

**AMENDMENTS AND EXCEPTIONS
TO THE
FREEDOM OF INFORMATION ACT**

**Thomas C. Zanck
Jeremy W. Shaw
Zanck, Coen & Wright, P.C.
40 Brink Street
Crystal Lake, Illinois 60014
815-459-8800**

**AMENDMENTS TO
FREEDOM OF INFORMATION ACT**

- A. Key components and action plan needed under the FOIA Amendments.
- i. Must designate FOIA officers.
 - ii. Must have FOIA officers complete annual training prepared by the Public Access Council of the Attorney General's office. The Public Access Counselor presently is Cara Smith at the Office of the Attorney General, 500 South 2nd Street, Springfield, Illinois 62706.
 - iii. Trained FOIA officers must ensure that proper responses are made to a FOIA request.
 - iv. Must respond to a request in five (5) business days (extension is limited to five (5) business days).
 - v. If District intends to deny access to a record by asserting a personal privacy exemption or the preliminary draft exemption, the public body must notify the Public Access Council at the Attorney General's office who can review the assertion of the exemption and deem if it is proper.
 - vi. Must provide first 50 pages of black and white copies free and charge no more than 15 cents per page thereafter. Copies in color or in a size other than letter or legal, you may charge only the actual cost for reproducing the records.
 - vii. If requester asks for a document that is maintained in an electronic format, the public body shall furnish it in the electric format specified by the requester, if feasible.
 - viii. Initial training for a FOIA officer must be completed by July 1, 2010 and annually thereafter.
- B. Consequences for failure to fulfill the District's responsibility to respond in a timely fashion to a FOIA request or as the result of an improper response:
- i. By failing to respond to a request, a District waives its ability to assert that the request is unduly burdensome and waives its right to charge for copying.
 - ii. Allows Courts to impose civil penalties between \$2,500.00 and \$5,000.00 against public bodies that willfully and intentionally fail to comply with the law or otherwise act in bad faith.
 - iii. Requires the Court to award attorney's fees to requesters who are forced to file law suits to obtain access to public records.

**EXCEPTIONS TO
FREEDOM OF INFORMATION ACT**

When a request is made under FOIA and the record contains both exempt and non-exempt information, the public body may redact the exempt information and make the balance available, subject to the following exemptions:

- A. Prohibited by Federal Law.
- B. Private information, unless disclosure is otherwise required by law.
- C. Personal information, disclosure which would constitute unwarranted invasion of privacy, unless consent is obtained from the individual. "Unwarranted invasion of privacy" means the disclosure of information which is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest. The disclosure of information that bears on the public duties shall not be considered an invasion of personal privacy.
- D. Records regarding any administrative enforcement proceeding and any law enforcement or correctional agency for law enforcement purposes or for internal matters of public body, but only to the extent that disclosures would:
 - i. **interfere with law enforcement proceedings;**
 - ii. **interfere with administrative enforcement proceedings;**
 - iii. **interfere with due process;**
 - iv. **disclose id of a confidential source;**
 - v. **disclosure specialized investigative technique;**
 - vi. **constitute an invasion of privacy;**
 - vii. **endanger someone's life;**
 - viii. **obstruct an ongoing investigation.**
- E. Records that relate to the security of prisons.
- F. **Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated unless that record has been publicly cited.**

- G. **Trade secrets, unless consent is given from the holder thereof.**
- H. **Proposal and bids for any contract, grant, or agreement, including information which if it were disclosure, would frustrate procurement or given an advantage to any person proposing to enter into a contractor agreement with the body, until awarded or final selection if made. Information used to prepare for bid solicitation is exempt until the final selection is made.**
- I. Computer geographic information systems or formulae.
- J. **Applicant exam questions.**
- K. **Architectural drawings and engineering plans/blueprints for construction projects built with public funds to the extent that disclosure would compromise security.**
- L. **Executive session meeting minutes.**
- M. **Privileged communications.**
- N. Records of adjudication or employee grievances or disciplinary cases until a final outcome resulting in discipline has been rendered.
- O. **Information that would jeopardize the network or software systems of a governmental entity.**
- P. **Material relating to collective negotiating matters, except that final approved collective bargaining agreements are subject to copying/inspection.**
- Q. **Test questions, scoring keys, and other examination data used to determine the qualifications of an applicant for a license or employment.**
- R. **Documents relating to the negotiations and purchase of real estate until such deal is closed.**
- S. **Proprietary information related to risk management association or self-insurance pool, jointly self-administered health plans or accident cooperative pools.**
- T. Info related to the supervision of financial or insurance institutions.
- U. **Exempt info under the State Officials and Employees Ethics Act.**
- V. **Disclosures related to codes, programs or private keys used to create electronic or digital signatures.**
- W. **Information contained in a duly adopted local energy emergency plan.**

- X. Data relating to the surcharge collected and remitted by wireless carriers.
- Y. **Vulnerability assessments.**
- Z. **Maps of Utilities.**
- AA. **Proposals, bids or negotiations related to utilities.**
- BB. **Information prohibited from disclosure by the Health and Hazardous Substances Registry Act.**
- CC. **Information protected under the HIPAA statutes.**

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**ORDINANCE SETTING FORTH PROVISIONS FOR COMPLIANCE
WITH THE ILLINOIS FREEDOM OF INFORMATION ACT**

WHEREAS, the Freedom of Information Act took effect on July 1, 1984 (5 ILCS 140/1 *et seq.*) and was substantially amended by PA 96-0542 effective January 1, 2010; and

WHEREAS, such Act is intended to provide the public with greater access to the records of public bodies; and

WHEREAS, it is necessary for _____ to establish practices and procedures ensuring its full compliance with said Act, so that the public policy stated therein can be carried out effectively and efficiently with respect to the records of the District.

