

School Board Records

Requirements of the Illinois Freedom of Information Act

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Letting the Sunshine in: School Board Records

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The Illinois Freedom of Information Act (5 ILCS 140/1 et seq.) ensures public access to records assembled, gathered, produced and disseminated by public bodies. This pamphlet is intended as a practical guide for school boards and administrators in dealing with the myriad provisions of these two important laws.

Thank You ...

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1. An Overview of the Laws Governing Illinois School Records

The Illinois Freedom of Information Act is one of at least five state laws regulating school records and public access thereto:

1) The Freedom of Information Act¹ makes all school records open to public inspection and copying except where (a) other statutes expressly forbid public access; (b) a requested record falls under one of the exemptions provided by the FOIA, or (c) the requested record was created prior to July 1, 1984 and falls under the purview of the Local Records Act.²

2) The Local Records Act³ governs the preservation and disposal of school records and requires public access to financial records created prior to July 1, 1984.

3) The Illinois Student Records Act⁴ protects the privacy of individual students by strictly limiting disclosure of their school records. It also provides students and their parents with the right to inspect and to challenge the contents of those records.

4) The Illinois Personnel Records Review Act⁵ regulates what may be included in the personnel records of a school employee, provides employee access and the right to challenge those records, and prohibits public access without permission of the employee.

5) The Open Meetings Act⁶ provides that the minutes of school board meetings must be made available for public

inspection within seven days after the board has approved them. The minutes of closed meetings need not be made available for inspection until the board declares there is no longer a reason to keep them confidential.

Prior to July 1, 1984, when the Freedom of Information Act (FOIA) became effective, the Local Records Act was the primary statute governing the records of local governments. The Local Records Act still controls the preservation and disposal of records and provides public access to financial records created prior to the FOIA effective date.

Today, the FOIA is by far the most comprehensive statute governing government records and the most cumbersome for school officials to implement.

The Local Records Act

Section 3a of the Local Records Act requires all records and reports “of the obligation, receipt and use of public funds” to be kept at the school district’s official place of business and made available for “public inspection during regular office hours except when in immediate use by persons exercising official duties which require the use of those records.” Section 3a also allows the school district to require a 24-hour advance written notice of the request to inspect, including a list of the records to be inspected. Section 3a also limits such disclosure where it would constitute an invasion of any person’s right to privacy.

Section 15 of the Local Records Act provides that Section 3a of the Act as it relates to the inspection of records “shall apply only as to records and reports prepared or received prior to” July 1, 1984.

The remaining provisions of the Local Records Act regarding such matters as disposal and preservation of records, etc., still retain their status as law and are not affected by the Freedom of Information Act.

¹ 5 ILCS 140/1 et seq.

² The Local Records Act governs public access to financial records created before July 1, 1984 and the FOIA governs financial records – as well as other records – created after that date. Which law, if any, governs public access to non-financial records created prior to July 1, 1984 is subject to dispute. The Illinois Attorney General has concluded that the FOIA applies.

³ 50 ILCS 205/1 et seq.

⁴ 105 ILCS 10/1 et seq.

⁵ 820 ILCS 40/0.01 et seq.

⁶ 5 ILCS 120/1 et seq.

2. The Freedom of Information Act – What It Requires

Coverage of the FOIA

School boards and all of their committees and subcommittees come within the coverage of the FOIA. The definition of the words “public records” is very broad and includes, but is not limited to: administrative manuals, procedural rules, final opinions and orders made in the adjudication of cases, statements and interpretations of policy which a public body adopts, final planning policies, factual and inspection reports, financial data and minutes of public meetings.

Note, however, that an individual alderman/trustee is

not included in the definition of a “public body” under the Act and, therefore, the personal records of an alderman/trustee are not subject to inspection and copying under the Act.⁷ The same concept presumably applies to an individual school board member.

E-mail communications which have been prepared, or have been or are being used, received, possessed or under the control of a public body should be treated as public records under the Act. E-mail messages produced on one’s

⁷ *Quinn v. Store*, 211 Ill.App.3d 809, 570 N.E.2d 676 (1991), cert. den., 580 N.E.2d 133 (1991)

personal computer in all likelihood will not constitute public records under the Act. Also, “personal” or “private” e-mails sent or received by school employees on a school’s computers should not be considered public records under the Act because they were not made or received pursuant to any law or ordinance or in connection with the official business of the school and, therefore, do not come under the control of the school.⁸

It is important for affected public officials to be conversant with the types of records that must be provided upon request and those that are exempt.

Intent of the FOIA

Section 1 of the Illinois Freedom of Information Act indicates that:

“Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act. Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.”

However, Section 1 also indicates what purposes the Act is *not* intended to cover or impose:

“This Act is not intended to be used to violate individual privacy, nor for the purpose of furthering a commercial enterprise, or to disrupt the duly-undertaken work of any public body independent of the fulfillment of any of the fore-mentioned rights of the people to access to information.

“This Act is not intended to create an obligation on the part of any public body to maintain or prepare any public record which was not maintained or prepared by such public body at the time when this Act becomes effective, except as otherwise required by applicable local, state or federal laws.”

In other words, the Act does not require a public body to prepare and keep any new records (however, the furnishing of records located in two different places does not constitute the creation of a new record.⁹) The Act does not require a public body to prepare answers to questions,¹⁰ and a public body is not required to prepare its records in a new format merely to accommodate a request for certain information.¹¹

Note that the Act says it is not intended to further the interests of a commercial enterprise. Although the legisla-

tive intent is not entirely clear on what this exception means (and also note that it is not included in the list of exemptions in Section 7 of the Act), it would appear, for example, that a public body can refuse to give out information to a business when the only interest the business would have is to use the list for marketing purposes (e.g., a mass mailing to potential customers) or to expand its business.¹²

In carving out these exceptions, however, Section 1 of the Act goes on to emphasize that these are “limited exceptions” to the general right of the public to know, and that the Act should be construed in such a manner.

Moreover, the FOIA pertains only to the availability of information and does not in any way protect the use of the information once received.¹³

The Act further provides in part that if a lawsuit is filed, the court must on motion of the plaintiff order the public body to provide an index of the public records to which access has been denied. The index must include certain specified information. Also, the Act makes it easy for the plaintiff to obtain an award of attorney’s fees against the public body. However, an attorney proceeding pro se (on his own behalf and not on behalf of a client) in an action under the Act is not entitled to an award of fees under the Act.¹⁴

Finally, the Act is to be construed as the exclusive statute on freedom of information unless another state statute creates any additional restrictions on disclosure of information (e.g., provisions relating to juvenile court proceedings) or creates additional obligations for disclosure.

Inspection and Copying

Section 3 of the Act requires public bodies to make available to any person for inspection or copying all public records except for those records expressly made exempt by Section 7 of the Act. If the person requesting a public record submits a written request, the public body must promptly provide such person with a copy of the public record requested (a certified copy must be provided if requested).

The public body must either comply with or deny such written request within seven working days after its receipt. If the written request is denied, the denial must be by letter.

Even though a public body is late in responding to a request for records, once it produces all the records, the merits of a plaintiff’s claim for relief in the form of production of information, become moot.¹⁵

⁸ *State of Florida v. City of Clearwater*, 863 So.2d 149 (Fla. S. Ct. 2003).

⁹ *Hamer v. Lentz*, 132 Ill.2d 49, 547 N.E.2d 191 (1989)

¹⁰ *Kenyon v. Garrels*, 184 Ill.App.3d 28, 540 N.E.2d 11 (1989)

¹¹ *AFSCME v. County of Cook* 136 Ill.App.2d 334, 555 N.E.2d 361 (1990)

¹² See *Healey v. Teachers Retirement System*, 200 Ill.App.3d 240, 558 N.E.2d 766, cert. den. 135 Ill.2d 556 (1990)

¹³ *Zientana v. Long Creek Township*, 211 Ill.App.3d 226, 569 N.E.2d 1299 (1999)

¹⁴ *Hamer v. Lentz*, 132 Ill.2d 49, 547 N.E.2d 191 (1989)

¹⁵ *Duncan Publishing, Inc. v. City of Chicago*, 304 Ill.App.3d 778, 709 N.E.2d 1281 (1st Dist. 1999).

Failure to respond within seven working days is considered a denial of the request.

