

Complaints of Sexual Harassment Made Against Board Members by Elected Officials ¹⁰

Pursuant to the State Officials and Employees Ethics Act (5 ILCS 430/70-5), members of the Board and other elected officials are encouraged to promptly report claims of sexual harassment by a Board member. Every effort should be made to file such complaints as soon as possible, while facts are known and potential witnesses are available. If the official feels comfortable doing so, he or she should directly inform the individual that the individual's conduct or communication is offensive and must stop.

Board members and elected officials should report claims of sexual harassment against a member of the Board to the Board President or Superintendent. If the report is made to the Superintendent, the Superintendent shall promptly notify the President, or if the President is the subject of the complaint, the Vice President. Reports of sexual harassment will be confidential to the greatest extent practicable. ¹¹

When a complaint of sexual harassment is made against a member of the Board by another Board member or other elected official, the Board President shall appoint a qualified outside investigator who is not a District employee or Board member to conduct an independent review of the allegations. If the allegations concern the President, or the President is a witness or otherwise conflicted, the Vice President shall make the appointment. If the allegations concern both the President and Vice President, and/or they are witnesses or otherwise conflicted, the Board Secretary shall make the appointment. The investigator shall prepare a written report and submit it to the Board. ¹²

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¹⁰ Required. Under SOEEA, school districts must, by resolution, amend their sexual harassment policies "to provide for a mechanism for reporting and independent review of allegations of sexual harassment made against an elected official of the governmental unit by another elected official of a governmental unit." 5 ILCS 430/70-5, amended by P.A. 101-221. This policy includes both elected and appointed board members to effectuate the intent of the law, to comprehensively address sexual harassment in the workplace, and for consistent treatment. The statute does not address whether the *independent review* must or may be limited to a board member's conduct in his or her official capacity, or if it can extend to a board member's behavior in his or her individual capacity. Consult the board attorney for advice. See sample policy 5:20, *Workplace Harassment Prohibited*, and its f/ns for information about what types of conduct may rise to the level of unlawful sexual harassment under federal and State laws. This policy only addresses the requirements of the SOEEA; it does not address harassment complaints made by employees or other non-elected individuals against board members. Such complaints may be processed under sample policy 2:260, *Uniform Grievance Procedure*, or, if the allegations involve Title IX sexual harassment, sample policy 2:265, *Title IX Sexual Harassment Procedure*. See policy 2:260, *Uniform Grievance Procedure*, at f/ns 1 and 6.

Unlike employees, board members are not legally required to take sexual harassment prevention training; however, it is a best practice. The Ill. Dept. of Human Rights offers a free online training module. See sample policy 5:20, *Workplace Harassment Prohibited*, at f/n 4 for more information.

¹¹ The Open Meetings Act (OMA) does not provide a specific exemption for discussion of complaints against a member of a public body in closed session. 5 ILCS 120/2(c)(1), amended by P.A. 101-459.

¹² 5 ILCS 430/70-5(a), amended by P.A. 101-221. The law requires governmental units, including school districts, to conduct an *independent review* of allegations of sexual harassment made against an elected official by another elected official; however, that term is not defined. Consult the board attorney about how to investigate such complaints.

For boards that wish to authorize the superintendent to appoint the outside investigator in these cases, substitute "Superintendent" for "Board President" in the first sentence, delete the second and third sentences in the paragraph, and delete the Cross Reference to 2:110, *Qualifications, Term, and Duties of Board Officers*.

If a Board member has engaged in sexual harassment, the matter will be addressed in accordance with the authority of the Board. ¹³

The Superintendent will post this policy on the District website and/or make this policy available in the District's administrative office. ¹⁴

LEGAL REF.: 105 ILCS 5/22-93.
5 ILCS 430/, State Officials and Employees Ethics Act.
10 ILCS 5/9-25.1, Election Interference Prohibition Act.

CROSS REF.: 2:100 (Board Member Conflict of Interest), 2:110 (Qualifications, Term, and Duties of Board Officers), 2:260 (Uniform Grievance Procedure), 4:60 (Purchases and Contracts), 5:120 (Employee Ethics; Code of Professional Conduct; and Conflict of Interest)

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¹³ A board's ability to address the harassing behavior of a board member is relatively limited because it does not have the legal authority to remove one of its members. See sample policy 2:60, *Board Member Removal from Office*, and its footnotes for more information about board member removal. Consult the board attorney when dealing with a claim of sexual harassment by a board member to discuss enforcement options, as well as the accused board member's participation in any decisions regarding the complaint.

¹⁴ This paragraph is optional, but it aligns with the intent of P.A. 101-221. See f/n 10, above.

School Board

Organizational School Board Meeting¹

During a March meeting in odd-numbered years, the School Board establishes a date for its organizational meeting to be held sometime after the election authority canvasses the vote, but within 40 days after the consolidated election. The consolidated election is held on the first Tuesday in April of odd-numbered years. At the organizational meeting, the following shall occur:

1. Each successful candidate, before taking his or her seat on the Board, shall take the oath of office as provided in Board policy 2:80, *Board Member Oath and Conduct*.²
2. The new Board members shall be seated.
3. The Board shall elect its officers, who assume office immediately upon their election.³
4. The Board shall fix a time and date for its regular meetings.^{4 5}

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¹ State law controls this policy's content. Local canvassing boards were abolished in 2006, and the statute requiring school boards to canvass the vote was repealed. The appropriate *election authority* (county clerk or election commission) canvasses the vote for school district elections. 10 ILCS 5/1-8. The election authority must canvass the vote within 21 days after the election. 10 ILCS 5/22-17 and 5/22-18. Sometime between receiving the results from the election authority, but within 40 days after the consolidated election, boards must hold an organizational meeting to elect officers and fix a time and place for the regular meetings. 105 ILCS 5/10-16, amended by P.A. 102-798. State law contains the schedule for consolidated elections. 10 ILCS 5/2A-1.1. See sample policy 2:30, *School District Elections*.