BE IT ORDAINED by the President and the Board of Trustees of _____, McHenry County, as follows:

SECTION 1: The _____ is hereby designated as the FOIA Officer to whom all initial requests for access to the records of the District are to be referred. Such requests are to be made at the District offices at _____, Illinois, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. In the event that the _____ is not available during the times described above, the _____ is designated as the Deputy FOIA Officer to whom such initial requests are to be made. Except in instances when records are furnished immediately, the FOIA Officer, or his designees, shall receive requests submitted to the District under the Freedom of Information Act, ensure that the District responds to requests in a timely fashion, and issue responses under the Act. The FOIA Officer shall develop a list of documents or categories of records that the District shall immediately disclose upon request.

SECTION 2: Upon receiving a request for a public record, the FOIA Officer shall:

- (1) note the date the District receives the written request;
- (2) compute the day on which the period for response will expire and make a notation of that date on the written request;
- (3) maintain 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
- (4) create 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.

SECTION 3: The FOIA Officer and Deputy FOIA Officer shall, within six (6) months after January 1, 2010, successfully complete an electronic training curriculum to be developed by the Public Access Counselor of the State of Illinois and thereafter successfully complete an annual training program. Whenever a new Freedom of Information Officer is designated by the District, that person shall successfully complete the electronic training curriculum within 30 days after assuming the position.

SECTION 4: Any records which are the subject of a request under the Freedom of Information Act shall be retrieved from such place as they are stored, by the FOIA Officer, or by an employee of the District acting under the direction of the FOIA Officer. In no event shall

records be retrieved by the party requesting them or by any person who is not employed by the District.

SECTION 5: If copies of records are requested, the fees for such copies, whether certified or not, shall be as determined from time to time by the FOIA Officer pursuant to Section 6(b) of the Freedom of Information Act. The _____ shall maintain a written schedule of current fees in the District's office. The fees so charged shall reflect the actual cost of copying the records, and the cost of certifying copies, if certification is requested.

SECTION 6: In the event that a request to inspect District's Records is denied by the FOIA Officer, the denial may be appealed to the Public Access Counselor of the State of Illinois.

SECTION 7: The _____ shall prepare: (a) a District Information Directory; (b) a block diagram of the functional Subdivisions of the District; (c) a District Records Directory; and (d) a Records Catalogue, all of which shall be substantially in the same form as the documents attached hereto and made a part hereof as Exhibits "A", "B", "C", and "D". This information shall also be posted on the District's website.

SECTION 8: THIS ORDINANCE shall be in full force and effect immediately upon its passage and approval as required by law.

PASSED this ___ day of _____, 20___, by the Board of Trustees of the _____, County of McHenry, Illinois, by a roll call vote as follows:

AYES: _____ NAYS: _____ ABSENT: _____

APPROVED this ___ day of _____, 2010, by the President of the Board of Trustees of _____, County of McHenry, Illinois.

,President

ATTEST:

,Secretary

ATTACHED EXHIBITS

EXHIBIT A. - DISTRICT INFORMATION DIRECTORY

EXHIBIT B. - SAMPLE BLOCK DIAGRAM OF FUNCTIONAL SUBDIVISIONS

EXHIBIT C. - DISTRICT RECORDS DIRECTORY

EXHIBIT D. - CATALOGING AND INDEXING OF PUBLIC RECORDS

EXHIBIT A

DISTRICT INFORMATION DIRECTORY

The _____ is a fire district incorporated and organized under the laws of the State of Illinois for the purpose of providing its residents with the following services:

- A.
- B.
- C.
- D.