In the event the public body cannot fill the request within this seven-working-day period, it may obtain an additional seven working days if it can meet one of the following seven reasons:

- 1) the requested records are stored in whole or in part at another location;
- 2) the request requires the collection of a substantial number of records;
- 3) the request is couched in categorical terms and requires an extensive search;
- 4) the public body has failed to locate the requested records in its initial attempt and the search is continuing;
- 5) the requested records require examination and evaluation by a competent person in order to determine which, if any, are exempt under Section 7 of the Act;
- 6) it would unduly burden or interfere with the operations of the public body to fill the request within the initial seven working days;
- 7) there is a need for consultation with another public body which has a substantial interest in the determination or in the subject matter of the request.

It must be remembered, however, that the maximum time available to fill a written request is 14 working days. Whenever a public body extends the time by the additional seven working days for one of the seven stated reasons, it must send a letter within the initial seven-working-day period to the person making the request, stating the reason(s) for the delay and the date by which the records will be made available or the request denied.

Burdensome Requests

In those cases where a person makes a request for all records falling within a category, the public body must fill the request unless to do so would unduly burden the public body and there is no way to narrow the request. In order to deny such a request, the burden on the public body must outweigh the public interest in the information sought. In addition, before a public body can rely upon this “burden” exemption, it must allow the person making the request an opportunity to confer with it in an effort to narrow the request to one that can be filled. Once again, if the public body relies upon this “burden” exemption, it must notify the requesting party and specify the reason(s) why it would be unduly burdensome for the public body to comply with the request.

The repeated requests for the same public records by the same person shall be deemed unduly burdensome. In one case, the court found that if one generally requests recorded information, that person may not request the same recorded information “soon thereafter,” even if the

person making the request asks for the recorded information in a different format.¹⁶

Rules and Regulations

Finally, a public body may adopt rules and regulations, in conformity with the Act, setting forth the times and places where records will be made available and the persons from whom such records may be obtained.

It is advisable for a public body to adopt rules and regulations that provide, among other things:

- the actual cost of retrieval and review of records prepared or received prior to July 1, 1984, shall be charged in addition to the cost of reproducing and certifying them;
- notice of appeal from a denial must be mailed within 14 days after notification of the denial (because the Act does not provide a time limit within which a notice of appeal from a denial must be mailed).

The term “head of the public body” is defined in such a manner as to mean the school superintendent (although an argument could be made that it could be the board president), or such person’s “duly authorized designee.” Of course, in appeals the designee cannot be the same person as the one who made the original decision. If there is to be a designee, the “head of the public body” should make the designation in writing and file it with the official records of the public body.

School District Directories

Section 4 of the Act requires all public bodies to prepare, prominently display at each of its offices, make available for public inspection and copying, and mail out if requested, each of the following two directories:

1) A brief description of the public body, including (a) a short summary of its purpose, (b) a block diagram of its functional subdivisions, (c) the total amount of its operating budget, (d) the number and location of all of its separate offices, (e) the approximate number of full and part-time employees, and (f) the identification and membership of all boards, commissions and committees which operate in an advisory capacity relative to the operation of the public body, or which exercise control over its policies or procedures, or to which the public body is required to report and be answerable for its operations.

2) A brief description of how and from whom (title and address of employees) public records may be requested and any fees permitted to be charged to the public under Section 6 of the Act.

Cataloging of Public Records

Public bodies, must list (catalog) all types or categories of records under their control which were prepared or

¹⁶ *AFSCME v. County of Cook*, 136 Ill.2d 334, 555 N.E.2d 361 (1990)

received after July 1, 1984. Records prepared or received prior to July 1, 1984 need not be so listed. However, once such a list has been prepared, it will, in all likelihood, also cover all records under a public body's control prior to July 1, 1984. This list of records must be made available to the public for inspection and copying, must be "reasonably" current, and must be "reasonably" detailed in order to assist the public in obtaining access to public records.

In the event the public body has stored its records in computers, it must provide the public with a description of how such records may be obtained in a form comprehensible to persons lacking knowledge of computer language or printout formats. The definition of "public records" includes computer tapes within its scope and computer tapes must be made available to the public.¹⁷

Computer technology also raises other issues such as whether e-mail constitutes a public record within the meaning of the Act (as well as the issue of preservation of such e-mail under the Local Records Act). The Ohio Supreme Court has ruled that sometimes e-mail is not a public record (e-mail generated by individual co-workers containing racial slurs and not serving to document the business functions of the Sheriff's Department), but that e-mail that does "document the organization, functions, policies, decisions, procedures, operations or other activities of the office" would be considered a public record.¹⁸ The Florida Supreme Court has also ruled that the personal e-mails of municipal employees were not "public records."¹⁹

Fees and Costs

A public body is allowed to charge fees only to reimburse its actual cost for reproducing and certifying public records and for the use by the public of equipment of the public body to copy records. The public body is not allowed to charge for any staff time necessary to retrieve or review the records. Therefore, all salary costs associated with filling requests for public records must be absorbed by the public body.

The allowable fees must be charged according to a standard scale of fees and such fee scale must be made public.

Records are to be furnished without charge or at a reduced charge, as determined by the public body, if the person making the request states the specific purpose for the request and indicates that a waiver or reduction of the fee is in the public interest. A waiver or reduction of the fee is in the public interest if the principal purpose of the request is to obtain information regarding the health,

safety and welfare or the legal rights of the general public and is not for the principal purpose of personal or commercial benefit. The words "commercial benefit" do not apply to requests made by news media when the principal purpose of the request is to access and disseminate information regarding the health, safety and welfare or the legal rights of the general public. In setting the amount of waiver or reduction, the public body may take into consideration the number of records requested and the cost of copying them.

If a public body knowingly charges a fee which exceeds its actual cost of reproduction and certification, such excessive fee is considered to be a denial of access to public records for the purpose of judicial review.

In those instances where someone such as an insurance company or an attorney requests a report and also requests "special service" beyond the requirements of the Act, such as that it be mailed within 24 or 48 hours, it should be legally permissible to charge a flat fee of \$5 or \$10 for such "special service." If such a flat fee is to be charged, the preferred procedure would be to require the requestor to submit a written request for "special service" and a statement that the requestor consents to the charge (e.g. \$5 or \$10) for such "special service."

Exemptions from Public Inspection

Under Section 8 of the Act, if any public record that is exempt from disclosure under Section 7 contains any material which is not exempt, the public body must "delete" the exempt information and then make the remaining information available for inspection and copying. For example, if the public body has a pre-printed form which includes both exempt and non-exempt material, the public body would have to give the entire pre-printed form, including all pre-printed material even if it was located where the exempt material was originally inserted, and delete from it the exempt information. In the past it would have been permissible to give only the portion where the non-exempt information was contained.²⁰

While reading and interpreting the exemptions contained in Section 7, it is important to remember that Section 1 specifically indicates that the Act is not intended to violate individual privacy nor further any commercial enterprise. Any school district claiming an exemption under Section 7 has the burden of proving the information sought to be protected falls within one of the exemptions.²¹

Section 7 contains a rather long list of exemptions (as well as exceptions to the exemptions) and it is not the intent of this chapter to cover or merely repeat each and every exemption and exception thereto. However, we would like to highlight some of the more important exemptions and exceptions applicable to school districts, including:

¹⁷ *AFSCME v. County of Cook*, 136 Ill.2d 334, 555 N.E.2d 361 (1990)

¹⁸ *State ex rel. Wilson-Simmons v. Lake County Sheriff's Department*, 82 Ohio St. 3d 37, 693 N.E.2d 789 (Ohio 1998).

¹⁹ *State of Florida v. City of Clearwater*, 863 So.2d 142 (Fla. S.Ct. 2003)

²⁰ *Staske v. Champaign*, 183 Ill.App.3d 1, 539 N.E.2d 747 (1989), cert. den., 127 Ill.2d 636 (1989)

²¹ *Wayne County Press, Inc., v. Isle*, Ill.App.3d, 636 N.E. 2d 65 (5th Dist. 1994)

1) Information specifically prohibited from disclosure by federal or state law, e.g., certain student records or records relating to juvenile court proceedings.

2) Information which, if disclosed, would constitute a “clearly unwarranted invasion of personal privacy,” unless disclosure is consented to in writing by the individual whose privacy is being invaded. Disclosure of information that “bears on the public duties” of public employees and officials is not considered an invasion of personal privacy. (Because no one knows the meaning of “clearly unwarranted invasion of personal privacy,” this section clearly is in need of judicial interpretation. Judicial interpretation also is sorely needed as to what information may “bear on” the public duties of public officials and employees.) However, some matters in personnel files and records may be discoverable.²²

3) Files and personal information regarding individuals receiving certain care or services from the school district.

