

FOIA TRAINING GUIDE 2010

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FOIA & Open Meetings Act – Major Changes in P.A. 96-542

FOIA

- **Definition of Record.** The Act modifies the definition of “public record” to include electronic communications. This had been assumed under the old Act but the new Act makes this explicit.
- **FOIA Officers; Training; Recordkeeping.** One of the major changes of the Act is that each public body must designate at least one FOIA officer (FOIO). The designated FOIO must complete electronic training. The training will be provided by the Illinois Attorney General's office. Council will likely delegate this authority to appoint to the City Manager. Three (3) FOIOs are anticipated- City-wide, for police and for METCAD.

The FOIO's responsibilities include logging each request, computing the time for response, making sure the reply is timely, and maintaining requests and denials. The new requirements for logging requests and computing time frames will require the City to establish a more centralized process.

- **Format.** The Act requires that records be provided in the format requested, including the specific electronic format requested if feasible. For example if they request email response, it might require PDFing a document and providing it that way.
- **Time Limits for Response.** The time limits for responding and for extensions were reduced from 7 working days to 5 business days. Consequences-- If a public body fails to respond to a FOIA request within the time permitted then it cannot charge copying fees or deny the request as unduly burdensome.
- **Commercial requests.** The Act has an extended time period for responding to those requests. Commercial requesters are subject to the same fee schedules as news media and citizen requests, but, like other requesters, can be required to pay costs prior to copying being started. The Act allows up to 21 working days for the City to make its initial response to commercial requests.
- **Cost.** The Act specifies the first 50 pages black & white are free, and \$0.15 per page thereafter. The city will have the same charge for color because the charge for any record cannot exceed the cost of actual production, not including personnel costs of finding or copying the record.
- **Exemptions.** The exemptions were restructured and the per se personal privacy exemptions were removed.

1. "Clearly unwarranted invasion of personal privacy". The privacy exemption remains, but the balancing test has been reformulated. “‘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 disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy”.

2. "Private" information is exempt. This is defined as unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records,

home or personal telephone numbers, personal email addresses, home addresses and personal license plates. Whether race and gender information, which is routinely collected by cities for law enforcement purposes, is biometric information is still unsettled.

3. Employee records which were previously exempt on the basis of a per se "personnel files" exemption are now evaluated under the unwarranted invasion of personal privacy standard. Since the "unwarranted invasion of privacy" test will require balancing the public interest with the personal interest, the new Act raises many questions which will require experience under the Act to apply. Discipline is specifically covered and can be exempted except for the final result, which must be disclosed.

- **Public Access Counselor.** The Act also establishes a Public Access Counselor (PAC) office in the Illinois Attorney General's office. Some common exemptions now require pre-approval by the PAC: "unwarranted invasion of personal privacy" or because the requested documents are "preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated". The other important role is that the PAC may make decisions in an appeal which will be binding on the City. A requestor whose request has been denied may either file a suit in the local circuit court or may request review by the PAC.

- **Appeals.** Previously, FOIA Act provided that an appeal could be made internally to the head of the public body and then to the courts. That initial internal review within the public body has been eliminated. Appeals are now made to the Public Access Counselor and then the Circuit Court via administrative review or directly to the Circuit Court. Therefore the initial decision will be the final City decision with no more steps for review. We will need to get it right the first time.

OPEN MEETINGS ACT

- **Electronic training.** The Act requires each public body to designate people required to take annual training in the Open Meetings Act. The training will be provided by the Illinois Attorney General's office.

- **Appeals.** Previously, an alleged violation of the Open Meetings Act would be brought to the attention of the State's Attorney's office or suit would be brought in Circuit Court against the government body. Appeals can now be made to the Public Access Counselor and then the Circuit Court via administrative review or directly to the Circuit Court

PROCEDURES FOR HANDLING REQUESTS FOR RECORDS – ALL DEPARTMENTS

A. Information that is subject to the FOIA. The FOIA requires the City to make available "public records". "Public records" means all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs,... recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body".

This includes email, information in electronic databases, information generated by or produced by others but in the possession of the City. Note the limiting phrase "pertaining to the public business."

The obligation is to provide and/or copy the "records" but not to create a record or explain what it means, although that might be a customer service obligation taken on by a department. This is a records act not an information act.

