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SUBTITLE E: MISCELLANEOUS STATE AGENCIES
CHAPTER XIV: ENVIRONMENTAL PROTECTION AGENCY

PART 1828
ACCESS TO PUBLIC RECORDS OF THE ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

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AUTHORITY: Implementing and authorized by Section 3(g) of the Freedom of Information Act [5 ILCS 140] and implementing Section 7 of the Illinois Environmental Protection Act [415 ILCS 5].

SOURCE: Adopted at 23 Ill. Reg. 11895, effective September 20, 1999; amended at 26 Ill. Reg. 6525, effective April 18, 2002; amended at 34 Ill. Reg. 9028, effective June 22, 2010; amended at 34 Ill. Reg. 15377, effective September 23, 2010.

SUBPART A: INTRODUCTION

Section 1828.101 Summary, Purpose and Compliance Date

- a) This Part states the policy of the Illinois Environmental Protection Agency (Agency) for making its public records available for reasonable public inspection while, at the same time, protecting legitimate interests in confidentiality.
- b) This Part:
 - 1) Establishes the following classifications for public records in the Agency's possession:
 - A) Public records which shall be disclosed;
 - B) Public records which shall not be disclosed; and
 - C) Public records which may be disclosed to governmental requesters;

- 2) Contains the procedures by which requesters may obtain public records in the Agency's possession; and
 - 3) Contains the procedures for claiming and determining that public records submitted to the Agency are exempt from disclosure.
- c) In determining whether a public record is a trade secret and therefore exempt from disclosure, the Agency shall follow the rules set forth at 2 Ill. Adm. Code 130, promulgated by the Illinois Pollution Control Board.

(Source: Amended at 34 Ill. Reg. 9028, effective June 22, 2010)

Section 1828.102 Definitions

Terms not defined in this Section shall have the same meaning as in the Freedom of Information Act [5 ILCS 140], the Environmental Protection Act [415 ILCS 5] and regulations promulgated by the Pollution Control Board. The following definitions are applicable for purposes of this Part:

"Act" means the Environmental Protection Act. [415 ILCS 5]

"Agency" means the Illinois Environmental Protection Agency as established by the Act.

"Board" means the Pollution Control Board as established by the Act.

"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. 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 or opinion or features of interest to the public, or (iii) for the purpose of academic, scientific, or public research or education. (Section 2(c-10) of FOIA)

"Copying" means the reproduction of any public record by means of any photographic, electronic, mechanical or other process, device or means now known or hereafter developed and available to the Agency. (Section 2(d) of FOIA)

"Department", when a particular entity is not specified, means (i) in the case of a function to be performed on or after July 1, 1995 (the effective date of the Department of Natural Resources Act), either the Department of Natural

Resources or the Department of Commerce and Economic Opportunity (formerly Department of Commerce and Community Affairs), whichever, in the specific context, is the successor to the Department of Energy and Natural Resources under the Department of Natural Resources Act; or (ii) in the case of a function performed before July 1, 1995, the former Illinois Department of Energy and Natural Resources. (Section 3.180 of the Act)

"Director" means the Director of the Agency.

"FOIA" means the Freedom of Information Act [5 ILCS 140].

"Governmental requester" means any officer, employee or authorized representative of Illinois or of the United States concerned with implementation of State or federal environmental statutes and regulations.

"News media" means a newspaper or other periodical issued at regular intervals, whether in print or electronic format, a news service whether in print or electronic format, a radio station, a television station, a television network, a community antenna television service, or a person or corporation engaged in making news reels or other motion picture news for public showing. (Section 2(f) of FOIA)

"Person" means any individual, corporation, partnership, firm, organization or association, acting individually or as a group. (Section 2(b) of FOIA)

"Private information" means 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, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person. (Section 2(c-5) of FOIA)

"Public Access Counselor" means an individual appointed by the Attorney General, who shall be an attorney licensed to practice law in the State of Illinois. The Public Access Counselor's mission is to provide advice and education with respect to the interpretation and implementation of FOIA and the Open Meetings Act. The Public Access Counselor is responsible for carrying out the duties as set forth in Section 7 of the Attorney General Act. [15 ILCS 205]

"Public body" means all legislative, executive, administrative, or advisory bodies of the State, State universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, any subsidiary bodies of any of the foregoing, including but not limited to committees and

subcommittees thereof, and a School Finance Authority created under Article 1E of the School Code [105 ILCS 5]. (Section 2(a) of FOIA)

"Public records" means all 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 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 the Agency. (Section 2 (c) of FOIA)

"Requester" is any person who has submitted to the Agency a written request for public records.

"Submitter" means any person who provides to the Agency public records that may or may not be available for public inspection.