4) Personnel files and personal information as to employees, appointees or elected officials or applicants for those positions. A union’s request to the Teachers Retirement System for the names, addresses, home telephone numbers and number of years in the system of all of system’s enrollees was exempt from disclosure.²³

5) Files and personal information regarding applicants, registrants or licensees receiving or requesting professional or occupational registration or licenses.

6) Information revealing the identities of persons filing complaints with or providing information to administrative, investigative, law enforcement or penal agencies.

7) Investigatory records compiled for “internal matters of a public body,” but only under certain specified circumstances. However, such records must be disclosed unless certain specifically listed criteria are met.

8) Criminal history records except where the requesting party is the individual identified in the records (with certain exceptions).

9) Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion thereof shall not be exempt when the record is publicly cited and identified by the head of the public body.

10) Trade secrets or commercial or financial information obtained from a person or business which are “privileged, proprietary or confidential” or where disclosure of trade secrets or information obtained from a person or business under circumstances where it would “cause com-

petitive harm.”

11) Proposals and bids for any contract, grant or agreement until an award or final selection is made. Information prepared by or for the body in preparation of a bid solicitation shall be exempt until an award or final selection is made.

12) Test questions, scoring keys and other examination data.

13) Certain architects’ plans, engineers’ technical submissions and other construction related technical 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, but only to the extent that disclosure would compromise security, including but not limited to water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings.

14) Minutes of meetings allowed to be kept confidential under the Illinois Open Meetings Act.

15) Certain limited communications with the attorney for the school district, as well as materials prepared for a criminal, civil or administrative proceeding upon the request of the attorney and also materials prepared for an internal audit. The Illinois Supreme Court has held that this exemption has two requirements: (1) that the communication be between a public body and an attorney representing it; and (2) that the information would not be subject to discovery in litigation. The burden is on the public body to prove that the information sought is exempt from disclosure. The court stated that the most effective way to prove the exemption applies is through a private review by the circuit court.²⁴

16) Certain administrative or technical information associated with automated data processing.

17) Documents or materials relating to collective bargaining matters but not including the final contract or agreement which is entered into.

18) Draft notes, recommendations and memoranda pertaining to financing and marketing transactions. What constitutes “financing and marketing” transactions will have to be judicially or legislatively clarified. Also exempt are the records of ownership, registration, transfer and exchange of municipal debt obligations, and of persons to whom payment with respect to such obligations is made.

19) Records regarding real estate (purchases and sales) negotiations up until the time the negotiations are concluded.

20) Certain information relating to an intergovernmental risk management association, self-insurance pool or jointly self-administered health and accident cooperative

²² *CBS, Inc. v. Partee*, 198 Ill.App.3d 936, 556 N.E.2d 648 (1990), cert. den., 133 Ill.2d 553 (1990)

²³ *Healey v. Teachers Retirement System*, 200 Ill.App.3d 240, 558 N.E.2d 766 (1990), cert. den., 135 Ill.2d 556 (1990)

²⁴ *Illinois Education Association v. The Illinois State Board of Education*, 204 Ill.2d 456, 791 N.E.2d 522 (2003).

or pool.

21) Information related solely to the internal personnel rules and practices of a public body.

22) Manuals or instructions to staff which relate to establishment or collection of liability for any state tax or which relate to investigations by a public body to determine violation of any criminal law.

23) Insurance or self insurance (including any inter-governmental risk management association or self insurance pool) claims, loss or risk management information, records, data, advice or communications.

24) Information received under procedures for the evaluation of faculty members by their academic peers.

25) Information concerning any adjudication of student or employee grievances or disciplinary cases, except for the final outcome of the cases.

26) Course materials or research materials used by faculty members.

27) Information the disclosure of which is exempted under the State Officials and Employee Ethics Act.

28) 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.

Denials of Requests for Records

In the event that requested disclosure of public records is denied, each public body or head of a public body must notify by letter the person making the request of:

- a) the decision to deny;
- b) the reasons for the denial;
- c) the names and titles or positions of “each person responsible for the denial;” (Whether this is more inclusive than merely the person or persons who actually makes the decision to deny is unclear.)
- d) the requester’s right to appeal to the “head of the public body” or, if the decision was made by such head of the public body, then of the person’s right to judicial review under Section 11 of the Act.

If the request is denied on the basis of one of the exemptions contained in Section 7 of the Act, the notice of denial must specify the exemption.

Appeals – If the decision to deny is made by someone other than the head of the public body, it may be appealed to such head by written notice to the head. No time frame is given for such an appeal. The head of the public body must, upon receipt of such an appeal, “promptly” review the records, determine whether the decision to deny was correct, and notify the person making the appeal of his

decision “within seven working days after the notice of appeal.”

A person will be deemed to have been denied access to the records and also to have exhausted all administrative remedies if the head of the public body upholds the denial or fails to act within the seven-day time limit. In such circumstances, the individual will be entitled to judicial review by a complaint for injunction or declaratory judgment.

Copies of all notices of denials must be retained, indexed and made available for public inspection. The indexing must be as to the type of exemption asserted and to the extent feasible according to the types of records requested.

Enforcement of the Act

The FOIA provides for civil remedies for enforcement of the Act. As noted above, any person denied access may file a suit for injunctive or declaratory relief. No time limit is provided within which such a suit may be brought.

If the court determines the Act was violated, it may enjoin withholding of the records and order disclosure, and the burden is on the public body to establish that its refusal was legitimate.

In the event of non-compliance with its order, the court may enforce the order through its contempt-of-court powers.

The court also has the power to award reasonable attorney’s fees and costs to the person requesting disclosure if such person “substantially prevails” in any such lawsuit. If, however, the court finds that the fundamental purpose of the request was to further the commercial interests of the requestor, the court may award reasonable attorney’s fees and costs if the court finds that the records were “of clearly significant interest to the general public” and that the public body lacked any reasonable legal basis for withholding the record.

No corresponding right for a school district to recover attorney’s fees is included under the Act. The refusal by a school district to furnish a lost record is not a violation of the Act and such refusal does not entitle the plaintiff to an award of attorneys fees.²⁵

Court Interpretations

The Illinois Act is modeled after the Federal Freedom of Information Act (FFOIA)²⁶ and shares several key provisions with the Federal Act, including exemptions from disclosure relating to personal privacy, investigatory records and trade secrets. The legislative history of the Illinois Act clearly indicates that the Act’s sponsors intended that interpretations of the FFOIA by federal courts will serve

²⁵ *Workmann v. Illinois State Board of Education*, 229 Ill.App.3d 459, 593 N.E.2d 141 (1992)

²⁶ 5 U.S.C. 552 (1976)

as a guide to understanding the provisions of the Illinois Act.

Also, other states have adopted acts similar to the Illinois Act. Thus, by examining judicial treatment and interpretation of similar provisions in the Federal Act and other state acts, it is possible to gain some insight into the intent of the Illinois Act and how Illinois courts might rule thereon.

In interpreting such laws, courts generally have broadly construed in favor of disclosure. In one case, the appellate court held that a settlement agreement reached in a contract suit was not exempt from disclosure despite the fact that one of the parties requested and was granted a “gag order” by the court.²⁷ In addition, an Illinois Appellate Court has held that the Act is constitutional and does not violate the constitutional guarantees of freedom of the press.²⁸

When hearing cases arising under the Federal Act, courts have also imposed strict procedural requirements on agencies seeking to avoid disclosure. These measures include placing the burden of proof on the agency opposing disclosure²⁹ and requiring the agency opposing disclosure to provide “particularized and specific justification for exempting information from disclosure” with all objections indexed to the material sought to be exempted from disclosure.³⁰

In imposing strict procedural requirements on agencies opposing disclosure, the Court in *Cuneo* recognized the difficulty faced by plaintiffs seeking the release of public records arising from the fact that they are without access to the material sought and unable to oppose the factual characterization of the material by the agency opposing disclosure.³¹

The U.S. Supreme Court attempted to clarify the scope of the Federal Act by stating that two requirements must be satisfied for requested materials to qualify as “agency records.”³² First, an agency must “either create or obtain” the requested materials, which includes materials produced outside the agency both by private and governmental organizations (e.g., studies and trade journal reports). Second, the Court said the agency must be in control of the requested materials at the time the FFOIA request is made, meaning that the materials have come into the agency’s possession in the legitimate conduct of its official duties.

