

Complying with FOIA...Without Losing Your Mind

LACONI

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10:00 a.m. – 12:00 p.m.

Presented by:
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Presumption

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

Public Records

"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.

FOIA Officer

Section 3.5 requires each public body to designate one or more officials or employees to act as its FOIA officer

Duties of FOIA Officer:

- Receive FOIA requests
- Respond to requests
- Note the date of receipt of request
- Compute the time period for response
- Maintain copy of the request
- Create a file for the request, response, and communications with requester

Required Data

Section 4 requires each public body to prepare and maintain certain data:

1. Brief description of its subdivisions
2. Total amount of its operating budget
3. Number and location of offices
4. Total number of FT and PT employees
5. Membership of boards, commissions, committees and advisory councils
6. Description of FOIA process (policy)
7. List of types or categories of records

Rules of Procedure

A written FOIA policy, with forms, can assist the FOIA officer in compliance with FOIA

Response to a Request

Generally, 5 days to respond

Exceptions:

1. extension is taken;
2. commercial requests;
3. recurrent request;
4. voluminous request

Creation of Records

Not required, but records including information would still need to be released

Form of Response

Record must be provided in the format requested if it exists in that format

Fees for Copies

1. First 50 pages are free
2. 15 cents/page after 50 pages
3. No charge for search/personnel time (unless commercial request)
4. Oversized and color copies additional fee
5. No charge for electronic records
6. Fee waiver or reduction

Commercial Requests

1. Applies to request that will be used for “sale, resale, or solicitation or advertisement for sales or services”
2. 21 days to respond
3. Requests from reporters or non-profit organizations are not commercial requests
4. \$10/hour charge for personnel time can be imposed
5. Also, public body can charge the actual cost for retrieving records from off-site storage facility
6. No free copies
7. Still cannot charge for electronic records

Unduly Burdensome

1. Applies only to “categorical requests”
2. Must provide opportunity to requester to narrow his or her request before denying a request based on this exemption
3. *Shehadeh v. Madigan* (2013), upheld use of this exemption where request would require search and review of 9,000 records

Denials

1. Must be in writing
2. Must include a detailed factual basis for the exemption and citation for section
3. Must provide notice of requester's right to appeal to PAC or circuit court

Exemptions

Disclosure Prohibited by Law, 7(1)(a)

Private Information, 7(1)(b) or Personal Information, 7(1)(c)

Investigatory Materials, 7(1)(d)

Trade Secrets or Proprietary Information

Real Estate Purchase Negotiations

Architectural or Engineering Technical Drawings

Communications with Attorney, 7(1)(m)

- Privileged information is protected
- Legal invoices can be redacted to protect privileged communications, but remainder of invoice should be released

Preliminary Materials and Drafts, 7(1)(f)

Personnel Records

- Personnel Evaluations
- Severance Agreements – FOIA trumps confidentiality clauses

Library Records Confidentiality Act, 7.5(b)

Enforcement

1. PAC Request for Review
2. Appeal to Circuit Court

Emails

What if the e-mail is on a library computer or account?

1. If it is about library business, it is a public record
2. If it is not about library business, it is not a public record

Use of Private Devices

What if I text from my personal cell phone?

1. If it is about library business, it could be a public record if it (1) is forwarded to/from a library account; (2) sent to a majority of the library board; (3) sent during a library meeting (Champaign v. Madigan case)
2. If it is not about library business, it is not a public record

Website Records

Section 8.5 of FOIA now allows a public body to direct FOIA requesters to the website where the record can be “reasonably accessed.”

If a requester cannot reasonably access the record online, then the public body must make the record available for inspection or copying as otherwise required by FOIA.

Recurrent Requester

In 2011, FOIA was amended to add a “recurrent requester” provision to provide public bodies with additional time to respond to requests filed by individuals who qualified as “recurrent requesters”

Definition

“Recurrent requester” is someone who has submitted to the same public body:

- (i) 50 or more FOIA requests in a 12 month period
- (ii) 15 or more FOIA requests within a 30 day period
- (iii) 7 or more FOIA requests within a 7 day period

Recurrent Requester Process

1. Public body has 5 business days to notify requester that the request is being treated as a “recurrent request,” the reasons why, and that the public body will respond to the initial request within 21 days of receipt of the request.
2. Within 21 days of the receipt of the request, the public body must provide one of the following:
 1. An estimate of time required to provide the records and fee estimate;
 2. Deny the request pursuant to one or more exemptions;
 3. Provide an opportunity to narrow an unduly burdensome request; or
 4. Provide the records.

Voluminous Request

A recent amendment to FOIA created a definition of "voluminous request" that is intended to provide a public body with some relief in responding to a "voluminous request."

Definition of Voluminous Request

"Voluminous request" is a request that:

- (i) includes more than 5 individual requests for more than 5 different categories of records or a combination of individual requests that total requests for more than 5 different categories of records in a period of 20 business days; or
- (i) 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, e-mail, letter, memorandum, book, map, microfilm, tape, or recording.

Voluminous Records Process

1. Public body has 5 business days to notify requester that his or her request is being treated as a "voluminous request"
2. Requester then has 10 business days to modify his or her request in a way that it would no longer be "voluminous."
3. Public body can charge up to \$20 for up to 2 MB of electronic data to \$100 for more than 4 MB of electronic data if the document is not in PDF format, or from \$20 for up to 80 MB of PDF data to \$100 for more than 160 MB of PDF data.
4. Public body can also now charge up to \$10/hour for examining records for necessary redactions, in addition to search and retrieval fees for responding to these type of requests.
5. Also allows a public body additional time to respond to voluminous requests.

Media Treated Differently

Members of the news media and non-profit, scientific, or academic organizations are expressly excluded from the definition of “voluminous request” and “recurrent requester” if the principal purpose of their request is to:

- (i) 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 scientific, academic, or public research or education.

Q&A

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