"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. (Section 7(1)(c) of FOIA)

(Source: Amended at 34 Ill. Reg. 9028, effective June 22, 2010)

SUBPART B: CLASSIFICATION OF PUBLIC RECORDS

Section 1828.201 Public Records that Will Be Disclosed

Upon request meeting the requirements of this Part, the Agency shall disclose to the requester all public records requested except those that are exempt from disclosure pursuant to Section 1828.202. Public records covered under this Section shall include, but not be limited to:

- a) *Records of funds. All records relating to the obligation, receipt, and use of public funds of the Agency are public records subject to inspection and copying by the public (Section 2.5 of FOIA);*
- b) *Payrolls. Certified payroll records submitted to the Agency under Section 5(a)(2) of the Prevailing Wage Act are public records subject to inspection and copying in accordance with the provisions of FOIA; except that contractors' employees' addresses, telephone numbers, and social security numbers must be redacted by the Agency prior to disclosure (Section 2.10 of FOIA);*
- c) *Criminal history records. The following documents maintained by the Agency pertaining to criminal history record information are public records subject to inspection and copying by the public pursuant to FOIA:*

- i) *Court records that are public;*
- ii) *Records that are otherwise available under State or local law; and*
- iii) *Records in which the requesting party is the individual identified, except as provided under Section 1828.202(a)(1)(D)(vi) (Section 2.15(b) of FOIA); and*
- d) *Settlement agreements. All settlement agreements entered into by or on behalf of the Agency are public records subject to inspection and copying by the public, provided that information exempt from disclosure under Section 1828.202 of this Part may be redacted. (Section 2.20 of FOIA)*

(Source: Amended at 34 Ill. Reg. 9028, effective June 22, 2010)

Section 1828.202 Public Records that Will Not Be Disclosed

- a) *When a request is made to inspect or copy a public record that contains information that is otherwise exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the Agency shall make the remaining information available for inspection and copying. (Section 7(1)(a) of FOIA) Subject to this requirement, the Agency shall not disclose the following public records:*
 - 1) *Public records exempt from disclosure pursuant to Section 7 of FOIA, including but not limited to:*
 - A) *Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law; (Section 7(1)(a) of FOIA)*
 - B) *Private information, unless disclosure is required by another provision of FOIA, a State or federal law or a court order; (Section 7(1)(b) of FOIA)*
 - C) *Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of 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; (Section 7(1)(c) of FOIA)*
 - D) *Records in the possession of any public body created in the course of administrative enforcement proceedings, and any law*

enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would:

- i) *Interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request;*
 - ii) *Interfere with active administrative enforcement proceedings conducted by the public body that is the recipient of the request;*
 - iii) *Create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing;*
 - iv) *Unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies; except that the identities of witnesses to traffic accidents, traffic accident reports, and rescue reports shall be provided by agencies of local government, except when disclosure would interfere with an active criminal investigation conducted by the agency that is the recipient of the request;*
 - v) *Disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct, and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request;*
 - vi) *Endanger the life or physical safety of law enforcement personnel or any other person; or*
 - vii) *Obstruct an ongoing criminal investigation by the agency that is the recipient of the request. (Section 7(1)(d) of FOIA)*
- E) *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 of a record shall not be exempt when the record is publicly cited and identified by the head of the Agency. The exemption*

provided in this subsection extends to all those records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents; (Section 7(1)(f) of FOIA)

- F) *Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested; (Section 7(1)(g) of FOIA)*
- G) *Proposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body, 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; (Section 7(1)(h) of FOIA)*
- H) *Valuable formulae, computer geographic systems, designs, drawings and research data obtained or produced by any public body when disclosure could reasonably be expected to produce private gain or public loss. The exemption for "computer geographic systems" provided in this subparagraph (H) does not extend to requests made by new media as defined in Section 1828.102 of this Part when the requested information is not otherwise exempt and the only purpose of the request is to access and disseminate information regarding the health, safety, welfare, or legal rights of the general public; (Section 7(1)(i) of FOIA)*
- I) *Architects' plans and engineers' technical submissions, and other construction related technical documents for projects not constructed or developed in whole or in part with public funds and for projects constructed or developed with public funds, including but not limited to power generating and distribution stations and other transmission and distribution facilities, water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings, but only to the extent that disclosure would compromise security; (Section 7(1)(k) of FOIA)*
- J) *Minutes of meetings of public bodies closed to the public as provided in the Open Meetings Act until the public body makes the*

minutes available to the public under Section 2.06 of the Open Meetings Act; (Section 7(1)(l) of FOIA)