To this effect, the court held that a transition staff was

not an agency within the provisions of the FFOIA and records created by a transition staff are not subject to disclosure. The court explained that an entity qualifies as an agency only if it has authority to perform specific government functions.³³

Similarly, the Court held that persons or institutions receiving grants from a branch of the federal government do not automatically become agencies for the purposes of the FFOIA. In making this determination, the Court looked to whether the contractors or grantees were subject to “day to day control” by a federal agency and whether they “became the functional equivalent of the agency, making its decisions for it.”³⁴

Furthermore, the U.S. Supreme Court held that an agency’s “presubmission review” regulation violated the Federal FOIA because it provided that information submitted to it in support of an application was not considered part of the agency’s files pending a determination by it as to whether any such information would be exempt from disclosure under the FFOIA and that, if the agency determined that any such information was discoverable, the applicant was given the option of withdrawing the information.³⁵

Federal courts also have pointed out that mere possession of a record by an agency official does not cause the record to become an agency record subject to disclosure. Rather, there must be some nexus between the record and the agency’s work in order for the record to become an “agency record.” Note, however, that the Illinois definition of public records is very liberal and is not limited to records required to be kept by law. Thus the requirement of disclosure may be broader in Illinois.

Both the FFOIA and the Illinois act contain an exemption from disclosure for information which would constitute a “clearly unwarranted invasion of personal privacy.” This provision has been interpreted by Federal courts as requiring a balancing of the public interest served by disclosure against the potential invasion of personal privacy. One Federal court held that the disclosure of public employees’ names and home addresses violates the Privacy Act, stating that federal employees have privacy interests in their names and home addresses that must be protected and that the relevant public interest in disclosure, though not nothing, is outweighed.³⁶

A Federal Appellate Court has upheld the Federal Trade Commission’s refusal to disclose the names and addresses of those individuals who had filed complaints with the Commission about “cramming” – the shady practice of putting bogus charges on a person’s bill. The Court

²⁷ *Carbondale Convention Center, Inc. v. City of Carbondale*, 245 Ill.App.3d 474, 614 N.E.2d 539 (1993)

²⁸ *City of Monmouth v. Galesburg Printing*, 144 Ill.App.3d 224, 494 N.E.2d 896 (1986)

²⁹ *Cunoco, Inc. v. U.S. Dept. of Justice*, 521 F.Supp. 1301 (D.Del. 1981)

³⁰ *Cuneo v. Schlesinger*, 484 F.2d at 1086, 1090 (D.C. Cir. 1973) and *Vaughn v. Rosen*, 484 F.2d 810 (D.C. Cir. 1973)

³¹ *Cuneo v. Schlesinger*, 484 F.2d at 1091

³² *U.S. Dept. of Justice v. Tax Analysts*, 492 U.S. 136; 109 S.Ct. 2841 (1989)

³³ *Illinois Institute for Continuing Legal Education v. United States Dept. of Labor*, 545 F.Supp. 1229 (N.D. Ill. 1982)

³⁴ *Forsham v. Califano*, 587 F.2d 1128 (D.C. Cir. 1978)

³⁵ *Teich v. Food and Drug Administration*, 751 F.Supp.243 (D.D.C. 1990)

³⁶ *Federal Labor Relations Authority v. Department of Treasury*, 884 F.2d 1446 (1989)

held that “[C]ompelling disclosure of the identity of consumers’ complaints about cramming would not further the core purpose [“to expose what the government is doing, not what its private citizens are up to”] of the FOIA.”³⁷

However, because Illinois does not have a similar Privacy Act, the names of public employees would be discoverable but their addresses are most likely exempt from disclosure. Illinois has adopted the same balancing test for the Illinois Act.³⁸

Courts have found that records containing a detailed synopsis of an individual’s career, family relationship and financial status represent the type of information that the exemption was intended to protect.³⁹

The Illinois Supreme Court considered a FOIA request from the Family Life League seeking a list of the physicians, hospitals and other service providers who had furnished abortion services under the Illinois Medicaid program. The Court rejected the Department’s claim that release of such information would constitute an unwarranted invasion of the providers’ and recipients’ rights to privacy based upon the Department’s speculation that such release would result in improper harassment and reluctance of women to continue using such services. However, the Court did find that because a special computer program had to be developed by the Department in order to segregate confidential information out of these records, the Department would be allowed reasonable time to perform this task and that plaintiffs would have to pay the reasonable expenses of the preparation of these records.⁴⁰

Issues similar to those involved in the Family Life League case include the following:

- information relating to state pension payments by former legislators subject to disclosure even though records contained exempt material where information could be separated and agency could charge fees reasonably calculated to reimburse agency for actual costs of producing records.⁴¹
- names and addresses of traffic accident witnesses exempted under the Illinois Act.⁴²

Several courts have also held that the “personal priva-

cy” exemption is not applicable to corporations.⁴³

One question that will have to be resolved in Illinois is whether the motive of the person making the request can be considered,⁴⁴ (e.g., see the indication in the Illinois Act that it was not intended to be used “for the purpose of furthering a commercial enterprise.”)

In one case, the U.S. Supreme Court stated that “the identity of the requesting party has no bearing on the merits of his or her FOIA request.”⁴⁵

One Illinois Court has held that the names and addresses of persons who have previously made requests under the FOIA are not subject to disclosure to a subsequent individual requesting such information under the FOIA, and thus the names and addresses were properly redacted.⁴⁶

A third exemption from disclosure found in both the Federal and Illinois Acts relates to trade secrets. For information to fall within this exemption, it must be shown that it is: (a) commercial or financial; (b) obtained from a person; and (c) privileged or confidential.⁴⁷ In one case, the Court held that the factors to be considered by an agency in exercising its discretion in applying this exemption are whether disclosure would aid the agency in performing its functions, whether harm to producers and the public would result from release of the information, and whether alternatives to full disclosure could serve the public equally well.⁴⁸

State courts also have interpreted similar provisions.⁴⁹

Another exemption appearing in the Illinois Act as well as the Federal Act and similar state acts is the exemption for “preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated” This exception is intended to encourage frank and open dialogue on matters of governmental concern in order to make an informed policy decision, which decision, of course, would be available for public review.⁵⁰

Other cases related to preliminary materials are as follows:

- court placed the burden of proof on the Department

³⁷ *The Lakin Law Firm, PC v. Federal Trade Commission*, 352 F.3d 1122 (7th Cir. 2003).

³⁸ *Margolis v. Director, Illinois Department of Revenue*, 180 Ill.App.3d 1084, 536 N.E. 2d 827 (1989) cert. den. 126 Ill.2d 560 (1989) and *Blumenfeld, Ltd. v. Department of Professional Regulation*, 263 Ill.App.3d 981, 636 N.E.2d 594 (1st Dist. 1993)

³⁹ *Columbia Packing Co., Inc. v. U.S. Dept. of Agriculture*, 417 F.Supp. 651 (D. Mass. 1976). See also, *Bahlman v. Brier*, 462 N.Y.S.2d 381 (1983) and *Blumenfeld, Ltd. v. Department of Professional Regulation*, 263 Ill.App.3d 981, 636 N.E. 2d 594 (1st Dist. 1993)

⁴⁰ *Family Life League v. Illinois Department of Public Aid*, 112 Ill.2d 449, 493 N.E.,2d 1054 (1986)

⁴¹ *Hamer v. Lentz*, 132 Ill.2d 49, 547 N.E.2d 191 (1989)

⁴² *Staske v. City of Champaign*, 183 Ill.App.3d 1, 539 N.E.2d 747 (1989)

⁴³ *Robertson v. Dept. of Defense*, 402 F.Supp. 1342 (D.D.C. 1975); *Ferguson v. Kelly*, 455 F.Supp. 324 (N.D.Ill.1978)

⁴⁴ See e.g., *Goodstein v. Shaw*, 463 N.Y.S.2d 162 (1983); and *News-Press Publishing Co., Inc. v. Good*, 388 So.2d 276 (1980); *Warden v. Bennett*, 340 So.2d 977 (1976); and *Williams v. I.R.S.*, 345 F.Supp 591 (1972)

⁴⁵ *Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 109 S.Ct. 1468 (1989)

⁴⁶ *Chicago Alliance for Neighborhood Safety v. The City of Chicago*, 2004 WL 602807 (1st Dist. 2004).