The following option may be added after the second sentence of the first paragraph. It allows a board to recognize that the consolidated election will be postponed for Passover (10 ILCS 5/2A-1.1a); the exact provision is already in 2:30, *School District Elections*:

If, however, that date conflicts with the celebration of Passover, the consolidated election is postponed to the first Tuesday following the last day of Passover.

² The oath required by 105 ILCS 5/10-16.5 is "administered as determined by the board." There are lots of variations on how to accomplish this task. One alternative follows:

The meeting is called to order by the Board President, provided he or she is still in office and, if not, by the Vice President. This individual also serves as the meeting's presiding officer. The presiding officer administers the oath of office.

³ *Id.* A secret vote for officer elections is not permitted. 5 ILCS 120/1.

⁴ The Open Meetings Act and the School Code have different provisions regarding the establishment of a regular meeting schedule. The Open Meetings Act requires each public body to prepare and make available a regular meeting schedule at the beginning of each calendar or fiscal year. 5 ILCS 120/2.03. The School Code states that this task is accomplished during the organizational meeting. 105 ILCS 10-16, amended by P.A. 102-798. By *announcing* the schedule at the beginning of each calendar or fiscal year and by *fixing* the schedule at the organizational meeting, a board can implement both laws.

⁵ For districts that elect board officers for one-year terms, an optional provision follows:

During an April Board meeting in even-numbered years, the Board considers organizational matters, such as, selecting individual members to fill offices with terms that expire this or the next month and fixing a time and date for its regular meetings.

LEGAL REF.: 105 ILCS 5/10-5, 5/10-16, and 5/10-16.5.
10 ILCS 5/2A-1 et seq., Election Code.

CROSS REF.: 2:30 (School District Elections), 2:110 (Qualifications, Term, and Duties of Board Officers), 2:200 (Types of School Board Meetings), 2:220 (School Board Meeting Procedure), 2:230 (Public Participation at School Board Meetings and Petitions to the Board)

School Board

Access to District Public Records¹

Full access to the District's *public records* is available to any person as provided in the Illinois Freedom of Information Act (FOIA), this policy, and implementing procedures. The Superintendent or designee shall: (1) provide the Board with sufficient information and data to permit the Board to monitor the District's compliance with FOIA and this policy, and (2) report any FOIA requests during the Board's regular meetings along with the status of the District's response.²

Freedom of Information Officer³

The Superintendent shall serve as the District's Freedom of Information Officer and assumes all the duties and powers of that office as provided in FOIA and this policy. The Superintendent may delegate these duties and powers to one or more designees, but the delegation shall not relieve the Superintendent of the responsibility for the action that was delegated.

Definition⁴

The District's *public records* are defined as records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary material pertaining to the transaction of public business, regardless of physical form or characteristics, having

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¹ The Ill. Freedom of Information Act (FOIA) governs the subject matter in this policy. 5 ILCS 140/. School districts are required to make public records available to any person for inspection or copying, unless they fall within an exception. 5 ILCS 140/3(a). The f/ns only discuss sections of FOIA that are relevant to school districts. State law does not explicitly require boards to adopt a policy on access to their records. However, a board policy is the logical instrument to memorialize the actions that are required to implement FOIA. The laws limiting the disclosure of employee evaluations are discussed in f/n 7.

See also *Let the Sunshine In: School Board Meetings and Records* published by IASB at: www.iasb.com/IASB/media/Documents/JPBSunshine.pdf.

Any person denied access to a public record may request a review by the Ill. Public Access Counselor (PAC) established in the office of the Ill. Atty. Gen. 5 ILCS 140/9.5. As a result of the review, the PAC may issue an opinion binding on the requester and public body. IASB reports on the opinions relevant to school districts at:

www.iasb.com/law/decisions.cfm?SubjectArea=Freedom%20of%20Information%20Act%20-%20FOIA.

² This sentence allows a board to monitor the district's compliance with FOIA. This is an important duty as illustrated by FOIA's provision stating: "It is a fundamental obligation of government to operate openly and provide public records as expeditiously and efficiently as possible." The School Code requires the FOIA report described in #2 (105 ILCS 5/10-16); it is optional, however, for districts governed by a board of school directors.

³ Each board must designate one or more official(s) or employee(s) to act as its freedom of information officer(s). 5 ILCS 140/3.5 (**referred to in the f/ns as FOIA Officer**). A board may replace *Superintendent* in this paragraph with another job title, or may replace the paragraph with one of the alternatives below:

Alternative 1: The Board will appoint an employee to serve as the District's Freedom of Information Officer. That appointee assumes all the duties and powers of that office as provided in FOIA and this policy.

Alternative 2: The Superintendent shall appoint an employee, who may be himself or herself, to [continue as with alternative 1].

⁴ The definition is quoted from 5 ILCS 140/2(c). Substitute the following alternative for this paragraph if desired:

The definition of *public records*, for purposes of this policy, is the definition contained in 5 ILCS 140/2(c) without amendment.

been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of the School District.

