

AGENDA
Committee of the Whole Meeting
June 22, 2015
5:00 p.m.

- A. Roll Call
- B. Items Also on the Regular Agenda
- C. Considerations
 - 1. Freedom of Information Act (FOIA) Policy.
- D. Public Participation
- E. Recess for Executive Session of the City Council
 - 1. Approval to Hold an Executive Session to Discuss the Purchase or Lease of Real Property as Provided for in 5 ILCS 120/2(c)(5).
- F. Adjournment

DATE: June 17, 2015

TO: Honorable Mayor John Rey
City Council

FROM: Anne Marie Gaura, City Manager
Patty Hoppenstedt, Assistant City Manager
Dean Frieders, City Attorney

SUBJECT: Approving a Freedom of Information Act Policy

I. Summary

The City of DeKalb, as a public body, is required to comply with the Illinois Freedom of Information Act (FOIA), 5 ILCS 140/1, *et. seq.* In order to meet best governance practices, a FOIA policy has been proposed for adoption by the City.

II. Background

Under FOIA, a public body may prescribe rules governing its receipt and processing of FOIA requests, including where such requests may be submitted, whether fees will be charged, and whether oral requests will be honored. FOIA also prescribes certain mandated rules, such as the timeline for responding to requests, which must be honored by all public bodies. The City has worked diligently to comply with FOIA requests on an ongoing basis, and in order to comply with best governance practices and ensure efficient, prompt responses to FOIA requests, it is recommended to update a FOIA policy guide.

The attached FOIA Policy outlines all of the mandatory timelines, exemptions and provisions of FOIA, and provides City staff with a process on how to receive and respond to FOIA requests. As many of the timelines are confusing and overlapping, the guide is organized as a flow chart which can be followed in progressive order to ensure the proper outcome with each request. Major policy considerations in the FOIA request include the following:

1. At present, the City has not designated a location at which FOIA requests will be received. In the case of an organization such as the City of Chicago, it would be inconceivable to contemplate each of the thousands of employees of the City potentially being recipients of FOIA requests. However, in the case of the City, from time to time FOIA requests are submitted to a myriad of the City's hundreds of employees. This can cause confusion and delay in processing requests. Accordingly, the policy guide contemplates that electronic FOIAs would be submitted to foia@cityofdekalb.com for general City FOIA requests, and policefoia@cityofdekalb.com for FOIA requests directed to the Police

Department. For FOIA requests submitted in person, they would be received in Room 219 of City Hall.

2. Public bodies can determine whether they will receive oral FOIA requests or not. The policy guide contemplates that the City would *not accept oral FOIA requests*, but rather would offer requesters assistance in documenting their request in writing. The reason that oral requests would not be honored is to ensure that the City has an accurate record of the FOIA requests received, and can accurately respond to them. With an oral FOIA request, there is an enhanced probability of confusion or misunderstanding.
3. FOIA outlines a detailed set of charges which may be imposed in responding to FOIA requests. The charges are relatively minimal, and are intended to recoup some small portion of the cost that a public body incurs in responding to FOIA requests. The City incurs a significant expense and utilizes significant staff resources in responding to FOIA requests on an annual basis. The FOIA policy contemplates that the City would comply with the fee schedule contemplated in the state statute. The FOIA policy also contemplates that for requests which are eligible for a fee reduction, the City would provide a fifty percent (50%) reduction in the fees to be charged, unless the City Manager approved a further reduction. Fees are required to be paid prior to delivery of a FOIA response. The guide also contemplates the potential for documents to be reviewed in person, without charge.

As the FOIA statute and the guidance promulgated by the Attorney General changes with regularity, it is recommended to authorize the City Manager to make changes to the policy from time to time, to keep up with changes in the law.

Prospectively, it is proposed to include a statement at the bottom of all outgoing City Emails, in a format approved by the City Manager. The format is presently contemplated to be as follows:

This is a transmission from the City of DeKalb that is confidential and proprietary. If you are not the intended recipient, copying or distributing the contents of this message is expressly prohibited. If you have received this message in error, please destroy it and notify the City immediately. This email is the property of the City of DeKalb and the City reserves the right to retrieve and read any message created, sent or received, including the right to monitor messages of City employees or representatives at any time, without notice. Freedom of Information Act Requests submitted electronically shall only be accepted when submitted to foia@cityofdekalb.com (for general requests) or policefoia@cityofdekalb.com (for requests directed to the Police Department).

III. Community Groups/Interested Parties Contacted

This matter is anticipated to be discussed at a City Council meeting, to provide an opportunity for public feedback.