⁴⁷ *National Park and Conservation Association v. Melton*, 498 F.2d 765 (D.C. Cir. 1974); *Consumers Union of U.S. v. Veterans Administration*, 301 F.Supp. 769 (S.D.N.Y. 1969)

⁴⁸ *Doctors Hospital of Sarasota, Inc. v. Califano*, 455 F.Supp 476 (M.D. Fla. 1978)

⁴⁹ See *Belth v. Insurance Dept. of New York*, 406 N.Y.S.2d 649 (1977); *Uribe v. Howie*, 19 Cal.App.3d 194, 96 Cal.Rptr. 493 (1971)

⁵⁰ *N.L.R.B. v. Sears*, 421 U.S. 132 (1975); *Mink v. EPA*, 410 U.S. 73 (1973)

of Corrections to show that preliminary draft regarding drugs to be used for lethal injections under the Illinois death penalty statute was exempt from disclosure;⁵¹

- a county sheriff's opinionated letter to the city regarding plaintiffs liquor license application was ruled exempt;⁵²
- a staff analysis of an arbitrator was ruled exempt;⁵³
- arrest records and traffic tickets were ruled not exempt;⁵⁴
- police "use of force" forms found exempt;⁵⁵
- promotion recommendations found exempt;⁵⁶
- correspondence with consultants ruled exempt.⁵⁷

Finally, conflicts have arisen concerning exemptions where disclosure is positively prohibited by another State

⁵¹ *Hoffman v. Illinois Department of Corrections*, 158 Ill.App.3d 473, 511 N.E.2d 759 (1987)

⁵² *Carrigan v. Harkrader*, 146 Ill.App.3d 535, 496 N.E.2d 1213 (1986), cert. den., 113 Ill.2d 558 (1986)

⁵³ *Kheel v. Ravitch*, 462 N.Y.S.2d 781 (1982)

⁵⁴ *Johnson Newspaper Corp. v. Stainkamp*, 463 N.Y.S.2d 122 (1983)

⁵⁵ *Ganhett Co. Inc. v. James*, 447 N.Y.S.2d 781 (1982)

⁵⁶ *Hafermehl v. Univ. of Washington*, 29 Wash.App.366, 69 P 1099 (1981)

⁵⁷ *Sea Crest Const, Corp. v. Stubing*, 442 N.Y.S.2d 130 (1981)

or Federal law. In one case, the prohibition on disclosure of certain student records under the Illinois School Code did not prohibit disclosure of masked and scrambled student records where individual identifying information was deleted.⁵⁸

The State and Federal Acts exempt from disclosure investigatory records compiled for administrative law enforcement purposes where disclosure would interfere with pending or reasonable contemplated enforcement proceedings.⁵⁹ However, a request seeking work attendance and sick leave records for a public agency's assistant bureau chief in order to substantiate a "tip" that the official had been taking unaccrued sick leave and improperly using sick leave time to take paid vacations was proper and the records were not exempt under the FFOIA.⁶⁰

⁵⁸ *Bowie v. Evanston Community Consolidated School District No. 65*, 128 Ill.2d 373, 538 N.E.2d 557 (1989)

⁵⁹ See e.g., *Moorfield v. U.S. Secret Service*, 611 F.2d 1021 (5th Cir. 1980), cert. den. 449 U.S. 909 (1980); *Griffith Laboratories U.S.A. v. Metropolitan Sanitary District*, 168 Ill.App.3d 341, 522 N.E.2d 744 (1988)

⁶⁰ *Dobronski v. Federal Communications Commission*, 17 F.2d 273 (9th Cir. 1994)

3. Complying with the FOIA

Initial Preparations

In order to comply with the Freedom of Information Act, school districts must do the following:

- Develop rules and regulations, which involves a number of important local decisions;
- Maintain directories required by the Act;
- Catalog and index school district records.

District Rules and Regulations

The FOIA authorizes school districts to adopt rules and regulations that are in conformity with the Act, setting forth the times and places where records will be made available and the persons from whom such records may be obtained. It is essential that such rules and regulations be written and adopted, because there are some important decisions each district must make.

The school board's policy regarding the FOIA should be very general. In most districts, the superintendent will be primarily responsible for complying with the Act. Therefore, the board's policy and the superintendent's job description should refer to this responsibility. The superintendent then should draw up rules and regulations that specify in some detail the procedures for compliance. The school board should then adopt or endorse those rules and regulations to make them a part of the official public

record.

Here are some major items that should be included in the rules and regulations:

1) Designate who will handle requests for records. Each district probably will want to designate two or more individuals, other than the superintendent, who will receive and process requests for records. These individuals should be instructed in detail about the Act's requirements and the district's own rules governing access to records.

2) Establish times when records may be requested, such as during normal office hours.

3) Establish the place where requests may be made, presumably the central administrative office.

4) Set forth the time deadlines for handling requests. Because these rules will serve as a guide for staff members dealing with requests for records, statutory deadlines should be recited in the rules.

5) Set forth the choice of responses that can be made to a request for records. Staff members handling requests need to know what their options are:

- Immediately grant the request whenever possible. For example, a request to examine the current district budget probably can be accommodated on the spot.
- Grant the request within seven working days.

- Delay granting the request for seven additional working days. A written response is required with this option, so the required content for such a response should be made a part of the rules (*see Appendix B*).

- Deny the request. Again, a written response is required for this option, and the content of such a response should be made part of the rules (*see Appendix C*).

6) A schedule of fees for copying. The rules should make it clear that the fees are based on actual costs and state what those costs are. Costs incurred in retrieving the documents cannot be charged.

7) The appeal procedure to be followed in case of denial. If someone other than the superintendent will make the initial decision to deny access to a record, the district must provide procedures for appealing the decision to the superintendent. Also, because the Act does not establish a time limit for making appeals following a denial, it would be advisable to establish such a time limit (14 days, for example).

8) Procedures for retaining denials of requests for records. All notices of denials must be retained, indexed and made available for public inspection. The rules, therefore, should state where these notices will be kept and how they will be indexed. An index might begin with the types of school district records that are automatically exempt under the Act, such as student records, staff evaluation records, and minutes of closed meetings.

Preparing Directories

As explained earlier, each district must develop and publicize two directories – one describing the district and one describing how citizens may obtain public records. These directories should be updated regularly and should be included in the list of records maintained by the district (see below).

Copies of both directories must be prominently displayed at the board of education office and at each school office. They also must be available for copying and mailed out upon request.

Sample directories are provided in *Appendix F* and *Appendix G*.

Cataloging and Indexing of Public Records

The Act requires that public bodies list all types or categories of records under their control which are prepared or received after July 1, 1984. There is some question whether a school district must catalog exempt records. The Act calls for a catalog of “all types or categories of records” under the school district’s “control.” Districts may wish to maintain a separate catalog or listing of exempt records until such time as the Attorney General or the courts clarify the extent of cataloging required.

Note that the Act requires the list to be by “type” or “category” of records and not listing every individual record. Suggested below are different types or categories that a school district might establish to cover the records that it has under its control and which are subject to inspection under the Act. This list is by no means meant to be exhaustive and is merely for reference or descriptive purposes. Obviously, the number of types or categories will vary from school district to school district.

The type of records is meant to be a broad general category and the category is a sub-part of the type. For example, one type of record is a financial record. Under “financial records” may be the following categories: (a) budgets; (b) levy resolution; and certificate of tax levy; (c) audit; (d) bills; (e) receipts for revenue; (f) vouchers; (g) cancelled checks; (h) water bills; (i) sewer bills; (j) real estate tax receipts; (k) salary schedules; (l) utility bills; (m) etc. This gives you examples of categories that could be listed under the general type “financial record.”

Other general types could include, for example, the following: (1) administrative memoranda; (2) board minutes; (3) board resolutions; (4) correspondence received by school district; (5) correspondence from school district; (6) bidding specifications; (7) board policies; (8) administrative rules and regulations; (9) personnel code; (10) personnel files; (11) office equipment; (12) insurance; (13) capital equipment; (14) real estate; (15) legal notices; (16) newspaper articles; (17) consulting contracts; (18) contracts for capital equipment; (19) contracts for office supplies; (20) contracts for maintenance and repairs; (21) professional consultant contracts; (22) pension fund records; (23) hospitalization records; (24) worker’s compensation records; (25) training records; (26) official bonds; (27) etc.