Requesting Records⁵

A request for inspection and/or copies of public records must be made in writing and may be submitted by personal delivery, mail, telefax, or email directed to the District's Freedom of Information Officer. Individuals making a request are not required to state a reason for the request other than to identify when the request is for a commercial purpose or when requesting a fee waiver. The Superintendent or designee shall instruct District employees to immediately forward any request for inspection and copying of a public record to the District's Freedom of Information Officer or designee.

Responding to Requests

The Freedom of Information Officer shall approve all requests for public records unless:

1. The requested material does not exist;⁶
2. The requested material is exempt from inspection and copying by the Freedom of Information Act;⁷ or
3. Complying with the request would be unduly burdensome.⁸

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⁵ This section restates 5 ILCS 140/3(c). Districts may, but are not required to, accept oral requests. Compliance with an oral request may stave off the formal written request and permit more flexibility in the response. If the district wants to accept oral requests, delete ~~must be made in writing~~ and from the first sentence and add the following:

Oral requests may be accepted provided personnel are available to handle them, but otherwise must be made in writing.

The response to an oral request should be documented. Districts may provide a request form for convenience but may not require its use. See 2:250-E1, *Written Request for District Public Records*.

⁶ FOIA does not require a public body to create a record. 5 ILCS 140/1; *Chicago Tribune Co. v. Dept. of Financial and Professional Regulation*, 8 N.E.3d 11 (4th Dist. 2014). However, compiling information already in the public body's possession into a different format in order to respond to a FOIA request does not constitute the creation of a new record. PAO 15-10. See also *Hites v. Waubesa Community College*, 56 N.E.3d 1049 (2nd Dist. 2016) (holding that databases that house aggregations of data and do not merely store documents are subject to FOIA).

⁷ 5 ILCS 140/7, amended by P.A.s 101-434, 102-791, 102-752, eff. 1-1-23, and 102-753, eff. 1-1-23, and 140/7.5 describe numerous explicit exceptions to the presumption that all public records are available for public inspection. Each record is "presumed to be open to inspection or copying" and the district will have "the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 and 140/11(f). A person who prevails in a court proceeding to enforce FOIA will be awarded attorney's fees; the public body may incur a civil penalty of between \$2,500 and \$5,000 for each occurrence of a willful or intentional violation of FOIA or other action in bad faith; and courts may impose additional penalties of up to \$1,000 for each day the violation continues if (1) the board fails to comply with the court's order after 30 days, (2) the court's order is not on appeal or stayed, and (3) the court does not grant the public body additional time to comply with the court's order to disclose public records. 5 ILCS 140/11(i) and (j). School officials should seek the board attorney's advice concerning the denial of a record request.

Two State laws limit the disclosure of employee personnel evaluations:

1. The Personnel Record Review Act prohibits the disclosure of performance evaluations. 820 ILCS 40/11.
2. The School Code prohibits the disclosure of public school teacher, principal, and superintendent performance evaluations except as otherwise provided in the certified employee evaluation laws. 105 ILCS 5/24A-7.1.

5 ILCS 140/7(kk), added by P.A. 101-434, exempts from disclosure "the public body's credit card numbers, debit card numbers, bank account numbers, Federal Employer Identification Number, security code numbers, passwords, and similar account information" that could result in identity theft or fraud of a government entity or a person.

⁸ 5 ILCS 140/3(g).

Within five business days after receipt of a request for access to a public record, the Freedom of Information Officer shall comply with or deny the request, unless the time for response is extended as specified in Section 3 of FOIA.⁹ The Freedom of Information Officer may extend the time for a response for up to five business days from the original due date.¹⁰ If an extension is needed, the Freedom of Information Officer shall: (1) notify the person making the request of the reason for the extension, and (2) either inform the person of the date on which a response will be made, or agree with the person in writing on a compliance period.¹¹

The time periods are extended for responding to requests for records made for a *commercial purpose*, requests by a *recurrent requester*, or *voluminous requests*, as those terms are defined in Section 2 of FOIA. The time periods for responding to those requests are governed by Sections 3.1, 3.2, and 3.6 of FOIA.¹²

When responding to a request for a record containing both exempt and non-exempt material, the Freedom of Information Officer shall redact exempt material from the record before complying with the request.¹³

Fees¹⁴

Persons making a request for copies of public records must pay any and all applicable fees. The Freedom of Information Officer shall establish a fee schedule that complies with FOIA and this policy and is subject to the Board's review. The fee schedule shall include copying fees and all other fees to the maximum extent they are permitted by FOIA, including without limitation, search and review fees for responding to a request for a *commercial purpose* and fees, costs, and personnel hours in connection with responding to a *voluminous request*.

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⁹ 5 ILCS 140/3(d). Reasons for extensions are addressed at 5 ILCS 140/3(e). Public bodies must respond to FOIA requests. PAOs 16-05, 16-04, 16-03, and 16-01. Public bodies must also conduct a reasonable search for public records responsive to a FOIA request, which includes searching public employees' communications on personal devices or accounts for records pertaining to the transaction of public business. PAO 16-06.

¹⁰ 5 ILCS 140/3(e).

¹¹ 5 ILCS 140/3(f). A board may replace the default paragraph with the following alternative:

The Freedom of Information Officer shall respond to record requests according to the time periods described in 5 ILCS 140/3.

¹² The timelines are extended to respond to a: (1) *recurrent requester* (defined in 5 ILCS 140/2(g)); (2) request with a *commercial purpose* (defined in 5 ILCS 140/2(c-10)); and (3) *voluminous request* (defined in 5 ILCS 140/2(h)). To use the extended timelines, a district must follow the requirements in 5 ILCS 140/3.2 for responding to a *recurrent requester*; 5 ILCS 140/3.1 for responding to a request with a *commercial purpose*; and 5 ILCS 140/3.6 for responding to a *voluminous request*. See administrative procedure 2:250-AP1, *Access to and Copying of District Public Records*, for additional information.