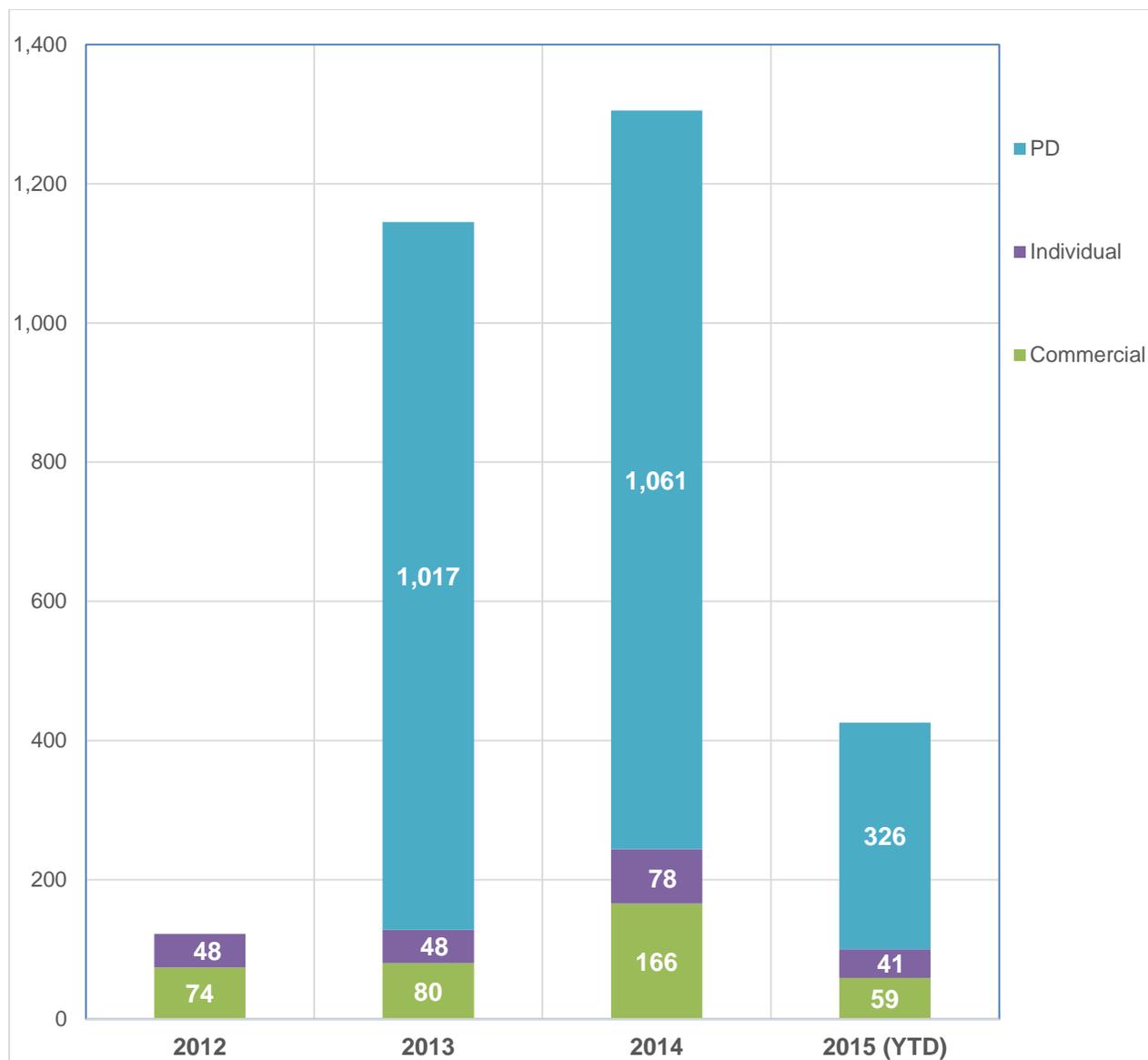
IV. Legal Impact

Adopting a FOIA Policy will help the City to comply with the requirements of the Freedom of Information Act, and to comply with best management practices.

V. Financial Impact

The City incurs substantial costs in responding to FOIA requests throughout the year; this Policy would assist the City in recovering a small portion of that cost.

The chart below represents the number of FOIA requests the City of DeKalb has received beginning January 1, 2012 through May 31, 2015 (the Police Department did not track FOIA requests received until 2013).



VI. Options

1. Approve the proposed FOIA Policy Guide.
2. Modify the proposed FOIA Policy Guide.
3. Do not approve the FOIA Policy Guide.

VII. Recommendation

Staff recommends approval of the FOIA Policy.



Processing Freedom of Information Act (FOIA) Requests

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General Notes

- FOIA requests submitted electronically to the City of DeKalb shall be received only at foia@cityofdekalb.com and policefoia@cityofdekalb.com. FOIA requests received at other addresses should be returned to the requestor or forwarded to the appropriate email address as outlined above.
- FOIA requests submitted via mail or submitted in person shall only be accepted at the City Manager's Office, Room 219, City Hall, 200 S. Fourth Street, DeKalb, Illinois. The City shall not honor oral or verbal FOIA requests, but shall provide assistance to a person seeking to submit a verbal request, in completing a FOIA request form.
- All deadlines can be extended by mutual agreement of the requestor and City. Always document extensions in writing (letter to requestor).
- Scope of request can be modified or limited by requestor. Always document modifications to scope in writing (letter to requestor).
- Any response that has the potential to be a final response (e.g. imposition of fee for Voluminous Response, denial of FOIA, request for modification of unduly burdensome FOIA) should include applicable exemption language whenever possible *and* the FOIA appeal/PAC contact information.
- All responses should include FOIA appeal/PAC contact information where possible.
- Any verbal or telephonic conversations with a requestor should be documented in writing. (E.g. if a requestor agrees to an extension or a limitation in scope, document in writing).
- The City shall charge fees in accordance with the fee schedule permitted under FOIA (outlined below). For requests that are eligible for a fee waiver or reduction, the City shall provide a uniform fifty percent (50%) reduction in fees. The City Manager may approve further reductions on a case-by-case basis, but further reductions shall be discouraged, as the City incurs substantial costs in processing FOIA requests.
- Charges associated with processing FOIA requests must be paid in advance, before documents are provided to the requestor. Charges may only be paid via cash, credit card or certified funds.
- If a person requests to inspect documents in person, in lieu of receiving a copy, the City shall keep a complete copy of all responsive documents inspected (after redaction and exemptions are applied), and shall charge for all documents provided to the requestor after inspection.
- Documents shall only be inspected during regular business hours of the City, and at a location designated by the City Manager or designee.
- All FOIA responses shall come from a FOIA officer of the City, the City Attorney, the City Manager or the City Manager's designee.



