not
16 required to, answer the allegations of the request for review.
17 The answer may take the form of a letter, brief, or memorandum.
18 The Public Access Counselor shall forward a copy of the answer
19 to the person submitting the request for review, with any
20 alleged confidential information to which the request pertains
21 redacted from the copy. The requester may, but is not required
22 to, respond in writing to the answer within 7 business days and
23 shall provide a copy of the response to the public body.

24 (e) In addition to the request for review, and the answer
25 and the response thereto, if any, a requester or a public body
26 may furnish affidavits or records concerning any matter

1 germane to the review.

2 (f) Unless the Public Access Counselor extends the time by
3 no more than 30 business days by sending written notice to the
4 requester and the public body that includes a statement of the
5 reasons for the extension in the notice, or decides to address
6 the matter without the issuance of a binding opinion, the
7 Attorney General shall examine the issues and the records,
8 shall make findings of fact and conclusions of law, and shall
9 issue to the requester and the public body an opinion in
10 response to the request for review within 60 days after its
11 receipt. The opinion shall be binding upon both the requester
12 and the public body, subject to administrative review under
13 Section 11.5.

14 In responding to any request under this Section 9.5, the
15 Attorney General may exercise his or her discretion and choose
16 to resolve a request for review by mediation or by a means
17 other than the issuance of a binding opinion. The decision not
18 to issue a binding opinion shall not be reviewable.

19 Upon receipt of a binding opinion concluding that a
20 violation of this Act has occurred, the public body shall
21 either take necessary action immediately to comply with the
22 directive of the opinion or shall initiate administrative
23 review under Section 11.5. If the opinion concludes that no
24 violation of the Act has occurred, the requester may initiate
25 administrative review under Section 11.5.

26 A public body that discloses records in accordance with an

1 opinion of the Attorney General is immune from all liabilities
2 by reason thereof and shall not be liable for penalties under
3 this Act.

4 (g) If the requester files suit under Section 11 with
5 respect to the same denial that is the subject of a pending
6 request for review, the requester shall notify the Public
7 Access Counselor, and the Public Access Counselor shall take
8 no further action with respect to the request for review and
9 shall so notify the public body.

10 (h) The Attorney General may also issue advisory opinions
11 to public bodies regarding compliance with this Act. A review
12 may be initiated upon receipt of a written request from the
13 head of the public body or its attorney, which shall contain
14 sufficient accurate facts from which a determination can be
15 made. The Public Access Counselor may request additional
16 information from the public body in order to assist in the
17 review. A public body that relies in good faith on an advisory
18 opinion of the Attorney General in responding to a request is
19 not liable for penalties under this Act, so long as the facts
20 upon which the opinion is based have been fully and fairly
21 disclosed to the Public Access Counselor.

22 (i) The Public Access Counselor may investigate, gather
23 data, and report on a public body for frequent violations of
24 this Act, for frequent violations of court orders, for failure
25 to comply with this Act, for unreasonably denying a request
26 under this Act, and for failure to adequately inform a

1 requester why a request is denied. The Public Access Counselor
2 may start an investigation after receiving a complaint from a
3 person or sua sponte.

4 If the Public Access Counselor finds that a public body
5 has violated any of the topics allowed to be investigated
6 under this Section, the Public Access Counselor may impose a
7 civil penalty of \$1,000 for the first finding of a violation of
8 this Act after investigation under this Section and \$2,000 for
9 the second and each subsequent finding of a violation. A civil
10 penalty may only be imposed after a hearing with notice to the
11 public body and an opportunity for the public body's
12 representative to be heard. The Attorney General may enforce a
13 penalty imposed by filing an action in circuit court.

14 The Attorney General shall adopt rules to implement this
15 subsection, including the procedures of the investigation and
16 hearings and defining "frequent violation".

17 (Source: P.A. 103-69, eff. 1-1-24.)