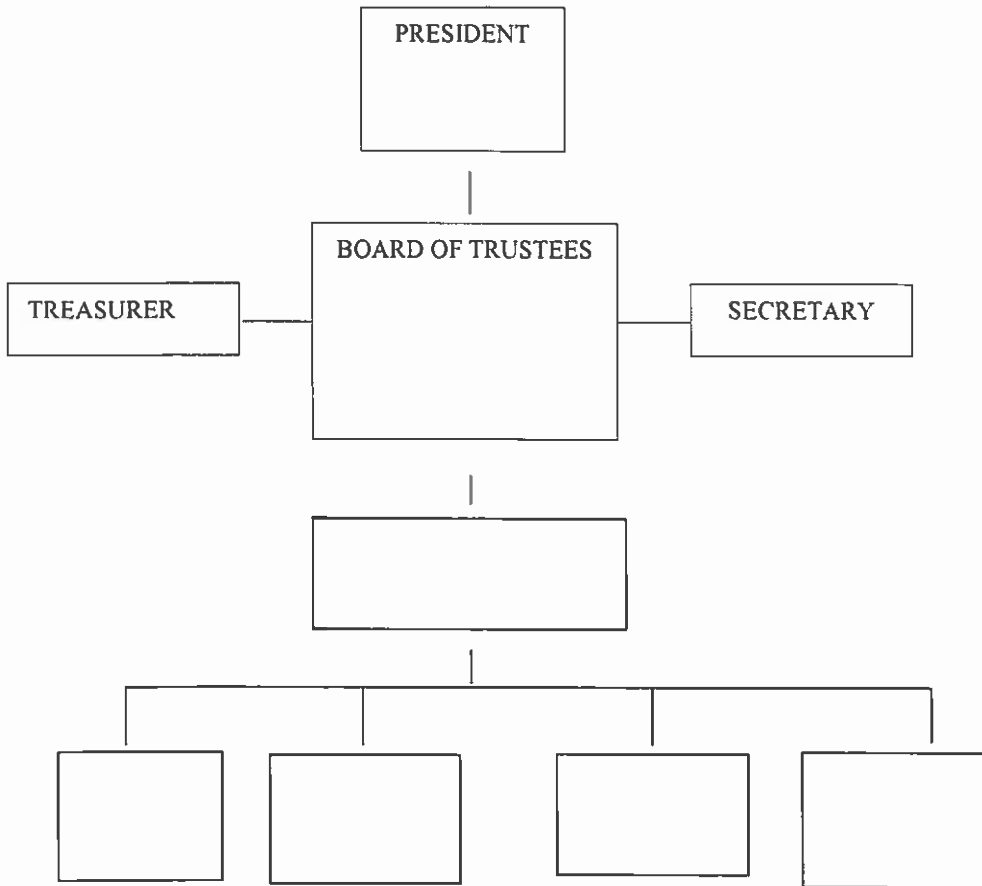
The _____ has certain functional subdivisions which are shown on Table 1 attached hereto. The approximate amount of the operating budget of the District is \$_____. The District's primary office is located at _____, and the District also has stations located at _____. The District currently employs approximately _____ full and part-time employees. The members of the boards, commissions and committees of the _____ are as follows:

Board -		
Commission -		
Committee -	Member	Title

(You should then list such members of each of the various boards, etc., including such boards as the board of trustees, fire commissioners, pension board, foreign fire insurance tax board, etc.)

EXHIBIT B

SAMPLE BLOCK DIAGRAM OF FUNCTIONAL SUBDIVISIONS



The Freedom of Information Officers for the District are:

Name:

Contact Location:

EXHIBIT C

DISTRICT RECORDS DIRECTORY

Any person requesting records of the _____ may make such a request either in person, orally or in writing at the office located at _____. Such request should be made to _____, FOIA Officer at such address and if he/she is not present in person, you should see _____, Deputy FOIA Officer. Another method would be by mailing, faxing or emailing a written request to either _____ specifying in particular the records requested to be disclosed and copied. All written requests should be addressed to the FOIA Officer at the address of the District's office. 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 any such records, if the person requesting the records wishes them to be copied, are as follows:

First 50 pages, black and white, letter or legal size copies, no cost.

Additional pages, black and white, letter or legal, actual cost to \$0.15.

Electronic records will be formatted subject to reimbursement for costs of recording medium.

Color copies or copies in a size other than letter or legal shall be reimbursed to actual costs.

Costs of certifying a record will be \$1.00.

Records may be furnished without charge or at a reduced charge, as determined by the District, if the person requesting the documents states the specific purpose for the request and indicates that a waiver or reduction of the fee is in the public interest. Waiver or reduction of the fee is in the public interest if 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 and is not for the principal purpose of personal or commercial benefit.

EXHIBIT D

CATALOGING AND INDEXING OF PUBLIC RECORDS

The Act requires that public bodies must list (catalog) all types or categories of records under their control which are prepared or received after July 1, 1984. There is some question, and perhaps it can only be resolved by litigation, whether the district must catalogue exempt records. The Act indicates that the purpose of the catalogued list is to aid individuals to "gain access" to public records under the Act, and since certain records are exempt from public access, the most reasonable interpretation of the Act would be that you do not have to catalogue or list exempt records. However, you may wish to maintain a separate catalogue or listing of exempt records until such time as the Attorney General or the courts clarify the extent of cataloguing required.

Please 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 of categories that a public body might wish to 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 district to 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) budget; (b) appropriation ordinance; (c) audit; (d) bills; (e) receipts for revenue; (f) vouchers; (g) cancelled checks; (h) real estate tax receipts; (i) other license fees; (j) plan review fees; (k) salary schedules; (l) utility bills (e.g., telephone, gas and electric); (m) etc. This gives you examples of categories that could be listed under the general type "financial record". While you certainly need not catalogue your records to the same degree as you list expenses in your annual appropriation ordinance or 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. 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. Remember, 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 being that the list must be "reasonably current" and must be "reasonably detailed" in order to assist the individual in obtaining access to public records.