Flow Chart

1. Is it a FOIA?

- a. Was it sent to a public body?¹
 - i. Yes. Proceed to 1(b).
 - ii. No. Not a FOIA.
- b. Is it a request for information that may be within one or more public records (paper or electronic)?²
 - i. Yes. Proceed to 1(c).
 - ii. No. Not a FOIA.
- c. Are the records in the possession of the public body or a qualifying third party contractor?³
 - i. Yes. It is a FOIA. Proceed to 2.
 - ii. No. Not a FOIA. Consider appropriate response.

2. Is the FOIA a Voluminous Request?⁴

- a. Does the request include more than 5 individual requests for more than 5 different categories of information?
 - i. Yes. Proceed to 2(d).
 - ii. No. Proceed to 2(b).
- b. If viewed in combination with any other requests from the same requestor over the past 20 business days, does the request include more than 5 individual requests for more than 5 different categories of information?
 - i. Yes. Proceed to 2(d).
 - ii. No. Proceed to 2(c).
- c. Does the request require the compilation of more than 500 pages of letter/legal size?
 - i. Yes.
 1. Is any one individual record/document in excess of 500 pages?
 - a. Yes. Likely not a voluminous request. Check with legal. Proceed to 3.
 - b. No. Proceed to 2(d).
- d. Is the requestor news media?⁵
 - i. Yes. Proceed to 2(f).
 - ii. No. Proceed to 2(e).
- e. Is the requestor a non-profit, scientific or academic organization?
 - i. Yes. Proceed to 2(f).
 - ii. No. It is a voluminous request. Proceed to 6(a).



- f. Is the request made to access and disseminate information concerning news and current/passing events?
 - i. Yes. Not a voluminous request. Proceed to 3.
 - ii. No. Proceed to 2(g).
- g. Is the request made related to articles of opinion or features of interest to the public?
 - i. Yes. Not a voluminous request. Proceed to 3.
 - ii. No. Proceed to 2(h).
- h. Is the request made for academic, scientific or public research or education?
 - i. Yes. Not a voluminous request. Proceed to 3.
 - ii. No. It is a voluminous request. Proceed to 6(a).

3. Is the request Unduly Burdensome?

- a. Is the request a repeated request from the same person for the same records that are unchanged or identical to records previously provided or properly denied?
 - i. Yes. Unduly Burdensome. Send Unduly Burdensome notice. See Appendix B. Proceed to 3(d).
 - ii. No. Proceed to 3(b).
- b. Does the request seek all records falling within a given category?⁶
 - i. Yes. Proceed to 3(c).
 - ii. No. Not unduly burdensome. Proceed to 4.
- c. Does the burden on the City outweigh the public interest in the information?
 - i. Yes. Send Unduly Burdensome notice. See Appendix B. Proceed to 3(d).
 - ii. No. Not unduly burdensome. Proceed to 4.
- d. Post-Notice Procedures:
 - i. If requestor agrees to narrow scope of request, re-process as FOIA and start at step 1 above.
 - ii. If requestor confers and refuses to narrow scope of request, confirm unduly burdensome status with final notice letter based off of Appendix B. Add detail regarding conference and refusal to limit scope in a reasonable fashion.
 - iii. If requestor fails to respond to unduly burdensome notice, close request.

4. Is it a Commercial Request?⁷

- a. Is the request for records or information that will be sold, resold or used to solicit or advertise for sales or services?
 - i. Yes. Proceed to 4(b).
 - ii. No. Not a Commercial Request. Proceed to 5.



- b. Is the requestor a news media, non-profit, or scientific/academic organization?
 - i. Yes. Not a commercial Request. Proceed to 5.
 - ii. No. Commercial Request. Proceed to 6(b).

5. Is the request from a Recurrent Requester?⁸

- a. In the 12 months preceding the request, has the requestor submitted at least 50 separate requests for records? (Note: one request may seek multiple documents; 50 separate requests must be received, not requests for 50 separate documents)
 - i. Yes. Proceed to 5(d).
 - ii. No. Proceed to 5(b).
- b. In the 12 months preceding the request, has the requestor submitted at least 15 requests within any 30 day period?
 - i. Yes. Proceed to 5(d).
 - ii. No. Proceed to 5(c).
- c. In the past 12 months preceding the request, has the requestor submitted at least 7 requests within any 7 day period?
 - i. Yes. Proceed to 5(d).
 - ii. No. Normal request. Proceed to 6(d).
- d. Is the requestor news media?⁹
 - i. Yes. Proceed to 5(f).
 - ii. No. Proceed to 5(e).
- e. Is the requestor a non-profit, scientific or academic organization?
 - i. Yes. Proceed to 5(f).
 - ii. No. It is a recurrent requestor. Proceed to 6(c).
- f. Were the qualifying number of requests made to access and disseminate information concerning news and current/passing events? (If some requests were news and some were not, count only those requests that were not news-based towards the qualifying numbers).
 - i. Yes. Not a recurrent requestor. Proceed to 6(d).
 - ii. No. Proceed to 5(g).
- g. Were the requests made related to articles of opinion or features of interest to the public? (Same note as 5(f) regarding count of requests).
 - i. Yes. Not a recurrent requestor. Proceed to 6(d).
 - ii. No. Proceed to 5(h).
- h. Were the requests made for academic, scientific or public research or education?
 - i. Yes. Not a recurrent requestor. Proceed to 6(d).
 - ii. No. It is a recurrent requestor. Proceed to 6(c).



6. Processing FOIA Requests

a. Processing Voluminous Requests

- i. Within 5 business days of receipt, issue Voluminous Request response. See Appendix A.
- ii. Must wait 10 business days from date that Voluminous Request Response is sent, or until response is received, to proceed.