¹³ 5 ILCS 140/7, amended by P.A.s 101-434, 102-791, 102-752, eff. 1-1-23, and 102-753, eff. 1-1-23. Redacting exempt portions is permitted, but not required, except that contractors' employees' addresses, telephone numbers, and social security numbers must be redacted before disclosure. 5 ILCS 140/2.10. Reviewing past responses to FOIA requests will promote uniform treatment of requests for similar records.

¹⁴ 5 ILCS 140/6. The first paragraph's intent is to be efficient and avoid paraphrasing a complex law. See 2:250-AP1, *Access to and Copying of District Public Records*, for a fee schedule identifying the maximum fees permitted.

5 ILCS 140/6(a) states: "If a request is *not* a request for a *commercial purpose* or a *voluminous request*, a public body *may not* charge the requester for the costs of any search for and review of the records or other personnel costs associated with reproducing the records." (Emphasis added.) This implies that a search and review fee may be charged when responding to a request for a *commercial purpose* or a *voluminous request*. However, 5 ILCS 140/6(b) states that the search and review fee described in 5 ILCS 140/6(f) may be charged *only* to someone making a *commercial request*. 5 ILCS 140/6(f) contains the maximum amounts that may be charged for search and review but does not explain when they may be charged. The FOIA Officer will need to consult the board attorney concerning fees.

Copying fees, except when fixed by statute, shall be reasonably calculated to reimburse the District's actual cost for reproducing and certifying public records and for the use, by any person, of its equipment to copy records. In no case shall the copying fees exceed the maximum fees permitted by FOIA. If the District's actual copying costs are equal to or greater than the maximum fees permitted by FOIA, the Freedom of Information Officer is authorized to use FOIA's maximum fees as the District's fees. No copying fees shall be charged for: (1) the first 50 pages of black and white, letter or legal sized copies, or (2) electronic copies other than the actual cost of the recording medium, except if the response is to a *voluminous request*, as defined in FOIA.

A fee reduction is available if the request qualifies under Section 6 of FOIA. The Freedom of Information Officer shall set the amount of the reduction taking into consideration the amount of material requested and the cost of copying it. ¹⁵

Provision of Copies and Access to Records

A public record that is the subject of an approved access request will be available for inspection or copying at the District's administrative office during regular business hours, unless other arrangements are made by the Freedom of Information Officer. ¹⁶

Many public records are immediately available from the District's website including, but not limited to, the process for requesting a public record.¹⁷ The Freedom of Information Officer shall direct a requester to the District's website if a requested record is available there. If the requester is unable to reasonably access the record online, he or she may resubmit the request for the record, stating his or her inability to reasonably access the record online, and the District shall make the requested record available for inspection and copying as otherwise provided in this policy. ¹⁸

Preserving Public Records

Public records, including email messages, shall be preserved and cataloged if: (1) they are evidence of the District's organization, function, policies, procedures, or activities, (2) they contain informational data appropriate for preservation, (3) their retention is required by State or federal law, or (4) they are subject to a retention request by the Board Attorney (e.g., a litigation hold), District auditor, or other

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¹⁵ 5 ILCS 140/6(c) makes it mandatory to furnish records "without charge or at a reduced charge" if the request is in the *public interest* as defined by FOIA. If a board wants to indicate when a reduction is available by paraphrasing the statute, it may substitute the following alternative for the default paragraph:

A fee reduction is available if the person requesting the record states a specific purpose for the request and indicates that a fee reduction is in the public interest by having as its principal purpose the preservation of the general public's health, safety, welfare, or legal rights and is not for the principal purpose of personal or commercial benefit. The Freedom of Information Officer shall set the amount of the reduction, taking into consideration the amount of material requested and the cost of copying it.

¹⁶ Public bodies may adopt rules for the times and places where records will be made available. 5 ILCS 140/3(h). A board may amend this sentence to reflect other times and/or places where records will be made available.

¹⁷ 5 ILCS 140/4. A district may reduce FOIA requests by posting records on its website. Many records are required to be web-posted, see 2:250-E2, *Immediately Available District Public Records and Web-Posted Reports and Records*. If the district does not have a website, replace this paragraph as follows:

Some public records are available for immediate access including a description of the process for requesting a public record, and a list of all types or categories of records under its control.

For a list of required web-postings see 2:250-E2, *Immediately Available District Public Records and Web-Posted Reports and Records*. Using the district's website is also a convenient way to comply with FOIA's requirement to identify documents that are *immediately* available. 5 ILCS 140/3.5(a). Although not required to be web-posted, a list of all types or categories of records under its control must be prepared and made available. 5 ILCS 140/5; see 2:250-AP1, *Access to and Copying of District Public Records*.

¹⁸ 5 ILCS 140/8.5.

individual authorized by the School Board or State or federal law to make such a request.¹⁹ Unless its retention is required as described in items numbered 3 or 4 above, a public record, as defined by the Illinois Local Records Act, may be destroyed when authorized by the Local Records Commission.²⁰

LEGAL REF.: 5 ILCS 140/, Illinois Freedom of Information Act.
105 ILCS 5/10-16 and 5/24A-7.1.
820 ILCS 40/11.
820 ILCS 130/5.