- K) *Communications between the Agency and an attorney or auditor representing the Agency that would not be subject to discovery in litigation, and materials prepared or compiled by or for the Agency in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the Agency, and materials prepared or compiled with respect to internal audits of public bodies; (Section 7(1)(m) of FOIA)*
- L) *Records relating to the Agency's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed; (Section 7(1)(n) of FOIA)*
- M) *Administrative or technical information associated with automated data processing operations, including but not limited to software, operating protocols, computer program abstracts, file layouts, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, would jeopardize the security of the system or its data or the security of materials exempt under this Section; (Section 7(1)(o) of FOIA)*
- N) *Records relating to collective negotiating matters between public bodies and their employees or representatives, except that any final contract or agreement shall be subject to inspection and copying; (Section 7(1)(p) of FOIA)*
- O) *Test questions, scoring keys, and other examination data used to determine the qualifications of an applicant for a license or employment; (Section 7(1)(q) of FOIA)*
- P) *The records, documents and information relating to real estate purchase negotiations until those negotiations have been completed or otherwise terminated. With regard to a parcel involved in a pending or actually and reasonably contemplated eminent domain proceeding under the Eminent Domain Act [735 ILCS 30], records, documents and information relating to that parcel shall be exempt except as may be allowed under discovery rules adopted by the Illinois Supreme Court. The records, documents and information relating to a real estate sale shall be exempt until a sale is consummated; (Section 7(1)(r) of FOIA) and*

- Q) *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 [5 ILCS 175] (Section 7(1)(u) of FOIA); or*
- 2) *Statutory Exemptions. To the extent provided for by the statutes referenced below, the following shall be exempt from inspection and copying:*
 - A) *All information determined to be confidential under Section 4002 of the Technology Advancement and Development Act [20 ILCS 700];*
 - B) *Information the disclosure of which is exempted under the State Officials and Employees Ethics Act [5 ILCS 430], and records of any lawfully created State or local inspector general's office that would be exempt if created or obtained by an Executive Inspector General's office under that Act;*
 - C) *Information that is prohibited from being disclosed under Section 4 of the Illinois Health and Hazardous Substances Registry Act [410 ILCS 525]; and*
 - D) *Information prohibited from being disclosed by the Personnel Records Review Act. [820 ILCS 40]*
- b) In determining whether a public record is exempt from disclosure, the Agency shall follow the procedures set forth in Subpart D of this Part.
- c) *A public record that is not in the possession of the Agency but is in the possession of a party with whom the Agency has contracted to perform a governmental function on behalf of the Agency, and that directly relates to the governmental function and is not otherwise exempt under FOIA, shall be considered a public record of the Agency, for purposes of this Part. (Section 7(2) of FOIA)*

(Source: Amended at 34 Ill. Reg. 9028, effective June 22, 2010)

Section 1828.203 Public Records that May Be Disclosed to Governmental Requesters

- a) *Any information accorded confidential treatment may be disclosed or transmitted to other officers, employees or authorized representatives of this State or of the United States concerned with or for the purposes of carrying out this Act or federal environmental statutes and regulations; provided, however, that such information shall be identified as confidential by the Agency, the Board, or the Department, as the case may be. Any confidential information disclosed or*

transmitted under this provision shall be used for the purposes stated herein.
(Section 7(e) of the Act).

- b) Governmental requesters seeking confidential information must demonstrate that they qualify under subsection (a) of this Section to obtain such information.

(Source: Amended at 34 Ill. Reg. 15377, effective September 23, 2010)

SUBPART C: PROCEDURES FOR REQUESTING PUBLIC RECORDS FROM THE AGENCY

Section 1828.301 Submittal of Requests for Public Records

- a) Any request for public records must be submitted to the FOI Officer at the Agency. The requester may use an internet form, which can be found at www.epa.state.il.us/foia.
- b) FOIA requests may be submitted via U.S. Mail, e-mail, fax, or hand delivery. Requests that are sent via U.S. Mail or hand delivery should be sent to:

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
Attn: _____, FOIA Officer, MC #16

(Source: Amended at 34 Ill. Reg. 15377, effective September 23, 2010)

Section 1828.302 Form of Requests for Public Records

Unless a request for public records is made in person, requests for public records must be made in writing. Requests should state that the public records are being sought under the provisions of FOIA. Written requests may be sent by U.S. mail, facsimile, telefax, special carrier, or electronic transmittal via the Agency's interactive web form.

(Source: Amended at 34 Ill. Reg. 9028, effective June 22, 2010)

Section 1828.303 Information To Be Provided in Requests for Public Records

A request for public records should include:

- a) The complete name, mailing address and telephone number of the requester;

- b) As specific a description as possible of the public records sought. Requests that the Agency considers unduly burdensome or categorical may be denied in accordance with Section 1828.502 (See Section 3(g) of FOIA);
- c) A statement as to the requested medium and format for the Agency to use in providing the public records sought: for example, paper, specific types of digital or magnetic media, or videotape;
- d) A statement as to the requested manner for the Agency to use in providing the public records sought: for example, for inspection at Agency headquarters in Springfield or by providing copies;
- e) A statement as to whether the requester needs certified copies of all or any portion of the public records, including a reference to the specific documents that require certification; and
- f) At the written request of the Agency prior to obtaining the public records, additional information to insure the proper management and tracking of the public record and the efficient administration of this Part, including but not limited to requester identification codes and reason for the FOIA request. The Agency may only ask the requester for the purpose of the request in order to determine whether the records are requested for a commercial purpose or whether to grant a request for a fee waiver.