1. Response received:

- a. Reanalyze request to determine if Voluminous Request. See Section 2 above.

i. If Voluminous Request:

1. Is extension warranted? See Appendix I.
2. If extension is justified, send a response extending the time period to 10 business days from the deadline for the requestor to respond (i.e. 20 business days from date of City's original Voluminous Request Response).
3. If extension is not justified, respond within 5 business days of receiving requestor's response. Response must either:
 - a. Provide estimate of fees to be charged, which must be paid in full before documents will be copied (See Appendix C); or,
 - b. Deny the request pursuant to FOIA exemptions; or,
 - c. Notify requestor that request is unduly burdensome and offer opportunity to reduce scope. See Section 3. See Appendix B, Unduly Burdensome Response; or,
 - d. Provide the responsive records (and charge fees).

- ii. If not a Voluminous Request, confirm if Commercial or Recurrent (see Sections 4 and 5 above). If Commercial or Recurrent, check with legal to confirm appropriate response timeline. Default is proceeding to Section 6(d) to process as normal request.

2. No response received:

- a. If extension is justified (see Appendix I), send a response extending the time period by an additional 10 business days from the deadline for the requestor to respond (i.e. 20 business days from date of City's original Voluminous Request Response).



- b. If extension is not justified, respond within 5 business days of the last day for requestor's response (i.e. 15 business days after the City's Voluminous Request response was sent). Response must either:
 - i. Provide estimate of fees to be charged, which must be paid in full before documents will be copied (See Appendix C); or,
 - ii. Deny the request pursuant to FOIA exemptions; or,
 - iii. Notify requestor that request is unduly burdensome and offer opportunity to reduce scope. See Section 3. See Appendix B, Unduly Burdensome Response; or,
 - iv. Provide the responsive records (and charge fees).
- iii. See Sections 8 and 9 for fees and exemptions.
- b. Processing Commercial Requests:
 - i. Within 21 business days of the date of the request, City must provide initial response to request.¹⁰ Response must:
 - 1. Provide an estimate of the time required to respond and the fees to be charged, which must be paid in full before copying the requested documents (See Appendix F); or
 - 2. Deny the request pursuant to FOIA exemptions; or
 - 3. Notify requestor that request is unduly burdensome and offer opportunity to reduce scope. See Section 3. See Appendix B, Unduly Burdensome Response; or
 - 4. Provide the responsive records (and charge fees).
 - ii. Unless the request is denied or the requestor refuses to pay fees, the City must respond to the request within a reasonable period of time given the size and complexity of the request, and giving priority to non-commercial requests.
 - iii. See Sections 8 and 9 for fees and exemptions.
- c. Processing Recurrent Requestors:¹¹
 - i. Within 5 business days of the date of the request, City must provide initial response to the request (See Appendix G). Response must:
 - 1. Notify the requestor that the City is treating the request as a recurrent request.
 - 2. Indicate the reason(s) why the requestor is being treated as a recurrent requestor.
 - 3. Indicate that the City will provide an initial response within 21 business days.



- ii. Thereafter, within 21 business days of the date of the request, City must provide secondary response to request. Response must:
 - 1. Provide an estimate of the time required to respond and the fees to be charged, which must be paid in full before copying the requested documents (See Appendix H); or,
 - 2. Deny the request pursuant to FOIA exemptions; or,
 - 3. Notify requestor that request is unduly burdensome and offer opportunity to reduce scope. See Section 3. See Appendix B, Unduly Burdensome Response; or,
 - 4. Provide the responsive records (and charge fees).
 - iii. Unless the request is denied or the requestor refuses to pay fees, the City must respond to the request within a reasonable period of time given the size and complexity of the request, and giving priority to non-commercial requests.
 - iv. See Sections 8 and 9 for fees and exemptions.
- d. Processing Normal FOIA Requests:¹²
- i. Is extension warranted? See Appendix I.
 - 1. If extension is warranted, send extension letter. See Appendix J. With extension, maximum timeline for responding is 10 business days from date of request (unless requestor voluntarily agrees to a longer extension).
 - 2. If extension is not warranted, within 5 business days of the date the request, comply with the request. See Appendix E.
 - ii. See Sections 8 and 9 for fees and exemptions.

7. Records Maintained Online:¹³

- a. For records that are maintained online and which are “reasonably accessible”, the City is not required to initially make copies of such records. Use this procedure to such portion of records as is applicable.
- b. Process for Online Records:
 - i. Notify the requestor of the location that the records are maintained online. See Appendix D, and insert that language into appropriate response letter.
 - ii. If the requestor is unable to access the information, the requestor may re-submit the request and must state the reason(s) why the requestor was unable to access the records. In such cases, the City should follow normal response protocols, and should provide a copy of the document.



8. Fees for FOIA Materials:¹⁴

a. Voluminous Requests

i. Materials available in electronic format:

1. If a record is requested in electronic format and if records are not in a PDF, charges are as follows:
 - a. \$20 for up to 2 megabytes of data.
 - b. \$40 for 2-4mb of data.
 - c. \$100 for 4+ mb of data.
2. If a record is requested in electronic format and records are in a PDF, charges are as follows:
 - a. \$20 for up to 80mb of data.
 - b. \$40 for 80-160mb of data.
 - c. \$100 for 160+ mb of data.
3. If responsive records are in both PDF and non-PDF format, charges are imposed under *both schedules*.
4. Must provide accounting of fees imposed.

ii. Materials in paper format:

1. Utilize same fee schedule as normal requests per page.

iii. Voluminous Commercial Requests:¹⁵

1. No fee for first 8 hours of research/redaction.
2. Fee of \$10/hour for any hours after first 8 hours of research/redaction.
 - a. Includes time spent searching for, retrieving, examining and redacting records.

b. Normal Requests and Recurrent Requests:

i. Requests in the public interest:

1. If the request states the specific purpose of the request, requests a waiver/reduction of fees and indicates that the request is in the public interest, fee shall be waived or reduced.
 - a. Permitted where request is made to access and disseminate information regarding health/safety/welfare/legal rights of general public.
2. Actual cost for reproduction may still be assessed.