CROSS REF.: 2:140 (Communications To and From the Board), 5:150 (Personnel Records),
7:340 (Student Records)

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¹⁹ The Local Records Act (50 ILCS 205/3) requires the preservation of records described in items #1-3. The preservation of records described in item #3 is also required by the Family Educational Rights and Privacy Act (20 U.S.C. §1232g) and the Ill. School Student Records Act (105 ILCS 10/), among other laws. An example of a record described in item #4 is a record subject to a *litigation hold* or a document preservation requirement pursuant to Federal Rules of Civil Procedure, Rules 16 and 26.

Categorizing email messages is complicated because two laws apply and the rules differ when a board member is a party. See sample policy 2:140, *Communications To and From the Board*, for a discussion of email between or among board members. When employees or agents are using email for school purposes, the email messages may be *public records*, but will not necessarily be subject to disclosure depending on the topic discussed. FOIA's list of exemptions from disclosure determines whether these emails are subject to disclosure. For exemptions see 5 ILCS 140/7, amended by P.A.s 101-434102-791, 102-752, eff. 1-1-23, and 102-753, eff. 1-1-23, and 140/7.5.

Not all email messages between or among employees must be preserved, even if they are *public records* for purposes of FOIA. The definition of *public record* in the Local Records Act (50 ILCS 205/3) is narrower than its definition in FOIA. Thus, staff email, like all district records, must be retained only when it contains material described in #1-4. While this is a slippery slope without definitive parameters, employee email that is conversational or personal, or contains brainstorming may generally be deleted.

The Prevailing Wage Act (820 ILCS 130/5) requires contractors, while participating in public works, to keep certified payroll records of all laborers, mechanics, and other workers employed by them on the project and to submit this record no later than the 15th of the month to the public body, until the Ill. Dept. of Labor (IDOL) activates an electronic database for certified payrolls no later than 4-1-20, at which time contractors will submit certified payrolls only to that database. *Id.* The public body in charge of the project must keep the records submitted before 1-1-14 for a period of not less than three years. Records submitted on or after 1-1-14 must be kept for a period of five years or until the IDOL activates the electronic database for certified payrolls, whichever is less. *Id.* Records may be retained in paper or electronic format. These records are considered public records, except for contractors' employees' addresses, telephone numbers, social security numbers, race, ethnicity, and gender, and they must be made available in accordance with FOIA. *Id.* **Note:** 820 ILCS 130/5 requires contractors to maintain records of the race, ethnicity, gender, and veteran status of workers on a public works project. FOIA, however, was not similarly amended to require public bodies to redact the workers' race, ethnicity, and gender from certified payroll records before disclosure. See 5 ILCS 140/2.10. The Ill. Atty. Gen. has previously issued at least one non-binding opinion finding that disclosure of a person's gender is not an unwarranted invasion of personal privacy under 5 ILCS 140/7(1)(c). Districts should consult with their board attorneys regarding what categories of information may be properly redacted in response to a FOIA request for certified payroll records.

²⁰ 50 ILCS 205/. Preservation and destruction of documents is covered in 2:250-AP2, *Protocols for Record Preservation and Development of Retention Schedules*. See also the Ill. Secretary of State's website for information on preserving and destroying records at: www.cyberdriveillinois.com/departments/archives/records_management/.

School Board

Administrative Procedure - Access to and Copying of District Public Records

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A. Legal Citations and Definitions

The legal requirements contained in this procedure are followed by a citation to the controlling statute. Citations in parenthesis indicate the location of a named law. For additional clarification regarding a requirement, the cited law should be reviewed.

Definitions are found in the Ill. Freedom of Information Act (FOIA) (5 ILCS 140/2). For easy reference, some definitions are re-printed in this procedure. The IASB reports on Ill. Public Access Counselor (PAC) opinions concerning FOIA on its [Recent Court and Agency Decisions website, located at: www.iasb.com/law/courtdecisions.cfm](http://www.iasb.com/law/courtdecisions.cfm).

B. FOIA Compliance

The District's Freedom of Information Officer (FOIA Officer) implements the Board policy (2:250, *Access to District Public Records*) and has the duties, without limitation, listed below:

1. Manages the District's compliance with FOIA including without limitation, performing the following duties specified in FOIA, 5 ILCS 140/3.5:
 - a. Receives FOIA requests, ensures that the District responds to requests in a timely fashion, and issues responses to FOIA requests.
 - b. Develops a list of documents or categories of records that will be immediately disclosed upon request. See 2:250-E2, *Immediately Available District Public Records and Web-Posted Reports and Records*.
 - c. Upon receiving a request for a public record, (a) notes the date the District received the written request; (b) computes the day on which the period for response will expire and makes a notation of that date on the written request; (c) maintains an electronic or paper copy of a written request, including all documents submitted with the request until the request has been complied with or denied; and (d) creates a file for the retention of the original request, a copy of the response, a record of written communications with the requester, and a copy of other communications.

2. Identifies other staff members to assist with FOIA compliance and delegates specific responsibilities to them. These individuals may include the information technology specialist and department heads.
3. Informs and/or trains staff members concerning their respective responsibilities regarding FOIA. This includes explaining the requirement that all FOIA requests must be immediately forwarded to the FOIA Officer, including those that are received via email.
4. Successfully completes the annual training program developed by the Ill. Public Access Counselor (PAC) in the Ill. Attorney General's office. Each newly appointed FOIA Officer must successfully complete the training program within 30 days after assuming the position.

C. Availability and Posting Requirements

Full access to the District's *public records* is available to any person as provided in FOIA. The FOIA Officer approves all requests for *public records* unless: (1) the requested material does not exist, (2) the requested material is exempt from inspection and copying by FOIA, or (3) complying with the request will be unduly burdensome after extending an opportunity to the requester to reduce the request to manageable proportions.