B. FOIA Requests - Form

- **Form of Request.** Any request for records shall be treated as a request under the FOIA. The City cannot require the use of any specific form, but if you are asked by a requestor about how to make an FOIA request a form is available on the City Website and is here as Attachment A.
 - Oral: Oral requests (in person or on the phone) are permissible only if (1) the record is "immediately available" (the list is available on the City website); or (2) the requestor is referred to a website; or (3) the requestor can be provided with the record/information without significant search time or review of the record. If the request cannot be filled immediately or needs review of any type, the requestor should be provided with an FOIA request form to be completed, directed to the City website where a form is available, or otherwise requested to submit in writing.
 - Written: Written requests may be received by personal delivery, mail, email or fax
- **Notice to FOIO When Receiving Requests**
 - Oral Requests: Requests which are handled by giving out brochures or pre-printed information or by referring the requestor to a Website (and the requestor was satisfied with that response) need not be further documented. Other oral requests must be documented by sending an email to the FOIO after the request has been completed.
 - Written Requests:
 1. Personal delivery or U.S. Mail: Stamp the request with the date received. Scan and send the scanned copy by email to FOIOCITY@ci.champaign.il.us.
 2. Fax: Stamp the fax with the date the request was retrieved from the fax machine. Scan and send the scanned copy by email to FOIOCITY@ci.champaign.il.us.
 3. Email: Forward by email to FOIOCITY@ci.champaign.il.us. Use FORWARD, not REPLY so any attachments to the email will be sent with the request.
- **Format of Records to be Provided.** If feasible, the requestor must be provided the record in the specific format requested. If the requestor asks for the records to be produced electronically but not in a specific format, the department should use the most convenient, although security of the records should be considered. e.g. WORD documents may be put in a PDF format.

- **Finding Records & Sending to Requestor:**

1. What to Do: The department which has received the request shall gather the records, copy, compute cost, if any, and send to the requestor within five (5) business days. If you think other departments might have responsive records, please note that in the confirmation email sent the first day to the FOIO.
2. How Long to Find & Send Records: Except for commercial requests, the response time is five (5) business days. A business day is Monday through Friday except designated City holidays. Five (5) business days are calculated by excluding the day the request is received and including the last day, so if a request is received on Monday and there are no holidays, the request is due the next Monday.
3. Record Found: When a record is found and sent to the requestor within five (5) business days an email must be sent to FOIOCITY@ci.champaign.il.us that the request has been filled. The email need only include what record was requested, when it was received and when filled. It does not need to include the information provided, or the requestor information. If more time is needed or review of the records is required, or a partial or full denial is required, contact the FOIO.
4. Record Not Found: If no records responsive to the request are found, the Department must send a reply to the requestor that no records were found, with a copy to the FOIO. If more time is needed to search and/or copy, contact the FOIO.
5. Need more time to Gather & Copy the Records: As soon as you realize more time is needed, contact the FOIO. The time can be extended five (5) more business days. If more time than that is required, contact the FOIO within the first five (5) day period.
6. Record found; Review required: If review of the records is required to determine if some or all of the information is exempt or if a partial or full denial is required, contact the FOIO.
7. Commercial Requests: If you believe the request may be a commercial request, the time limits are much longer – 21 days to respond with an estimate of how long filling the request will be. If you have a commercial request which cannot be filled by the department within five (5) days, contact the FOIO for instruction and forms.

- **Costs: Inspection is always free.**

- Paper Copies: the first 50 pages (black & white or color 8 ½ x 11) of a request are free. Each subsequent page or side of a page is \$0.15. If a fee is set by statute, it shall be collected. If none of the above applies, the actual cost of reproduction shall be charged, e.g. sent out to Kinko's for copying.
- Computer Records: \$0.75 per CD and \$1.00 per DVD if the requestor does not provide their own media.
- Email Response: Records sent by an email attachment which have been scanned into an electronic format from a paper copy shall be charged at the rate of paper copies.

ATTACHMENT "A"

CITY OF CHAMPAIGN
FREEDOM OF INFORMATION ACT REQUEST

Return to City Clerk, City of Champaign, 102 North Neil, Champaign, IL 61820 or email to:
FOIOCITY@ci.champaign.il.us

DATE:

NAME:

ADDRESS:

DAYTIME TELEPHONE NUMBER:

E-MAIL:

Please describe the information/records you are requesting in as much detail as possible. This will enable us to find the records quickly.

I wish to:

Inspect Only Inspect and Receive Copies Receive Copies Only Receive Certified Copies

Certification of Commercial/Non-Commercial Request

"Commercial purpose" means the use of any part of a public record or records, or information derived from public records, in any form for sale, resale, or solicitation or advertisement for sales or services. It is a violation of the Freedom of Information Act for a person to knowingly obtain a public record for a commercial purpose without disclosing that it is for a commercial purpose.

I hereby certify that my request is is not for a commercial purpose

Signature of Requestor

COST OF COPIES: Paper: \$0.15 per page, First 50 pages free; Computer Records: \$0.75 per CD; \$1.00 per DVD. Payment of estimated cost will be required prior to search.

Office Use Only: Due Date of Requests _____