- ii. Materials available in electronic format:
 - 1. If a record requested in electronic format and is maintained in electronic format, furnish in electronic format if feasible.
 - a. May not be feasible if redaction is required.
 - 2. If not feasible to produce electronically, furnish in format maintained, or in paper at option of requestor.
 - 3. City can charge actual cost of recording medium (disk, USB, etc).
 - 4. City cannot charge for search/production time.
- iii. Materials in paper format:
 - 1. Black and white legal/letter sized copies:
 - a. No charge for first 50 pages.
 - b. \$0.15/page charge thereafter.
 - 2. Other copies (color, large format, etc.):
 - a. Actual cost of reproduction, per page.
 - 3. Certified records:
 - a. Costs as outlined above, plus \$1.00 per certified document.
- c. Commercial Requests
 - i. Electronic or Paper Records:
 - 1. Use same fee schedule as Normal Requests.
 - ii. Research Time:¹⁶
 - 1. No fee for first 8 hours of research/redaction.
 - 2. Fee of \$10/hour for any hours after first 8 hours of research/redaction.
 - a. Includes time spent searching for, retrieving, examining and redacting records.

9. FOIA Exemptions

- a. General Principles: FOIA contemplates disclosure of records in the public interest, but recognizes that the disclosure of certain records is not in the public interest. Every FOIA response should be reviewed to determine whether the records are exempt from disclosure, and whether assertion of the exemption is in the public interest.
- b. Where questions exist, review the Public Access Counselor's previous decision page at: <http://foia.ilattorneygeneral.net/preauthapprovalanddenialletters.aspx>



- c. Exemptions Permitted: The current listing of exemptions is maintained at 5 ILCS 140/7. Review full list of exemptions to make informed decision, and review full text of exemption before relying upon exemption.
- d. A list of language excerpts to use for each exemption appears in Appendix L.
- e. The most common exemptions include:
 - i. Information prohibited from disclosure by state/federal law—7(a).
 - 1. E.g. HIPAA protected patient information, sales tax information received from the state with regard to a specific business.
 - ii. Private Information¹⁷, unless disclosure is required—7(b).
 - 1. E.g. social security number, home address/phone of public employees, passwords or medical records, biometric identifiers.
 - iii. Personal Information which would generate an Unwarranted Invasion of Personal Privacy¹⁸--7(c).
 - 1. Information which would bear upon the performance of public duties is *not exempt*, even if embarrassing.
 - iv. Records created in the course of law enforcement/administrative enforcement, to the extent that records would: --7(d).
 - 1. Interfere with pending or reasonably contemplated law enforcement proceedings by the City;
 - 2. Interfere with active administrative enforcement proceedings by the City;
 - 3. Create a substantial likelihood that any party would be deprived of a fair trial;
 - 4. Unavoidably disclose a confidential informant or identity of persons who file complaints (see statute for specific restrictions);
 - 5. Disclose unique/specialized investigational techniques that would result in demonstrable harm to City;
 - 6. Endanger the life/safety of law enforcement personnel or any person; or,
 - 7. Obstruct an ongoing criminal investigation of the City.
 - v. Records wholly created by another law enforcement agency, which the City only access through joint record-management systems - Section 7(d-5).
 - vi. Records that relate to the security of correctional institutions and detention facilities - Section 7(e).
 - 1. E.g. request for architectural plans from Police Department holding area.



2. See also Section 7(k) which exempts architectural plans, engineers technical submissions and similar documents for publicly-funded projects, if disclosure would compromise security.
- vii. Preliminary notes, drafts, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated (unless a specific record is cited by the head of the public body)—Section 7(f).
 1. E.g. notes from a staff meeting discussing proposed legislation or recommendations to City Council.
 2. Pre-decisional, deliberative communications are exempt.
 3. Final documents are not exempt.
- viii. Proposals for bid or contract, grant or agreement, if disclosure would give an advantage to any party, until the award/final selection is made - Section 7(h).
 1. E.g. FOIA for competitors' bid materials during the course of a pending bid selection.
- ix. Minutes of closed session meetings, until disclosure is approved by the City - Section 7(l).
- x. Communications between the City and its attorney or auditor (if they would be privileged in litigation), materials prepared in anticipation of a criminal, civil or administrative proceeding, and materials compiled with respect to internal audits - Section 7(m).
- xi. Records relating to adjudication of employee grievances or disciplinary cases; exemption *does not apply* to final outcome of cases in which discipline is imposed - Section 7(n).
 1. Note: There is conflicting case law on the extent to which disclosure is required. Review on case by case basis.
- xii. Matters relating to collective bargaining and negotiation; final contract is subject to disclosure - Section 7(p).
- xiii. Records relating to real estate purchase negotiations, until the negotiations are completed—Section 7(r).
- xiv. Security measures, vulnerability assessments, and policies or plans to prevent or respond to security threats, if disclosure would jeopardize the effectiveness of the measures or public/law enforcement safety - Section 7(v).



Appendix A: Voluminous Request Response

Insert additional appropriate language.

The City of DeKalb is in receipt of your FOIA dated _____, and hereby tenders its initial response.