The FOIA Officer shall:

1. Prominently display at each administrative office and school, and post on the District website, if any, the following:
 - a. A brief description of the District, and
 - b. The methods for requesting information and District public records, directory information listing the FOIA Officer and where requests for public records should be directed, and any fees. 5 ILCS 140/4. This information must be copied and mailed if requested.
2. Maintain and make available for inspection and copying a reasonably current list of all types or categories of records under the District's control. 5 ILCS 140/5. The list below contains the categories of records kept by the District; some of the records within these categories are exempt and, therefore, will not be disclosed in response to a FOIA request.
 - a. Board governance, including without limitation, Board meeting calendar and notices, Board meeting agendas and minutes, Board policy
 - b. Fiscal and business management, including without limitation, levy resolution and certificate of tax levy, audit, line-item budget, grant documents, account statements, accounts payable list, contracts, legal notices, bidding specifications, requests for proposals
 - c. Personnel, including without limitation, employee contact information, salary schedules, staff handbook, collective bargaining agreements, personnel file material
 - d. Students and instruction, including without limitation, accountability documents, calendars, student handbooks, learning outcomes, student school records

D. Fee Schedule

The FOIA Officer establishes a fee schedule (from time-to-time as appropriate) that complies with 5 ILCS 140/6, including each of the following:

1. The fees, except when otherwise fixed by statute, must: (a) be reasonably calculated to reimburse the District's actual cost for reproducing and certifying public records and for the

use, by any person, of its equipment to copy records, and (b) not exceed that maximum fee amount set by FOIA.

2. Statutory fees applicable to copies of public records when furnished in a paper format are not applicable to those records when furnished in an electronic format.
3. No fee is charged for the first 50 pages of black and white, letter or legal sized copies furnished to a requester.
4. The fee for black and white, letter or legal sized copies shall not exceed 15 cents per page.
5. If the District provides copies in color or in a size other than letter or legal, the fee may not be more than its actual cost for reproducing the records.
6. A fee reduction is available if the person requesting the record states a specific purpose for the request and indicates that a fee reduction is in the public interest by having as its principal purpose the general public's health, safety, welfare, or legal rights and is not for the principal purpose of personal or commercial benefit. In setting the reduction's amount, the FOIA Officer considers the amount of materials requested and the cost of copying them.
7. In accordance with 5 ILCS 140/6(a-5), if a voluminous request is for electronic records and the responsive records are:
 - a. Not in a portable document format (PDF), the District charges up to \$20 for not more than two megabytes of data, up to \$40 for more than two but not more than four megabytes of data, and up to \$100 for more than four megabytes of data.
 - b. In a PDF, the District charges up to \$20 for not more than 80 megabytes of data, up to \$40 for more than 80 megabytes but not more than 160 megabytes of data, and up to \$100 for more than 160 megabytes of data.
 - c. In both a PDF and not in a PDF, the District separates the fees and charges the requester under both fee scales.
8. Unless the request is for a commercial purpose or a voluminous request, the costs of any search for and review of the records or other personnel costs associated with reproducing the records are not included in the fee calculation. 5 ILCS 140/6(a).

*Section 6(a) states: "If a request is *not* a request for a *commercial purpose* or a *voluminous request*, a public body *may not* charge the requester for the costs of any search for and review of the records or other personnel costs associated with reproducing the records." (Emphasis added) This implies that a search and review fee may be charged when responding to a request for a *commercial purpose* or a *voluminous request*. However, Sec. 6(b) states that the search and review fee described in Sec. 6(f) may be charged *only to* someone making a *commercial request*. Sec. 6(f) contains the maximum amounts that may be charged for search and review but does not explain when they may be charged. The FOIA Officer will need to consult the Board Attorney.

When responding to a request for commercial purposes, as defined in 5 ILCS 140/2(c-10), the District charges:

- a. Up to \$10.00 for each hour spent by personnel in searching for or retrieving a requested record or examining the record for necessary reductions. No fee is charged for the first eight hours spent by personnel in searching for or retrieving a requested record. 5 ILCS 140/6(f).

- b. The actual cost of retrieving and transporting public records from an off-site storage facility when the public records are maintained by a third-party storage company under contract with the District. 5 ILCS 140/6(f).

Someone making a voluminous request may be charged the fees as described above upon the FOIA Officer's consult with the Board Attorney.

The FOIA Officer provides the requester with an accounting of all fees, costs, and personnel hours in connection with the request for public records under 7 and 8 above. 5 ILCS 140/6(a-5) and (f).

E. Response to FOIA Requests

The FOIA Officer must:

