

1 AN ACT in relation to public records.

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

4 Section 5. The Freedom of Information Act is amended by
5 changing Sections 9 and 11 and adding Section 10.5 as
6 follows:

7 (5 ILCS 140/9) (from Ch. 116, par. 209)

8 Sec. 9. (a) Each public body or head of a public body
9 denying a request for public records shall notify by letter
10 the person making the request of the decision to deny such,
11 the reasons for the denial, and the names and titles or
12 positions of each person responsible for the denial. Each
13 notice of denial by a public body shall also inform such
14 person of his right to appeal to the head of the public body.
15 Each notice of denial of an appeal by the head of a public
16 body shall inform such person of his right to judicial
17 review under Section 11 and, if applicable, the person's
18 right to file a request for review with the Office of the
19 Public Records Access Counsel under Section 10.5 ef---this
20 Act.

21 (b) When a request for public records is denied on the
22 grounds that the records are exempt under Section 7 of this
23 Act, the notice of denial shall specify the exemption claimed
24 to authorize the denial. Copies of all notices of denial
25 shall be retained by each public body in a single central
26 office file that is open to the public and indexed according
27 to the type of exemption asserted and, to the extent
28 feasible, according to the types of records requested.

29 (Source: P.A. 83-1013.)

30 (5 ILCS 140/10.5 new)

1 Sec. 10.5. Public Records Access Counsel; advisory
2 opinions.

3 (a) A person whose request to inspect or copy a public
4 record is denied by the head of a public body may file a
5 request for review with the Office of the Public Records
6 Access Counsel established in the Office of the Attorney
7 General. The request for review must be in writing, signed
8 by the requestor, and include (i) a copy of the request for
9 access to records, (ii) the appeal, and (iii) any responses
10 from the public body.

11 (b) The Counsel shall forward a copy of a proper request
12 for review to the public body within 3 business days after
13 receipt. The public body shall provide access to records and
14 otherwise fully cooperate with the Counsel to the extent
15 necessary for the Counsel to issue a timely opinion as to the
16 propriety of the denial.

17 (c) Unless the Counsel extends the time on written
18 notice to the requestor and public body and includes a
19 statement of the reasons for the extension in the notice, the
20 Counsel shall issue to the requestor and the public body an
21 advisory opinion in response to the request for review within
22 30 days after its receipt.

23 (d) If the requestor files suit under Section 11 with
24 respect to the same denial that is the subject of a pending
25 request for review, the requestor shall notify the Counsel,
26 and the Counsel shall take no further action with respect to
27 the request for review.

28 (e) Records that are the subject of a request for review
29 and obtained by the Counsel from a public body for purposes
30 of issuing an opinion under this Section may not be disclosed
31 to the public by the Counsel.

32 (f) This Section does not apply to any of the following
33 or to any officer, member, or employee of any of the
34 following: the General Assembly, either house of the General

1 Assembly, any committee or subcommittee of the General
 2 Assembly or of either of its houses, or any Legislative
 3 Support Services Agency.

4 (5 ILCS 140/11) (from Ch. 116, par. 211)

5 Sec. 11. (a) Any person denied access to inspect or
 6 copy any public record by the head of a public body may file
 7 suit for injunctive or declaratory relief regardless of
 8 whether the person has filed a request for review under
 9 Section 10.5.

10 (b) Where the denial is from the head of a public body
 11 of the State, suit may be filed in the circuit court for the
 12 county where the public body has its principal office or
 13 where the person denied access resides.

14 (c) Where the denial is from the head of a municipality
 15 or other public body, except as provided in subsection (b) of
 16 this Section, suit may be filed in the circuit court for the
 17 county where the public body is located.

18 (d) The circuit court shall have the jurisdiction to
 19 enjoin the public body from withholding public records and to
 20 order the production of any public records improperly
 21 withheld from the person seeking access. If the public body
 22 can show that exceptional circumstances exist, and that the
 23 body is exercising due diligence in responding to the
 24 request, the court may retain jurisdiction and allow the
 25 agency additional time to complete its review of the records.