- 1) Your Request is being processed by the City as a Voluminous Request pursuant to 5 ILCS 140/3.6.
- 2) The City has concluded that the request is a Voluminous Request because: *(insert reason based on nature of request, recipient, and apparent purpose of request).*
- 3) You must respond to the City within ten business days after this response is sent and specify whether you would like to amend your request in such a way that the request will no longer qualify as a Voluminous Request.
- 4) If you do not respond within ten business days of the date of this letter, or if your request continues to be a Voluminous Request, the City will respond to the request and assess any fees that are appropriate.
- 5) The City has five business days after receipt of your response, or five business days after the last day for you to respond, whichever is sooner, to respond to the request.
- 6) The City may request an additional ten business days to comply with the request.
- 7) Should you wish to have your request reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General 5 ILCS 140/9.5(a), you can file your Request for Review with the PAC by writing to:

Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us

You also have the right to seek judicial review by filing a lawsuit in the State Circuit Court. 5 ILCS 140/11. If you choose to file a Request for Review with the PAC, you must do so within sixty (60) calendar days of the date of this letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this letter when filing a Request for Review with the PAC.

- 8) If you fail to accept or collect the responsive records, the City will still charge you for its response and your failure to pay will be considered a debt due and owing the City which will be collected in accordance with applicable law.



Appendix B: Unduly Burdensome Response

The City of DeKalb is in receipt of your FOIA dated _____, and hereby tenders its initial response.

Upon review of the request, it appears as though the request is for production for all records falling within a specified category. Compliance with the request would require the production of *(describe reasons why unduly burdensome, including page estimates where possible)*. That request would burden the operations of the City in that *(describe, with specificity, impact that compliance would have on City operations, number of hours required to complete, tasks required to complete)*.

At this point, the City believes that the burden on the public body outweighs the public interest in the production of records. Accordingly, the City would extend to you the opportunity to confer in an attempt to reduce the request to manageable portions. Should you choose to not confer or reduce the scope of the request, the request would be denied as unduly burdensome pursuant to 5 ILCS 140/3g.

Further, the City would note that the following exemptions are applicable to certain requests that you have made, and the City is not providing certain documents which are exempt from disclosure under these exemptions contained within 5 ILCS 140/7:

(Cite applicable exemptions)

Should you wish to have your request reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General 5 ILCS 140/9.5(a), you can file your Request for Review with the PAC by writing to:

Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us

You also have the right to seek judicial review by filing a lawsuit in the State Circuit Court. 5 ILCS 140/11. If you choose to file a Request for Review with the PAC, you must do so within sixty (60) calendar days of the date of this letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this letter when filing a Request for Review with the PAC.



Appendix C: Voluminous Request Fee Notice

The City of DeKalb is in receipt of your FOIA dated _____, and hereby tenders its supplemental response.

The City provided a response to that request on *(date)*, which response identified the request as a Voluminous Request and sought your response thereto. *(The City received your reply to that notice on date. [or] The City has not received any response to that notice)*. The City has concluded that the request is a Voluminous Request pursuant to the provisions outlined in the preliminary response. Pursuant to 5 ILCS 140/3.6(c), the City is hereby providing you with an estimate of the fees to be charged in responding to this request.

The fees are presently estimated (in accordance with 5 ILCS 140/6) at \$_____. *(This fee must be paid to the City before the City commences copying of the requested documents. [or] The City may commence copying and charge you for the records, which charges will be a debt due and owing the City even if you fail to accept or collect the records requested, pursuant to 5 ILCS 140/3.6(e).)*

Further, the City would note that the following exemptions are applicable to certain requests that you have made, and the City is not providing certain documents which are exempt from disclosure under these exemptions contained within 5 ILCS 140/7:

(Cite applicable exemptions)

Should you wish to have your request reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General 5 ILCS 140/9.5(a), you can file your Request for Review with the PAC by writing to:

Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us

You also have the right to seek judicial review by filing a lawsuit in the State Circuit Court. 5 ILCS 140/11. If you choose to file a Request for Review with the PAC, you must do so within sixty (60) calendar days of the date of this letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this letter when filing a Request for Review with the PAC.



Appendix D: Records Maintained Online Language

Insert into appropriate letter.

The City has reviewed your request for *(description of record)*. This record is maintained on the City's website at:

(insert appropriate link).

Pursuant to 5 ILCS 140/8.5, you may access and save or print this record from the City's website, and no copy of the document is required to be provided. Should you be unable to reasonably access that information, please submit a request for this record, and please identify the reason that you are unable to access the online record.



Appendix E: General FOIA Response:

The City of DeKalb is in receipt of your FOIA dated _____, and hereby tenders its initial response. Your request sought the following information:

(Describe information, and City response thereto).

The City would note that the following exemptions are applicable to certain requests that you have made, and the City is not providing certain documents which are exempt from disclosure under these exemptions contained within 5 ILCS 140/7:

(Cite applicable exemptions)

Should you wish to have your request reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General 5 ILCS 140/9.5(a), you can file your Request for Review with the PAC by writing to:

Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us

You also have the right to seek judicial review by filing a lawsuit in the State Circuit Court. 5 ILCS 140/11. If you choose to file a Request for Review with the PAC, you must do so within sixty (60) calendar days of the date of this letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this letter when filing a Request for Review with the PAC.



Appendix F: Commercial Request Fee Notice:

The City of DeKalb is in receipt of your FOIA dated _____, and hereby tenders its supplemental response. The request has been determined by the City to be of a commercial nature, pursuant to 5 ILCS 140/2(c-10).

The fees are presently estimated (in accordance with 5 ILCS 140/3.1) at \$_____. This fee must be paid to the City before the City commences copying of the requested documents.

Further, the City would note that the following exemptions are applicable to certain requests that you have made, and the City is not providing certain documents which are exempt from disclosure under these exemptions contained within 5 ILCS 140/7:

(Cite applicable exemptions)

Should you wish to have your request reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General 5 ILCS 140/9.5(a), you can file your Request for Review with the PAC by writing to:

Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us

You also have the right to seek judicial review by filing a lawsuit in the State Circuit Court. 5 ILCS 140/11. If you choose to file a Request for Review with the PAC, you must do so within sixty (60) calendar days of the date of this letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this letter when filing a Request for Review with the PAC.