1. Comply with or deny a request for inspection or copying within five business days of receiving a records request, unless the time for response is extended. 5 ILCS 140/3. He or she may use forms prepared by the PAC available at: www.foiapac.ilag.gov/. Click on the menu *PAC Resources*, then on the submenu *Forms and Sample Letters*.
2. Redact any and all exempt portion(s) of requested records containing both exempt and non-exempt material and release the remaining material. 5 ILCS 140/7.
3. Comply with the Personnel Record Review Act (PRRA), 820 ILCS 40/, amended by P.A. 101-531.
 - a. The response to a request for a disciplinary report, letter of reprimand, or other disciplinary action depends on the age and nature of the responsive record.
 - 1) If the responsive record is more than four years old and is not related to an incident or an attempted incident of sexual abuse, severe physical abuse, or *sexual misconduct* as defined in 105 ILCS 5/22-85.5(c), the request must be denied unless the release is ordered in a legal action or arbitration. 5 ILCS 140/7.5(q), amended by P.A. 101-620; 820 ILCS 40/8, amended by P.A.s 101-531 and 102-702.
 - 2) If the responsive record is more than four years old and is related to an incident or an attempted incident of sexual abuse, severe physical abuse, or *sexual misconduct* as defined in 105 ILCS 5/22-85.5(c), the request cannot be denied. 820 ILCS 40/8, amended by P.A.s 101-531 and 102-702.
 - 3) If the responsive record is four years old or less, it must be disclosed (regardless of its nature) and the employee must be notified in writing (first class mail) or by email, if available, on or before the day any such record is released, unless notice is not required under the PRRA. 5 ILCS 140/7.5(q), amended by P.A. 101-620; 820 ILCS 40/7, amended by P.A. 102-562. A notice to the employee is not required if:
 - The employee specifically waived written notice as part of a written, signed employment application with another employer;
 - The disclosure is ordered to a party in a legal action or arbitration; or
 - Information is requested by a government agency as a result of a claim or complaint by an employee, or as a result of a criminal investigation by such agency.
 - b. A request for a performance evaluation(s) must be denied. 820 ILCS 40/11.

F. Extensions of Time to Respond

The District FOIA Officer may extend the time for a response for any of the reasons stated in 5 ILCS 140/3(e)(i-vii), **quoted below**:

- (i) The requested records are stored in whole or in part at other locations than the office having charge of the requested records;
- (ii) The request requires the collection of a substantial number of specified records;
- (iii) The request is couched in categorical terms and requires an extensive search for the records responsive to it;
- (iv) The requested records have not been located in the course of routine search and additional efforts are being made to locate them;
- (v) The requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure under 5 ILCS 140/7 or should be revealed only with appropriate deletions;
- (vi) The request for records cannot be complied with by the public body within the time limits prescribed by 5 ILCS 140/3(d) without unduly burdening or interfering with the operations of the public body; or
- (vii) There is a need for consultation, which shall be conducted with all practicable speed, with another public body or among two or more components of a public body having a substantial interest in the determination or in the subject matter of the request.

If an extension of time for a response is needed, the FOIA Officer must perform one of the following actions within five business days after receipt of the request:

1. Notify the requester that the District is extending its time for response for no longer than 5 business days from the original due date, and identify the reason for the delay and the date on which a response will be made. 5 ILCS 140/3(e) and (f); or
2. Confer with the requester in an attempt to reach an agreement on an extended compliance date. The agreement must be in writing. 5 ILCS 140/3(e).

G. Unduly Burdensome Requests

Before invoking the *unduly burdensome* exemption, the FOIA Officer must confer with the requester in an attempt to reduce the request to manageable proportions. 5 ILCS 140/3(e) and (g). A request may be unduly burdensome due, for example, to the request's breadth. The FOIA Officer must explain to the requester in writing when a request continues to be unduly burdensome, specifying the reason why the request is unduly burdensome.

H. Requests for Commercial Purposes

A request is for *commercial purposes*, according to 5 ILCS 140/2(c-10), if:

[T]he 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. For purposes of this definition, requests made by news media and non-profit, scientific, or academic organizations shall not be considered to be made for a *commercial purpose* when the principal purpose of the request is (i) to access and disseminate information concerning news and current or passing events, (ii) for articles of opinion or features of interest to the public, or (iii) for the purpose of academic, scientific, or public research or education.

The FOIA Officer responds to a request that appears to be for commercial purposes pursuant to 5 ILCS 140/3.1 by:

1. Asking the requester to identify if the record is for a commercial purpose. See 2:250-E1, *Written Request for District Public Records*. It is unlawful for a person to knowingly obtain a public record for a commercial purpose without disclosing that it is for a commercial purpose, if requested to do so by the District. 5 ILCS 140/3.1(c).
2. Responding to a request for records to be used for a commercial purpose within 21 working days after receipt. The response must be one of the following: (a) provide an estimate of the time required by the District to provide the records and an estimate of the fees, which the requester may be required to pay in full before copying the requested documents; (b) deny the request pursuant to one or more of the exemptions; (c) notify the requester that the request is unduly burdensome and extend an opportunity to attempt to reduce the request to manageable proportions; or (d) provide the records requested.
3. Complying with a request, unless the records are exempt from disclosure, within a reasonable period considering the size and complexity of the request, and giving priority to records requested for non-commercial purposes.
4. Collecting a fee as described in subsection D. above.

I. Managing Requests from a Recurrent Requester

A request is from a *recurrent requester*, according to 5 ILCS 140/2(g), if:

[A] person that, in the 12 months immediately preceding the request, has submitted to the same public body (i) a minimum of 50 requests for records, (ii) a minimum of 15 requests for records within a 30-day period, or (iii) a minimum of seven requests for records within a seven-day period. For purposes of this definition, requests made by news media and non-profit, scientific, or academic organizations shall not be considered in calculating the number of requests made in the time period in this definition when the principal purpose of the requests is (i) to access and disseminate information concerning new and current or passing events, (ii) for articles of opinion or features of interest to the public, or (iii) for the purpose of academic, scientific, or public research or education.

For purposes of this definition, one *request* may identify multiple records to be inspected or copied.

The District complies with a request from a recurrent requester within a reasonable period considering the size and complexity of the record, unless the records are exempt from disclosure. 5 ILCS 140/3.2(c).

