

Sec. 3.5. Public Access Counselor; opinions.

- (a) A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation. The request for review must be in writing, must be signed by the requester, and must include a summary of the facts supporting the allegation. The changes made by this amendatory Act of the 99th General Assembly apply to violations alleged to have occurred at meetings held on or after the effective date of this amendatory Act of the 99th General Assembly.
- (b) Upon receipt of a request for review, the Public Access Counselor shall determine whether further action is warranted. If the Public Access Counselor determines from the request for review that the alleged violation is unfounded, he or she shall so advise the requester and the public body and no further action shall be undertaken. In all other cases, the Public Access Counselor shall forward a copy of the request for review to the public body within 7 working days. The Public Access Counselor shall specify the records or other documents that the public body shall furnish to facilitate the review. Within 7 working days after receipt of the request for review, the public body shall provide copies of the records requested and shall otherwise fully cooperate with the Public Access Counselor. If a public body fails to furnish specified records pursuant to this Section, or if otherwise necessary, the Attorney General may issue a subpoena to any person or public body having knowledge of or records pertaining to an alleged violation of this Act. For purposes of conducting a thorough review, the Public Access Counselor has the same right to examine a verbatim recording of a meeting closed to the public or the minutes of a closed meeting as does a court in a civil action brought to enforce this Act.
- (c) Within 7 working days after it receives a copy of a request for review and request for production of records from the Public Access Counselor, the public body may, but is not required to, answer the allegations of the request for review. The answer may take the form of a letter, brief, or memorandum. Upon request, the public body may also furnish the Public Access Counselor with a redacted copy of the answer excluding specific references to any matters at issue. The Public Access Counselor shall forward a copy of the answer or redacted answer, if furnished, to the person submitting the request for review. The requester may,

but is not required to, respond in writing to the answer within 7 working days and shall provide a copy of the response to the public body.

- (d) In addition to the request for review, and the answer and the response thereto, if any, a requester or a public body may furnish affidavits and records concerning any matter germane to the review.
- (e) Unless the Public Access Counselor extends the time by no more than 21 business days by sending written notice to the requester and public body that includes a statement of the reasons for the extension in the notice, or decides to address the matter without the issuance of a binding opinion, the Attorney General shall examine the issues and the records, shall make findings of fact and conclusions of law, and shall issue to the requester and the public body an opinion within 60 days after initiating review. The opinion shall be binding upon both the requester and the public body, subject to administrative review under Section 7.5 of this Act.

In responding to any written request under this Section 3.5, the Attorney General may exercise his or her discretion and choose to resolve a request for review by mediation or by a means other than the issuance of a binding opinion. The decision not to issue a binding opinion shall not be reviewable.

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

- (f) If the requester files suit under Section 3 with respect to the same alleged violation that is the subject of a pending request for review, the requester shall notify the Public Access Counselor, and the Public Access Counselor shall take no further action with respect to the request for review and shall so notify the public body.
- (g) Records that are obtained by the Public Access Counselor from a public body for purposes of addressing a request for review under this Section 3.5 may not be disclosed to the public, including the requester, by the Public Access Counselor. Those records, while in the possession of the Public Access Counselor, shall be exempt from disclosure by the Public Access Counselor under the Freedom of Information Act.
- (h) The Attorney General may also issue advisory opinions to public bodies regarding compliance with this Act. A review may be initiated upon receipt of a written request from the head of the public body or its attorney. The request must

contain sufficient accurate facts from which a determination can be made. The Public Access Counselor may request additional information from the public body in order to facilitate the review. A public body that relies in good faith on an advisory opinion of the Attorney General in complying with the requirements of this Act is not liable for penalties under this Act, so long as the facts upon which the opinion is based have been fully and fairly disclosed to the Public Access Counselor.