Appendix G: Preliminary Response to Recurrent Requestor

The City of DeKalb is in receipt of your FOIA dated _____, and hereby tenders its initial response. Your request sought the following information:

(Describe information, and City response thereto).

- 1) The City has identified this request as falling within the guidelines applicable to recurrent requestors at 5 ILCS 140/2(g) and 140/3.2.
- 2) The City has identified this as a recurrent requestor based upon its conclusion that within the 12 months immediately preceding this request, the City received *(more than fifty requests within that twelve month period [or] more than fifteen requests within a thirty day period [or] more than seven requests within a seven day period.)* The City has further concluded that the requests outlined above do meet the statutory criteria for recurrent requestors.
- 3) The City will send an initial response to your FOIA within 21 business days of its receipt of your request.

The City would note that the following exemptions are applicable to certain requests that you have made, and the City is not providing certain documents which are exempt from disclosure under these exemptions contained within 5 ILCS 140/7:

(Cite applicable exemptions)

Should you wish to have your request reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General 5 ILCS 140/9.5(a), you can file your Request for Review with the PAC by writing to:

Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us

You also have the right to seek judicial review by filing a lawsuit in the State Circuit Court. 5 ILCS 140/11. If you choose to file a Request for Review with the PAC, you must do so within sixty (60) calendar days of the date of this letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this letter when filing a Request for Review with the PAC.



Appendix H: Recurrent Requestor Fee Notice

The City of DeKalb is in receipt of your FOIA dated _____, and hereby tenders its supplemental response. The request has been determined by the City to be of a recurrent requestor, pursuant to 5 ILCS 140/2(g).

The fees are presently estimated (in accordance with 5 ILCS 140/3.2) at \$_____. This fee must be paid to the City before the City commences copying of the requested documents.

Further, the City would note that the following exemptions are applicable to certain requests that you have made, and the City is not providing certain documents which are exempt from disclosure under these exemptions contained within 5 ILCS 140/7:

(Cite applicable exemptions)

Should you wish to have your request reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General 5 ILCS 140/9.5(a), you can file your Request for Review with the PAC by writing to:

Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us

You also have the right to seek judicial review by filing a lawsuit in the State Circuit Court. 5 ILCS 140/11. If you choose to file a Request for Review with the PAC, you must do so within sixty (60) calendar days of the date of this letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this letter when filing a Request for Review with the PAC.



Appendix I: Extension Decision Tree

1. Are the records stored in whole or in part at other locations than the office having charge of the requested records?
 - a. If yes, proceed to 8.
 - b. If no, proceed to next step (2).
2. Does the request require the collection of a substantial number of records?
 - a. If yes, proceed to 8.
 - b. If no, proceed to next step (3).
3. Is the request couched in categorical terms that require extensive search?
 - a. If yes, proceed to 8.
 - b. If no, proceed to next step (4).
4. Did routine search not locate the records, and are additional efforts required?
 - a. If yes, proceed to 8.
 - b. If no, proceed to next step (5).
5. Do the records require competent evaluation to determine if exemptions apply?
 - a. If yes, proceed to 8.
 - b. If no, proceed to next step (6).
6. Would obtaining the records within the time constraints unduly burden the City's operations?
 - a. If yes, proceed to 8.
 - b. If no, proceed to next step (7).
7. Is consultation needed with another public body or another component of a public body with a substantial interest in the request?
 - a. If yes, proceed to 8.
 - b. If no, extension is not warranted. Use shorter timeline.
8. Extension is warranted. Use up to longer timeline.



Appendix J: Normal FOIA Extension Notice

The City of DeKalb is in receipt of your FOIA dated _____. Your request sought the following information:

(Describe information, and City response thereto).

Pursuant to 5 ILCS 140/3(f), the City hereby gives notice that the request qualifies for extension under 5 ILCS 140/3(e), and that it shall therefore extend the timeline for response to your request by up to an additional 5 business days. *(Describe reason why request qualifies for extension).*

Should you wish to have your request reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General 5 ILCS 140/9.5(a), you can file your Request for Review with the PAC by writing to:

Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us

You also have the right to seek judicial review by filing a lawsuit in the State Circuit Court. 5 ILCS 140/11. If you choose to file a Request for Review with the PAC, you must do so within sixty (60) calendar days of the date of this letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this letter when filing a Request for Review with the PAC.



Appendix K: FOIA Response Timeline

| Business Days | Regular FOIA | Voluminous Request | Commercial Request | Recurrent Requestor |
|--------------------------|-----------------------------------|---|--------------------------------|--|
| Date of submission | | | | |
| +1 | | | | |
| +2 | | | | |
| +3 | | | | |
| +4 | | | | |
| +5 | Response or Extension Letter Due. | Voluminous Request Response Due (Appendix A) | | Notify of Designation as Recurrent Requestor |
| +6 | | | | |
| +7 | | | | |
| +8 | | | | |
| +9 | | | | |
| +10 | Final Response Due if extended. | | | |
| +11 | | | | |
| +12 | | | | |
| +13 | | | | |
| +14 | | | | |
| +15 | | Last Day for Requestor Response | | |
| +16 | | | | |
| +17 | | | | |
| +18 | | | | |
| +19 | | | | |
| +20 | | City Response or extension letter. ^a | | |
| +21 | | | City Preliminary Response Due. | City Secondary Response Due. |
| +22 | | | | |
| +23 | | | | |
| +24 | | | | |
| +25 | | City Final Response due. | | |
| Within a Reasonable Time | | | City Final Response Due | City Final Response Due |

^a Note that if the Requestor submits a response to the initial Voluminous Request notification, this deadline (even if extended) is based upon 5 business days (10 business days if extended) from the date that the City *receives the response*.



