



**SB 189**  
**SUNSHINE LAW REFORM**  
**CREATING A MORE TRANSPARENT ILLINOIS**

**SETS A TONE OF TRANSPARENCY**

- Declares that FOIA should be construed to require disclosure of records as expeditiously and efficiently as possible.
- Declares that providing records in compliance with FOIA is a primary duty of public bodies to the People of Illinois and FOIA should be construed to this end, notwithstanding the fiscal obligations imposed by this law.
- Creates a presumption that all records are public and confirms that if a public body asserts an exemption from disclosure, it has the burden of proving that the record is exempt by clear and convincing evidence.

**PROVIDES FOR EFFECTIVE ENFORCEMENT OF FOIA AND OMA**

- Codifies the Public Access Counselor (PAC) within the Attorney General's Office.
- Provides that when a person is unable to obtain a document under FOIA from a local government body or an agency of the executive branch of state government, that person may seek help from the PAC.
- Provides that when a violation of the Open Meetings Act may have occurred, a person can turn to the PAC for assistance.
- Provides the PAC with the authority to review and determine whether the document should have been disclosed under FOIA or whether the public body violated the Open Meetings Act.
- To conduct this thorough review, the bill authorizes the Attorney General to issue subpoenas, if necessary, to obtain information.
- Creates a process, with specific deadlines, for public bodies to provide information to the PAC and to respond to any issues raised by the person requesting the documents under FOIA or challenging the application of the Open Meetings Act and for the PAC to make a decision.
- When an Open Meetings Act issue concerns whether a public body properly closed a meeting, the bill authorizes the PAC to examine the verbatim recording of the closed meeting as part of the review of a the issue.
- Authorizes the Attorney General to issue advisory opinions to public bodies in FOIA and OMA disputes. This provides a mechanism for public bodies to obtain direction on how to handle a FOIA or OMA issue before a dispute arises. Under this bill, a public body that relies in good faith on an advisory opinion from the PAC is not liable for penalties under FOIA or OMA.
- Authorizes the Attorney General to issue binding opinions in FOIA and OMA disputes.

- To give flexibility to this process and allow disputes to be resolved as efficiently and quickly as possible, the bill authorizes the PAC to resolve FOIA or OMA disputes through less formal means than issuing an opinion, such as by mediating the dispute.
- Provides that once the Attorney General issues a binding opinion in response to a FOIA or OMA dispute, the public body or the requester may seek administrative review of that decision in the Circuit Court of either Sangamon County or Cook County.
- If the public body or the requester seeks administrative review in the Circuit Court, the court reviews the record created when the PAC reviewed the issue – it does not start from scratch. To overturn the PAC’s binding opinion, the court must find that it was erroneous.
- Authorizes the Attorney General to file suit to enforce binding opinions issued in FOIA and OMA disputes.
- In the section of FOIA allowing lawsuits to obtain records, the bill provides that any public body that asserts an exemption from disclosure has the burden of proving that the record is exempt *by clear and convincing evidence*.
- Under current law, when a person seeking to obtain access to a record “substantially prevails” in a lawsuit to obtain the record, the court *may* award reasonable attorneys’ fees and costs. The bill significantly changes the law to provide that when a requester prevails (not “substantially prevails”) in a lawsuit to obtain access to a record, **the court shall award reasonable attorneys’ fees and costs**.
- The current law contains no penalties for failing to comply with FOIA. The bill allows courts to impose **civil penalties between \$2,500 and \$5,000** against public bodies that willfully and intentionally failed to comply with the law or otherwise acted in bad faith.

## **STREAMLINES ACCESS TO INFORMATION**

- To ensure compliance with the law, the bill requires all public bodies to designate a FOIA officer or officers. The FOIA officers must successfully complete an electronic FOIA training curriculum within 6 months after the effective date of the law and thereafter on an annual basis. The FOIA officers will be responsible for processing and ensuring the public body’s compliance with FOIA.
- Creates an easy process for submitting FOIA requests:
  - Provides that FOIA requests must be made in writing, but expressly allows requesters to submit the requests by mail, personal delivery, fax or any other means available – which would include email.
  - Explicitly prohibits public bodies from requiring that a FOIA request be submitted on a standard form or requiring that a requester specify the purpose for the request, except to determine whether the records are sought for a commercial purpose or to determine whether to waive copying charges.
  - Prohibits public bodies from inquiring into the purpose of a FOIA request, except to determine whether the records are sought for a commercial purpose or to decide whether to waive any copying charges.
  - The bill specifically notes that public bodies may honor oral FOIA requests.
- Consistent with current law, the time period for a public body to respond to a FOIA will start running when the public body receives the request. To ensure that FOIA officers begin working on the request quickly, the bill provides that all requests “received by a public body shall immediately be forwarded to its Freedom of Information officer or designee.”