Again, this list is not meant to be exhaustive.

While you need not catalog your records to the same degree as you list expenses in your annual budget, such may be used as a convenient starting point for determining what categories and types of records you may wish to list. Another good source for ideas in cataloging would be the suggested school record retention schedule usually available from the local record commission or the regional superintendent of education. Of course, you also should rely on your past experience by reviewing the records you currently have on hand and dividing them into what will appear to you to be meaningful categories. There is a great deal of latitude in determining what the categories or types of records will be and consequently what the list would contain, but keep in mind the statutory mandate that the list must be “reasonably current” and must be “reasonably detailed” in order to assist individuals in obtaining access to public records.

Finally, note that the catalog need not cover records prepared or received prior to July 1, 1984. Thus, if a particular type or category of record has been discontinued prior to the effective date of the Act, it should not be

included in the listing.

The catalog of records must be available for public inspection and copying.

Responding to Requests

A school district is in compliance with the FOIA when it has (a) rules and regulations for responding to requests for records, (b) the two directories required by the Act, and (c) a catalog of records received or prepared after July 1, 1984. Let's assume that Anytown School District 1 meets these requirements and then let's suppose that the following written request is hand-delivered to the district office on June 1:

June 1, 2004

Mrs. Alice Rose, Secretary
Board of Education School District 1
Anytown, Illinois

Dear Mrs. Rose:

May I please inspect and have copies of the following School District records:

1. Certified copy of the Minutes of the School Board Meeting held on April 17, 2004.
2. Reading scores of all fifth grade students in the District.
3. School Board policy on student testing.
4. The names, salaries, titles and dates of employment of all past and present employees of the District during the past five years.

Sincerely,
Robin Jones

Mrs. Rose should first explain to Mr. Jones that she will review his request and will get back to him within the next seven working days either with the requested records and/or with an appropriate response. She should also be sure that he is acquainted with the fee schedule for copies of records and should explain that he will be required to pay for any records before he receives them. If she knows how much the charge for the requested records will be at the time the request is made, she may then collect the fee. In any event, she may want to take Mr. Jones's telephone number so that she can contact him when the records are ready for him to pick up.

Next Mrs. Rose should examine each item requested and prepare a response to the request:

Item 1: So long as the board meeting on April 17 was open to the public, Item number 1 can be easily furnished to Mr. Jones within the next seven working days (assuming the minutes have been approved by the school board). If, however, part of the meeting was closed, only the minutes of the open part of the meeting may be given to Mr. Jones. Reference to the minutes of the closed meeting should be included in a letter of denial.

If the minutes requested have not been approved, Mrs.

Rose may deny the request until the minutes have been approved. She would, of course, notify Mr. Jones of the delay and the reason within seven working days of June 1.

Item 2: The reading scores of individual fifth grade students are, of course, student records specifically prohibited from disclosure by the Illinois School Student Records Act and the Federal Family Educational and Privacy Rights Act.

Item 3: The board policy should be given to Mr. Jones within seven working days of June 1.

Item 4: This information falls within the Act's definition of "public records" and must generally be furnished to Mr. Jones. If the school district employs any number of employees, however, such request could require the collection of a large number of records and, therefore, meet one of the seven reasons which would allow an additional seven working days to fill the request.

After making this determination and copying the records which are readily available (i.e., the board minutes and the policy), Mrs. Rose can telephone Mr. Jones to come and pay for them and pick them up. Or, since some of the records are to be denied and others to be delayed, thereby requiring a written response, she could send the following reply:

June 3, 2004

Dear Mr. Jones:

In accordance with your written request for school district records received on June 1, 2004, the following items are available for you to pick up at the Board of Education office:

- (1) Certified copy of the minutes of the Board of Education meeting held on April 17, 2004. I call to your attention that a portion of this meeting was closed to the public to discuss the dismissal of an employee. The minutes of this closed portion of the meeting are permitted to be kept confidential by the Illinois Open Meetings Act and the Illinois Freedom of Information Act and are not included with the minutes being furnished to you for that reason.
- (2) Board Policy Number 234 on Student Testing. These records consist of six pages. At the cost of 18 cents per page, the charge for these will be \$1.08. In addition, there is a charge of 10 cents for certification of the Board minutes. You may pay the total charge of \$1.18 when you pick up the records.

Your request for the reading scores of individual fifth grade students in the District is hereby denied. These scores are student records which are exempt from disclosure under the Illinois School Student Records Act and The Federal Family Educational and Privacy Rights Act. Section 7(a) of the Illinois Freedom of Information Act exempts from inspection and copying information which is specifically prohibited from disclosure by Federal or State law. The undersigned, as School Board Secretary, is responsible for the denial of both the minutes of the closed portion of the April 17, 2004 Board meeting and the student test scores. You may appeal this decision to Dr. Allen James, Superintendent of School District 1, Administrative Center, 21 S. Rock Road, Anytown,

Illinois 60000. Such appeal must be made in writing within fourteen (14) days of the date of this letter.*

Finally, your request for the names, salaries, titles and dates of employment of all past and present District employees for the past five years cannot be filled within seven working days of June 1, 2004. Because the District normally employs between 150 and 200 employees, this request requires the collection of a large number of records, most all of which are stored in the Board offices. These records will be made available to you no later than Wednesday, June 21, 2004. I will notify you prior to that date of the fee for these records.

Very truly yours,
Alice Rose, Secretary
Board of Education
School District #1

* The Act provides for no time limit, but it is the author's opinion that a school district can require a reasonable time limit by adoption of a policy to that effect. This response and the sample form denial letter included in APPENDIX C assume that a policy setting a 14-day time limit has been adopted.

It is strongly recommended that each school district maintain a special file to contain all requests for public records. If the request is in writing, the written request should be placed in such a file with a date stamp indicating when the request was received and an indication of when the seven-day period for fulfilling the request expires, when the request was fulfilled and by whom, including both date and time, or the date when the request was denied and by whom with a copy of the denial letter to be included in the file attached to the request. If the request for records was an oral request, the author strongly suggests that the school district employee receiving the request so note in memorandum form and place the memorandum form in the request file with all the information indicated above regarding written requests. Also, in the request file should be all information, notices and decisions relating to the appeal of a decision made by an employee under the Act.

Included in the appendices are several form responses which may be used in responding to requests for records.

4. Some Questions and Answers About the FOIA

What is a "public body" covered by the Freedom of Information Act?

The definition of a public body in the Freedom of Information Act (FOIA) is word for word the definition of a public body contained in the Open Meetings Act (OMA).

The definition contained in each act indicates that it includes all legislative, executive, administrative or advisory bodies of a school district, and "any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue." While there is substantial doubt as to what constitutes a subsidiary body, clear examples would be committees or bodies established by action of the school board. For example, Section 10-22.31 of The School Code, which authorizes joint agreements for the provision of special education services, authorizes the designation of a governing body under the joint agreement. Such governing body, in the author's opinion, is clearly a subsidiary body under both Acts. Also, all subcommittees of a board of education and all committees established by such a board are subject to the Act. A committee, however, which is not established by the board and does not report to the board, but which is established to advise a school's administrators, probably is not subject to the Act.

What about records kept by individual school officials or employees?

The Act does not require disclosure of personal material belonging to officials or employees. However, the Act

does cover records and materials that officials and employees must prepare or maintain as part of their official duties. As a practical guide, if the school board or superintendent has authority to compel another official or employee to disclose the records in question, they are probably covered by the Act and subject to disclosure.

Which public records must be made available?

The term "public records" means all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, recorded information and all other documentary information prepared, used, received, possessed or under the control of the public body.

Although the Act provides numerous exemptions from disclosure, none of those exemptions is based on the form a record might take. Exemptions are based on content.

Note that a district is not required to create new records to comply with requests for information. The Act applies to existing records or to records that might become established by law or by the school board or superintendent.

Section 2(c) of the Act lists 17 examples of records that must be made available for public inspection and copying.

Who may request records?

Any individual, corporation, partnership, firm, organization or association, acting individually or as a group.

Must requests for records be submitted in writing?