Appendix L: FOIA Exemption Language

(Copy and paste into appropriate response letter. All citations from 5 ILCS 140/7. Note that additional, uncommon exemptions appear in the statute that are specific to certain agencies and that are unlikely to be utilized by a municipality).

- (a) Information specifically prohibited from disclosure by federal or state law.
- (b) Private information as defined at 5 ILCS 140/2.
- (c) Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and/or which would cause 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, but exclusive of records that bear upon the public duties of public employees and officials.
- (d) Records in the possession of the City created in the course of administrative enforcement proceedings or for law enforcement purposes, to the extent that disclosure would interfere with pending or actually/reasonably contemplated law enforcement proceedings conducted by the City, would interfere with active administrative enforcement proceedings conducted by the City, would create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing, would unavoidably disclose the identity of a confidential source, would disclose unique or specialized investigative techniques, would endanger the life or safety of law enforcement personnel or any other person, or would obstruct an ongoing criminal investigation by the City.
- (d-5) Law enforcement records maintained in a shared electronic record management system which were not created by the City, but which the City has access to or custody of.
- (e) Records that relate to the security of correctional institutes and detention facilities.
- (f) Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated.
- (g) Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial/financial information are furnished under a claim that they are proprietary, privileged or confidential and the disclosure of the information would cause competitive harm to the person or business.
- (h) Proposals and bids for any contract, grant or agreement, including information that if disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the City, until an award or final selection is made.
- (i) Valuable formulae, computer geographic or GIS systems, designs, drawings and research data obtained or produced by the public body when disclosure could reasonably be expected to produce private gain or public loss.



- (k) Architects' plans, engineers' technical submissions and other construction related 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 to the extent that disclosure would compromise security.
- (l) Meetings of minutes of public bodies closed to the public as provided in the Open Meetings Act until the public body makes the minutes available under 5 ILCS 120/2.06.
- (m) Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, or prepared 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.
- (n) Records relating to a public body's adjudication of employee grievances or disciplinary cases, exclusive of the final outcome of cases in which discipline is imposed.
- (o) Administrative or technical information associated with automated data processing operations 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.
- (p) Records relating to collective negotiating matters between public bodies and their employees or representatives, exclusive of the final, approved contract or agreement.
- (q) Test questions, scoring keys and other examination data used to determine the qualifications of an applicant for license or employment.
- (r) The records, documents and information relating to real estate purchase negotiations until those negotiations have been completed or otherwise terminated, or the records relating to a real estate sale until such sale is consummated.
- (s) Proprietary information and records relating to the operation of a risk management association or self-insurance pool or health and accident cooperative or pool, and insurance or self-insurance claims, loss or risk management information, records, data, advice and communications.
- (u) 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.
- (v) Vulnerability assessments, security measures and response policies or plans that are designed to identify, prevent or respond to potential attacks upon the City'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, including details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communications systems or protocols, or to tactical operations.



- (x) Maps and other records regarding the location or security of generation, transmission, distribution, storage, gathering, treatment or switching facilities owned by a utility.

Endnotes

¹ **Public Body:** 5 ILCS 140/2(a): “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.”

² **Public Record:** 5 ILCS 140/2(c): “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.”

³ **Qualifying Third Party Records:** 5 ILCS 140/7(2): “A public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body, and that directly relates to the governmental function and is not otherwise exempt under this Act, shall be considered a public record of the public body, for purposes of this Act.”

⁴ **Voluminous Record:** 5 ILCS 140/2(h).

⁵ **News Media:** 5 ILCS 140/2(f): “A newspaper or other periodical issued at regular intervals whether in print or electronic format, a news service whether in print or electronic format, a radio station, a television station, a television network, a community antenna television service, or a person or corporation engaged in making news reels or other motion picture news for public showing.” Note that “merely disseminating information or criticism electronically through a website or email does not meet the statutory definition of “news media.” 2015 PAC 33323.

⁶ **Unduly Burdensome:** 5 ILCS 140/3(g). Example of unduly burdensome request: request for all fire department run sheets over a 7 year period, where it would require manual review of each report and over 500 hours of staff time to comply. 2010 PAC 9625.

⁷ **Commercial Request:** Defined in 5 ILCS 140/2(c-10).

⁸ **Recurrent Requestor:** Defined in 5 ILCS 140/2(g). Note that when a group of persons act in concert to submit a FOIA, they may be considered as a single group submitting a FOIA for purposes of constituting a “recurrent requestor,” as under FOIA, a person may include an organization or association acting individually or as a group.” 2015 PAC 33188.

⁹ **News Media:** 5 ILCS 140/2(f): “A newspaper or other periodical issued at regular intervals whether in print or electronic format, a news service whether in print or electronic format, a radio station, a television station, a television network, a community antenna television service, or a



person or corporation engaged in making news reels or other motion picture news for public showing.”

¹⁰ **Processing of Commercial Requests:** 5 ILCS 140/3.1.

¹¹ **Processing Recurrent Requests:** 5 ILCS 140/3.2.

¹² **Processing Normal Requests:** 5 ILCS 140/3.

¹³ **Records Maintained Online:** 5 ILCS 140/8.5.

¹⁴ **Authority to Charge Fees:** 5 ILCS 140/6.

¹⁵ **Charging for Voluminous Commercial Request Staff Time:** 5 ILCS 140/6(f).

¹⁶ **Charging for Commercial Request Staff Time:** 5 ILCS 140/6(f).

¹⁷ **Private Information:** 5 ILCS 140/2(c-5): “means unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.”

¹⁸ **Unwarranted Invasion of Personal Privacy:** 5 ILCS 140/2(c): “means 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. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.”