- The bill **shortens the initial time to respond to a FOIA request from 7 to 5 business days** and the time allowed in an extension from 7 to 5 business days. As a result, if a public body seeks to extend the time to respond, the entire time period allowed under this bill for non-commercial requests is 10 business days, instead of the 14 business days allowed under current law.
- Allows public bodies and the person making the FOIA request to agree *in writing* to extend the time for providing the documents.
- Eliminates the appeal process that currently serves to delay the requester's ability to go to court and rarely results in a public body overturning its initial denial.
- Requires that FOIA officers develop a list of documents or categories of records that the public body shall immediately disclose upon request.
- Requires that after receiving a request, the FOIA officer must compute the day on which the response is due, maintain a copy of the request, and create a file to retain the request and a copy of the response.
- Provides consequences for failing to respond to a FOIA request. Under current law, if a public body completely fails to respond to a FOIA request within the time periods allowed (by either denying the request due to an exemption or by providing access to the requested documents), there are no consequences. Thus, on many occasions, public bodies simply refuse to respond to FOIA requests. This bill changes the current law and ensures that there are consequences if public bodies fail to respond to a FOIA request within the time periods allowed. Specifically, the bill provides that if a public body fails to respond to a request within the time periods allowed, that public body waives the ability:
  - (1) to impose a fee for copying those records, or
  - (2) to assert the exemption for unduly burdensome requests.
- Permits public bodies to redact exempt information from public records, but expressly provides that public bodies must produce the remaining information.
- Limits and clarifies the current, confusing ban on repeated requests. The current law states that "Repeated requests for the same public records by the same person shall be deemed unduly burdensome ...." The bill limits and clarifies this provision by rewriting it to state: "Repeated requests from the same person for the same records that are unchanged or identical to records previously provided or properly denied under this Act shall be deemed unduly burdensome under this provision."
- Requires public bodies to post information concerning how to make a FOIA request, including the names of the FOIA officers, on their websites.

## **EXPANDS THE RECORDS THAT MUST BE DISCLOSED AND NARROWS EXEMPTIONS**

- In a clear, concise new section, the bill provides that all records relating to the receipt and use of public funds (i.e.: city budgets) are public records that must be open for inspection and copying by the public.
- The bill contains language to clarify that when a public body contracts with an outside entity to perform a government function on its behalf, the records of those outside entities that relate to the government functions are *public records*, even if they are not in the possession of the public body.
- Clarifies that electronic communications are considered "public records" under FOIA.
- Clarifies that "public records" includes all documents "pertaining to the transaction of public business" and all documents "having been prepared by or for" any public body.

- The bill addresses a specific problem encountered by members of the public and organizations seeking to ensure that public bodies are adhering to the Prevailing Wage Act. Under the Prevailing Wage Act, public bodies must obtain certified payroll records from contractors performing work on projects paid for with taxpayer dollars. The bill provides that those certified payroll records are public records subject to inspection and copying under FOIA.
- Narrows exemptions to clearly proscribe information that is exempt.
- The current law includes references to exemptions to disclosure found in other statutes. This bill groups those statutory exemptions together to make it easier to understand and follow the law.
- Expands existing law to require that when a public body denies a FOIA request, the notice of denial must include “the specific reasons for the denial, including a detailed factual basis and a citation to supporting legal authority.”
- Limits the exemption for trade secrets and commercial or financial information obtained from third parties to instances where (1) the third party provided the information to the government body under a claim that it was proprietary, privileged or confidential and (2) the assertion that disclosure would cause competitive harm directly applies to the records requested.

### **REQUIRES HEIGHTENED SCRUTINY OF USE OF PRIVACY AND PRELIMINARY DRAFT EXEMPTIONS**

- When a public body intends to deny access to a document based on either the personal privacy exemption or the exemption for preliminary records or drafts, the bill mandates that the public body provide notice to the Public Access Counselor *before* asserting these exemptions. The Public Access Counselor may then review the assertion of the exemption and deem if it is proper. This pre-approval requirement will ensure that these exemptions are not asserted improperly to deny access to public records.