26 (e) On motion of the plaintiff, prior to or after in
 27 camera inspection, the court shall order the public body to
 28 provide an index of the records to which access has been
 29 denied. The index shall include the following:

30 (i) A description of the nature or contents of each
 31 document withheld, or each deletion from a released document,
 32 provided, however, that the public body shall not be required
 33 to disclose the information which it asserts is exempt; and

1 (ii) A statement of the exemption or exemptions claimed
2 for each such deletion or withheld document.

3 (f) In any action considered by the court, the court
4 shall consider the matter de novo, and shall conduct such in
5 camera examination of the requested records as it finds
6 appropriate to determine if such records or any part thereof
7 may be withheld under any provision of this Act. The burden
8 shall be on the public body to establish that its refusal to
9 permit public inspection or copying is in accordance with the
10 provisions of this Act.

11 (g) In the event of noncompliance with an order of the
12 court to disclose, the court may enforce its order against
13 any public official or employee so ordered or primarily
14 responsible for such noncompliance through the court's
15 contempt powers.

16 (h) Except as to causes the court considers to be of
17 greater importance, proceedings arising under this Section
18 shall take precedence on the docket over all other causes and
19 be assigned for hearing and trial at the earliest practicable
20 date and expedited in every way.

21 (i) If a person seeking the right to inspect or receive
22 a copy of a public record substantially prevails in a
23 proceeding under this Section, the court shall may award such
24 person reasonable attorneys' fees, costs, and other
25 reasonable expenses of litigation ~~if the court finds that the~~
26 ~~record or records in question were of clearly significant~~
27 ~~interest to the general public and that the public body~~
28 ~~lacked any reasonable basis in law for withholding the~~
29 ~~record.~~

30 (Source: P.A. 85-1357.)

31 Section 10. The Attorney General Act is amended by
32 adding Section 7 as follows:

1 (15 ILCS 205/7 new)

2 Sec. 7. Public records access.

3 (a) The General Assembly finds that members of the
4 public have encountered obstacles in obtaining copies of
5 public records from units of local government, that many of
6 those obstacles result from difficulties that both members of
7 the public and public bodies have had in interpreting and
8 applying the Freedom of Information Act, and that the
9 public's significant interest in access to public records
10 would be better served if there were a central office
11 available to provide advice and education with respect to the
12 interpretation and implementation of the Freedom of
13 Information Act.

14 (b) Therefore, there is created in the Office of the
15 Attorney General the Office of the Public Records Access
16 Counsel. The Counsel's Office shall comprise an assistant
17 attorney general designated by the Attorney General to serve
18 as the Public Records Access Counsel and such additional
19 assistant attorneys general and other staff as are deemed
20 necessary by the Attorney General.

21 (c) The Public Records Access Counsel shall, subject to
22 the supervision and direction of the Attorney General, have
23 the power:

24 (1) to establish and administer a program to train
25 public officials and educate the public on the rights of
26 the public and the responsibilities of public bodies
27 under the Freedom of Information Act;

28 (2) to prepare and distribute interpretive or
29 educational materials and programs;

30 (3) to issue advisory opinions with respect to the
31 Freedom of Information Act upon the request of a public
32 body or, as provided in Section 10.5 of that Act, in
33 response to a request for review of a denial of access to
34 records under the Act, provided, however, that the

1 Counsel may not issue an advisory opinion concerning a
2 specific matter with respect to which a lawsuit has been
3 filed under Section 11 of the Freedom of Information Act;
4 (4) to respond to informal inquiries made by the
5 public and public bodies;
6 (5) to conduct research on compliance issues;
7 (6) to make recommendations to the General Assembly
8 concerning ways to improve access to public records and
9 on other issues pertaining to public access to the
10 processes of government; and
11 (7) to adopt rules necessary to implement these
12 powers.

13 (d) The Counsel shall post his or her opinions on the
14 official World Wide Web site of the Office of the Attorney
15 General, with links to those opinions from the official home
16 page, and shall make them available for inspection in his or
17 her office.

18 (e) This Section does not apply to any of the following
19 or to any officer, member, or employee of any of the
20 following: the General Assembly, either house of the General
21 Assembly, any committee or subcommittee of the General
22 Assembly or of either of its houses, or any Legislative
23 Support Services Agency.