No, records also may be requested in person. However, it may not be possible to fill a request while the party waits. Moreover, the seven-day time limit and the appeal procedures are tied to written requests. Therefore, it would be advisable to reduce the request to writing, either by a form that the requesting person fills out or by a memorandum completed by a staff member (*see Appendix E*).

The school district appears to be under no legal obligation to provide records on the spot, but it makes sense to do so where the request is straightforward and easily accommodated.

Who is responsible for complying with requests for records?

The Act puts the burden of compliance on the “public body,” which is the board of education. It also places a number of responsibilities on the “head of the public body,” which is the district superintendent. The superintendent is authorized by the Act to deny access to certain records by invoking the exemptions cited in the law, and the superintendent is required to hear appeals where another employee has denied access. It is recommended that the school board or superintendent should designate employees to handle the initial request so that the superintendent will be available to handle controversial requests on appeal (and thus have time to get legal advice).

When is a request for records “unduly burdensome?”

A “burdensome” request would be one requiring more than seven working days to fill. In such cases, the district must invoke the additional seven days by notifying the requesting party by letter and by citing one of the seven reasons provided in the Act.

An “unduly burdensome” request would probably be one that is so broad or general that district employees cannot reasonably comply without disrupting the work of the district or without excessive cost. Court decisions interpreting the Federal Freedom of Information Act have tried to apply a balancing test, weighing the burden of the request against the public’s need to see the records. The Illinois law requires the district to meet with the requesting person in an attempt to reduce the request to manageable size. If that fails, the request may be denied as being “unduly burdensome.”

Repeated requests for the same records by the same person can likewise be considered unduly burdensome.

How should a district make public records “available for inspection?”

Providing the requesting party with the exact location of the requested records is probably sufficient under the Act. That means district employees would have to first find the exact location, which might be a binder or a file drawer.

However, in order to preserve the integrity of its

records, the district should pull the records, identify and itemize them, and provide the records for inspection under staff supervision.

Records stored electronically are another matter. To make them “available for inspection” probably will mean setting up whatever equipment is necessary, such as a tape player or micro-film viewer.

What if the requested record is on a computer file, film, audio or video tape, or some form other than on paper?

If the information meets the legal definition of a public record and is not exempt under Section 7 of the Act, the district must find a way to provide for inspection and, if requested in writing, to provide a copy. Keep in mind that the requesting person may be required to pay a copying fee based on the actual cost of reproduction. Reproduction of a tape or a film would probably be more substantial than reproducing a paper record.

Also keep in mind that some documents in the form of film, tapes, books and computer software are protected by copyrights or patents and are, therefore, exempted from copying under Section 7.

Finally, the Act requires the district to help individuals understand how information may be obtained from computerized records and how to comprehend computer print outs.

What is meant by “copying?”

Where a request is submitted in writing, the district is obligated to provide a duplicate copy of the record. Also, where requested, the district must certify the copy as being an accurate reproduction of the original record.

The Act also states that records must “be made available for copying,” presumably relating to individuals who request records in person.

It would probably be unwise to turn original records over to anyone other than a responsible employee or to permit inspection of an original record without the supervision of a responsible employee. On the other hand, the district probably would err in requiring a fee for copying where the individual merely wants to “inspect.”

This may be the best reason for getting all requests in writing. The employee in charge must determine the volume of records desired and whether the person wants copies or merely wants to inspect.

Presumably, the district is under no obligation to provide copies where the request is not in writing, but it would appear to make no sense not to provide copies. By getting the request in writing, the district can invoke the seven-day time period if necessary for large requests. This is certainly preferable to turning records over to private citizens to make their own copies.

Keep in mind also that a citizen might ask to see numerous records and then (a) request copies of a few pages or (b) make hand-written notes from the records.

Individual needs must be determined at the outset.

What is a “certified copy?”

In filling a written request for a certified copy of a record, the district is required to certify that the copy is a true reproduction of the original. This can be accomplished by indicating on the copy or on an attached form that “I

hereby certify this to be a true and correct copy of a record maintained by _____ School District No. _____, County of _____, State of Illinois.” This statement would be accompanied by a date and signature of the board of education secretary or the secretary’s designated representative.

Appendix A

Policy Verbatim Records of Closed Meetings

Pursuant to Public Act 93-0523, the **[insert name of governmental entity]** adopts the following policy concerning verbatim records of closed meetings:

1. A verbatim record of all closed meetings of the **[insert name of governmental entity]** shall be kept in the form of an audio/video **[pick one]** recording. The **[insert name of governmental entity]** shall provide the recording device and only one recording device will be allowed. Individuals shall not be allowed to bring their own recording devices to closed meetings.
2. The **[insert name of designated party, most likely the Clerk or Secretary, whichever is applicable]**, or his or her designee if he or she is unavailable, will be responsible for operating the recording device for all closed meetings of the Board of **[insert name of governmental entity]**. Each committee of the Board of **[insert name of governmental entity]** shall designate in writing the individual responsible for recording closed meetings and submit such designation to the **[Clerk/Secretary]** of the **[insert name of governmental entity]**.
3. The **[Clerk/Secretary, whichever is applicable]** shall maintain the audio/video **[pick one]** tapes in a safe and secure location under lock and key. Access to non-released tapes shall be limited to **[fill in names or titles of persons allowed access]** unless otherwise directed in writing by the governing body of **[insert name of governmental entity]**. Individuals allowed access shall sign a log indicating the date and time they listened to a particular tape. Individuals allowed access shall listen to a tape only under supervision. No copies of any non-released tape shall be made.
4. The verbatim record of a closed meeting may be destroyed eighteen (18) months after the completion of the meeting if the Board of **[insert name of governmental entity]** approves the destruction of the particular recording and if it approves written minutes for the particular closed meeting that contain the following, as required by Section 2.06 of the Open Meetings Act:
 - (1) the date, time and place of the meeting;
 - (2) the members of the public body recorded as either present or absent; and
 - (3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.
5. The **[insert name of designated party]** shall, on a periodic basis, but not less frequently than quarterly, inspect the recordings to check their quality and completeness, and report on any problems to the Board of **[insert name of governmental entity]**.
6. Unless the Board of **[insert name of governmental entity]** has determined that a recording no longer requires confidential treatment, or otherwise consents to disclosure, the verbatim recordings of closed meetings made pursuant to Paragraph 1 above shall not be either open for public inspection or subject to discovery in any administrative proceeding other than one brought to enforce the provisions of the Open Meetings Act. In a civil action brought to enforce the provisions of the Open Meetings Act, a recording will be made available to the court for in camera examination for the purpose of determining whether a violation of the Open Meetings Act exists. In the case of a criminal proceeding, a recording will be made available to the court for in camera examination for the purpose of determining what portion, if any, must be made available to the parties for use as evidence in the prosecution.

Appendix B

Sample Form For Extending Time for Disclosure

Dear (individual involved):

We have been unable to fill your request dated _____ requesting:

(the records requested)

for the reason or reasons checked below:

- The requested records are stored in another location.
- The request requires the collection of a large number of records.
- The request is categorical in nature and requires an extensive search.
- We have failed to locate the requested records in our initial attempt and the search is continuing.
- The requested records require examination by a competent person in order to determine which, if any, are exempt under Section 7 of the Act.
- It would unduly burden or interfere with the operations of this school district to fill the request within the initial seven working days.
- There is a need for consultation with another public body which has a substantial interest in the determination or in the subject matter of the request.

With respect to the records you have requested, such records will be available to you by _____* or we will make a decision denying your request by such date. Such date will be within seven additional working days from _____**.

School District No.: _____

By: _____

Title: _____

Date: _____

*Here insert the date of the fourteenth working day after the request for records was received.

** Here insert the date of the seventh working day after the request for records

Appendix C

Sample Form For Denial Letter

Dear (individual involved):

You are hereby notified that your request for the disclosure of:

(records requested)

is hereby denied and the reason for such denial is as follows:

(reason for denial, citing the exemptions under the Act)*

The person or persons making this decision to deny and their title or titles are set forth below:

Name	Official Title
_____	_____
_____	_____
_____	_____

You are hereby further notified that you have the right to appeal this decision to the School Superintendent who, under the Illinois Freedom of Information Act, will make a decision either to affirm the denial of disclosure or to allow disclosure within seven working days after you file a notice of appeal. Such notice of appeal should be filed within fourteen days of your receipt of this letter.** If the decision to deny your request for disclosure was made by the head of the public body, you have the right to appeal the decision of the head of the public body to the Circuit Court of this county under Section 11 of the Freedom of Information Act.