### **LIMITS THE APPLICATION OF THE PERSONAL PRIVACY EXEMPTION**

- Under current law, information is exempt if disclosure would constitute a clearly unwarranted invasion of personal privacy. The current law does not define a “clearly unwarranted invasion of personal privacy.” Additionally, the current law includes a lengthy list of categories of information that fall into the personal privacy exemption. The bill significantly narrows and clarifies the personal privacy exemption:
  - First, it eliminates “per se” privacy exemptions.
  - Second, the bill creates a clear, narrow category of “private information” that is exempt from disclosure. In creating this category, the bill is intended to give specific guidance to public bodies on what kind of information is exempt due to privacy concerns, preventing public bodies from adopting a broad approach when refusing to disclose information due to privacy concerns. Under the bill, “private information” 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 and personal telephone numbers, and personal email addresses.” The bill also provides that “private information” includes home address and personal license plate number,

“except as otherwise provided by law or when compiled without possibility of attribution to any person.”

- Third, in allowing public bodies to withhold information that, if disclosed, would constitute a “clearly unwarranted invasion of personal privacy,” the bill adds to Illinois law a clear definition of “unwarranted invasion of personal privacy.” Specifically, the bill provides that: “Unwarranted invasion of personal privacy’ 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 bill also includes the following statement from existing law: “The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.”

### **CLARIFIES THE REQUIRED DISCLOSURE OF ARREST INFORMATION AND THE LAW ENFORCEMENT EXEMPTIONS**

- Requires disclosure of arrest reports and defines criminal history record information that must be made public. Specifically and clearly provides for information regarding arrests to be disclosed quickly. Under the State Records Act, when a person is arrested, police departments must disclose a specific list of information concerning the arrest to the media as soon as practicable, but no later than 72 hours after the arrest. To make FOIA consistent with the State Records Act, the bill adds language to FOIA requiring that police departments must disclose arrest information to any requester within the 72-hour deadline set by the State Records Act.
- Tightens the law enforcement exemptions by making clear that only law enforcement agencies can assert these exemptions.
- Continues to protect information from confidential sources.

### **CREATES A SEPARATE TRACK FOR COMMERCIAL REQUESTS**

- Along with provisions designed to speed up responses to FOIA requests from members of the public and the media, the bill creates a separate track for public bodies to follow in responding to FOIA requests that are submitted for a “commercial purpose.”
- The bill defines a “commercial purpose” as when the requester seeks to use part or all of the public records “for sale, resale, or solicitation or advertisement for sales or services.”
- The bill explicitly provides that requests by the news media and non-profit, scientific or academic organizations shall not be considered to be made for a commercial purpose when the principle purpose of the request is: to access and disseminate information concerning the news, for articles of opinion, or for the purpose of academic, scientific, or public research or education.
- The bill provides that public bodies may take a longer time to respond to commercial requests and must give priority to records requested for non-commercial purposes.

### **ENSURES THAT DOCUMENTS WILL BE PROVIDED IN ELECTRONIC FORMAT**

- Under this bill, if a requester asks for a document that is maintained in an electronic format, the public body “shall furnish it in the electronic format specified by the requester, if feasible.”

- If it is not feasible to do that, then the public body shall either furnish the record in the format in which it is maintained or on paper.

### **LIMITS COPYING CHARGES**

- For black and white, letter or legal sized copies, the bill requires that public bodies provide **the first 50 pages for free.**
- The bill caps the charge for the remaining black and white, letter/legal sized pages at 15 cents per page.
- For copies in color or in a size other than letter or legal, the bill provides that the public body may not charge more than its actual cost for reproducing the records.
- The bill limits the cost of certifying a record to \$1.00.
- Under current law, the “purposeful imposition of a fee” that is not consistent with the law is considered a denial of the FOIA request. The bill deletes “purposeful” and simply provides that imposing a fee inconsistent with the statute constitutes a denial of the FOIA request.
- In the definition of what it means to “copy” a document, the bill specifically provides that “copying” includes using new technology that may be developed in the future to reproduce documents.

### **PROVIDES FOR TRAINING AND MODEL FOIA POLICIES TO GUIDE GOVERNMENT COMPLIANCE**

- Requires that the Public Access Counselor prepare an electronic training curriculum for compliance with the Freedom of Information Act and the Open Meetings Act.
- Requires public bodies to designate employees, officers or members to receive annual Open Meetings Act training.
- Requires annual FOIA training for all FOIA officers.
- Authorizes the Public Access Counselor to prepare and distribute model policies for public bodies to comply with FOIA.
- Requires the Public Access Counselor to post binding FOIA and Open Meetings Act as opinions on the Attorney General’s website.