The FOIA Officer responds to a request from a recurrent requester by:

1. Notifying the requester within five business days after receiving a request from a recurrent requester (5 ILCS 140/3.2(b)) that:
 - a. The request is being treated as coming from a recurrent requester under 5 ILCS 140/2(g);
 - b. The reasons the request is being treated as coming from a recurrent requester;
 - c. The District will send an initial response within 21 business days after receipt of the request; and
 - d. The proposed FOIA responses that may be asserted pursuant to 5 ILCS 140/3.2(a). These are the same responses that the District can provide within 21 business days after receipt of a request.

2. Responding within 21 business days after receipt of a recurrent request with one of the following (5 ILCS 140/3.2(a)):
 - a. An estimate of the time required by the District to provide the records and an estimate of the fees, which the requester is required to pay in full before the District copies the requested documents;
 - b. A denial pursuant to one or more of the exemptions;
 - c. Notification that the request is unduly burdensome and extend an opportunity to attempt to reduce the request to manageable proportions; or
 - d. The records as requested.

J. Managing Voluminous Requests

A *voluminous request*, according to 5 ILCS 140/2(h), means:

[A] request that:

- i. Includes more than five individual requests for more than five different categories of records or a combination of individual requests that total requests for more than five different categories of records in a period of 20 business days; or
- ii. Requires the compilation of more than 500 letter or legal-sized pages of public records unless a single requested record exceeds 500 pages. *Single requested record* may include, but is not limited to, one report, form, email, letter, memorandum, book, map, microfilm, tape, or recording.

According to 5 ILCS 140/2(h), a *voluminous request* “does not include a request made by news media and non-profit, scientific, or academic organizations if the principal purpose of the request is: (1) to access and disseminate information concerning news and current or passing events; (2) for articles of opinion or features of interest to the public; or (3) for the purpose of academic, scientific, or public research or education.”

The FOIA Officer responds to a voluminous request by:

1. Notifying the requester within five business days after receiving a voluminous request that:
 - a. The District is treating the request as a voluminous request under 5 ILCS 140/3.6.
 - b. The District is treating the request as voluminous for one of the following reasons:
 - 1) Includes more than five individual requests for more than five different categories of records or a combination of individual requests that total requests for more than five different categories of records in a period of 20 business days; or
 - 2) Requires the compilation of more than 500 letter or legal-sized pages of public records unless a single requested record exceeds 500 pages.
 - c. The requester must respond to the District within ten business days after this response is sent. The requester must specify whether the requester would like to amend the request in such a way that the District will no longer treat the request as a voluminous request.
 - d. If the requester does not respond within ten business days or if the request continues to be a voluminous request following the requester response, the District will respond to the request and assess any fees the District charges pursuant to 5 ILCS 140/6.

- e. The District has five business days after receipt of the requester's response or five business days from the last day for the requester to amend the request, whichever is sooner, to respond to the request.
 - f. The District may request an additional ten business days to comply with the request.
 - g. The requester has the right to review the District's determination by the public access counselor whose address and phone number follows:
 - Public Access Counselor
 - Office of the Attorney General
 - 500 S. 2nd Street
 - Springfield, Illinois 62706
 - Phone: 1-877-299-3642
 - h. If the requester fails to accept or collect the responsive records, the District will still charge the requester for its response pursuant to 5 ILCS 140/6 and the requester's failure to pay will be considered a debt due and owing to the District and may be collected in accordance with applicable law.
2. Providing the requester ten business days from the date the District responded to amend the request in such a way that the District will no longer treat it as a voluminous request.
 3. If a request continues to be a voluminous request following the requester's reply or the requester fails to reply, responding within the earlier of five business days after the District receives the requester's reply or five business days after the final day for the requester to reply to the District's notification. The District's response must:
 - a. Provide an estimate of the fees to be charged, indicating whether the District requires the person to pay in full before the District copies the requested documents;
 - b. Deny the request pursuant to one or more of the exemptions sent out in FOIA;
 - c. Notify the requester that the request is unduly burdensome and extend an opportunity to the requester to attempt to reduce the request to manageable proportions; or
 - d. Provide the records as requested.

The District may extend the time for responding by not more than five business days from the final date for the requester to reply to the District's notification for any of the reasons provided in 5 ILCS 140/3(e).

The requester and District may agree in writing to extend the time for compliance for a period to be determined by the parties.

K. Denials

The FOIA Officer will deny a FOIA request for any of the exemptions in 5 ILCS 140/7 or 7.5, amended by P.A.s 101-221, 101-620, and 101-649. He or she will comply with 5 ILCS 140/9 by:

1. Providing the requester with a written response containing: (a) the reasons for the denial, including a detailed factual basis for the application of any exemption claimed; (b) the names and titles or positions of each person responsible for the denial; and (c) information about his or her right to review by the Public Access Counselor (include the address and phone number for the Public Access Counselor), and to judicial review under 5 ILCS 140/11.

2. Specifying the exemption claimed to authorize the denial and the specific reasons for the denial, including a detailed factual basis and a citation to supporting legal authority when the denial is based on the grounds that the records are exempt under 5 ILCS 140/7.
3. Retaining copies of all denial notices in a single central office file that is open to the public and indexed according to the type of exemption asserted and, to the extent feasible, according to the types of records requested. 5 ILCS 140/9(b).

L. Consultation with the Board Attorney

The FOIA Officer may consult with the Board Attorney, as needed, for legal advice concerning compliance with FOIA, including without limitation:

1. Responding to specific requests,
2. Communicating with the Office of the Ill. Attorney General or PAC, or
3. During any judicial proceeding.

LEGAL REF.: 5 ILCS 140/, Freedom of Information Act.