School District No.: _____

By: _____

Title: _____

Date: _____

* A school district that finds itself having to deny access to exempt records frequently may want to print a form letter that lists here all of the exemptions applicable under the Act. The employee handling the request can then simply check the appropriate exemption being invoked in each situation.

** (The Act provides for no time limit, but it appears that the school board can require a reasonable time limit by adopting a policy to that effect; this form assumes adoption of a policy setting a fourteen day time limit.)

Appendix D

Sample Letter of Disclosure with Deletion of Exempt Material

Dear (individual involved):

Pursuant to your written request of ___(date)___, enclosed you will find copies of the records you have requested. Please note that pursuant to Section 8 of the Freedom of Information Act, certain material originally contained in such records has been deleted because such material is exempt material under Section 7 of the Act.

By: _____

Title: _____

Date: _____

Where the deleted material has been specifically requested the deletion may represent a denial. Therefore, it would be advisable to attach a letter of denial (see Appendix C).

Appendix E

Sample Employee Memorandum Regarding Oral Request for Records

On the _____ day of _____, 20____, at the hour of _____ . M., the following individual(s) appeared in person at the office of the Board of Education and asked to inspect the following records:

Individual(s) making the request:

(here insert names)

Records sought to be inspected:

(here insert records requested)

The above records were presented to such individual(s) for inspection at _____ . M. on the _____ day of _____, 20____, except for:

(here insert any records not presented)

The reason(s) for not providing the above records (or portion of records) was:

(here insert reason – such as the fact that the records were exempt records, or that they could not be immediately located and a search would continue, or that no such records existed)

Of the records requested, copies of the below records were provided to or made by the individual(s) making the request:

(here insert records copied)

Date and Time of Memorandum: _____

Signature of Employee: _____

Title of Employee: _____

Witness: _____

Appendix F

Sample School District Information Directory

Community Unit School District No. 1

Community Unit School District No. 1 is a school district located in Anytown, One County, Illinois. The District is organized under the laws of the State of Illinois for the purpose of providing its residents with schools for grades K-12 for the education of all eligible persons in the District.

The District operates the following schools (all located in Anytown):

1. Main Street School, for grades K-6, located at 111 W. Main Street.
2. Central School, for grades K-6, located at 15 N. Pembroke Street.
3. Liberty Junior High School, for grades 7-8, located at 15 E. Liberty Drive.
4. Westbrook High School, for grades 9-12, located at 25 S. Rock Road.

and maintains its Administrative office at 25 S. Rock Road in Anytown.

The District is governed by a seven-member Board of Education. The Board's office is located in Westbrook High School, 25 S. Rock Road, Anytown, Room Number 106. Current members of the Board of Education are:

1. Alexander Jones, President
2. Robert Doe, Vice President
3. William Cone, Secretary
4. Martha Redd
5. Alice Fox
6. Michael Washburn
7. Frederick Higgins

Members of committees of the School Board are as follows:

Committees	Member	Title
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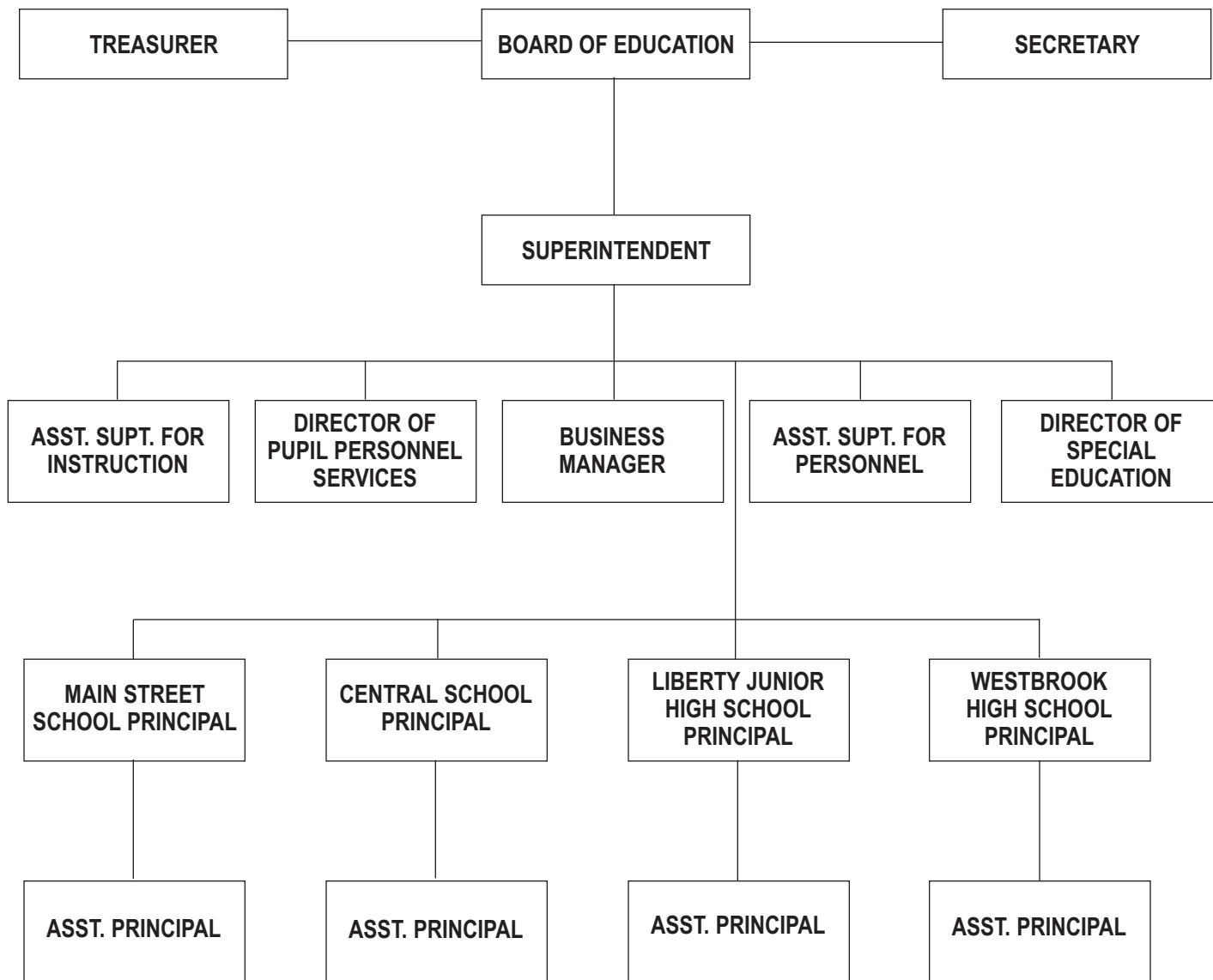
(here list the members of all committees of the Board.)

The approximate amount of the operating budget of the District is \$9,156,500.00. The District currently employs 178 full and part-time employees.

(continued)

The block of the functional subdivisions of the School District is as follows:

Sample Block Diagram of Functional Subdivisions



This directory must be “prominently” displayed at the school district’s main office and at each school. It also must be available for public inspection and copying and mailed to persons requesting it.

Appendix G

Sample School District Records Directory

Community Unit School District No. 1

Any person requesting records of Community Unit School District No. 1 may make such a request in person, orally or in writing, at the Board of Education office in Westbrook High School, 25 South Rock Road, Anytown, Room Number 106. Such request should be made to Mr. William Cone, School Board Secretary, at such address; and if he is not present, such request may be made to Mrs. Alice Rose, Administrative Secretary.

Alternatively, any person may mail a written request to either Mr. Cone or Mrs. Rose specifying in particular the records requested to be disclosed and copied. All written requests should be addressed to the Board of Education office at the above address. If you desire that any records be certified, you must indicate that in your request and specify which records must be certified.

The fees for copies of records are as follows:

*18 cents per page (actual cost) if school district employee copies records

16 cents per page (actual cost) if individual requesting records makes copies using school district's equipment

8 cents per page (actual cost) if individual requesting records makes copies using his or her own equipment

10 cents per certificate (actual cost) if the copies are to be certified

*Each school district must establish fees based on its own calculations of actual cost.

This directory must be “prominently” displayed at the school district’s main office and at each school. It also must be available for public inspection and copying and mailed to persons requesting it.