(Source: Amended at 34 Ill. Reg. 9028, effective June 22, 2010)

Section 1828.304 Requests for Public Records Relating to Pending Litigation (Repealed)

(Source: Repealed at 34 Ill. Reg. 9028, effective June 22, 2010)

Section 1828.305 Requests for Public Records To Be Used for Commercial Purposes

- a) The Agency *shall respond to a request for records to be used for a commercial purpose within 21 working days after receipt. The response shall:*
 - 1) *Provide to the requester an estimate of the time required by the Agency to provide the records requested and an estimate of the fees to be charged, which the Agency may require the person to pay in full before copying the requested documents;*
 - 2) *Deny the request pursuant to one or more of the exemptions set out in Section 1828.202 of this Part;*
 - 3) *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*

- 4) *Provide the records requested.*
- b) *Unless the records are exempt from disclosure, the Agency shall comply with a request within a reasonable period considering the size and complexity of the request, and giving priority to records requested for non-commercial purposes.*
- c) *It is a violation of FOIA 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 Agency. (Section 3.1 of FOIA)*

(Source: Added at 34 Ill. Reg. 9028, effective June 22, 2010)

SUBPART D: PROCEDURES FOR CLAIMING AND DETERMINING THAT PUBLIC RECORDS ARE EXEMPT FROM DISCLOSURE

Section 1828.401 Claims by Submitters that Public Records are Exempt from Disclosure

- a) A claim that a public record is exempt from public disclosure pursuant to Section 1828.202 must be made at the time of submittal of the public record.
- b) A claim that a public record is exempt from public disclosure must include:
 - 1) A claim letter, stating that the public record is exempt from public disclosure pursuant to Section 1828.202, identifying all exemptions that apply, and briefly describing the public record;
 - 2) A justification for the claim, including:
 - A) If the public record is a subsequent version of a public record previously granted exempt status by the Agency, a certified statement indicating:
 - i) The date of submission of the previous public record; and
 - ii) That the previous justification remains applicable to the current submission; or
 - B) If the submittal is not a subsequent version of a public record previously granted exempt status by the Agency, the following information:
 - i) Measures taken by the submitter to prevent disclosure of the public record;

- ii) The rights of privacy, if any, that might be an unwarranted invasion of personal privacy by disclosure of the public record;
 - iii) The competitive value, if any, of the public record to the submitter; and
 - iv) Any other information that will support the claim for exemption from disclosure;
 - 3) A copy of the public record, marked in accordance with the requirements of subsection (c) of this Section; and
 - 4) If the submitter is currently a party in a proceeding before the Board or a court in which the information is relevant to the issues, the title of the proceeding, docket number, and, if applicable, identification of the court.
- c) The submitter must mark a public record or portions thereof claimed exempt from disclosure as follows:
- 1) Where the public record is claimed to be exempt from disclosure in its entirety, mark the public record with the words "Public Record Claimed Exempt" in red ink on the face or front of the public record. If submitted in electronic format, the public record must be clearly marked in bold at the top or front of the public record with the words "Public Record Claimed Exempt"; or
 - 2) Where less than the entire public record is claimed to be exempt from disclosure:
 - A) Mark the public record with the words "Public Record Claimed Exempt – in Part" in red ink on the face or front of the public record. If submitted in electronic format, the public record must be clearly marked in bold at the top or front of the public record with the words "Public Record Claimed Exempt – in Part";
 - B) Indicate on the face or beginning of the public record which portion of the public record is claimed to be exempt from disclosure;
 - C) Mark every portion of the public record which is claimed to be exempt from disclosure with the words "Public Record Claimed Exempt"; and
 - D) Furnish the Agency with a second copy of the public record that is marked in accordance with (A) and (B) of this subsection and from

which the portion of the public record that is claimed to be exempt from disclosure is deleted.

(Source: Amended at 34 Ill. Reg. 9028, effective June 22, 2010)

Section 1828.402 Agency Review of Claims of Exemption from Disclosure

- a) The Agency shall review a claim that a public record is exempt from disclosure when the Agency determines that any of the following criteria applies:
 - 1) There is reasonable anticipation of requests or an actual request from the public for disclosure of the public record;
 - 2) To facilitate public participation in proceedings before the Agency where notice and comment periods are short relative to the time required for a final determination in accordance with the requirements of this Part;
 - 3) There is reasonable doubt that the public record is exempt from disclosure and there has been a practice, on the part of the submitter of the public record, of indiscriminately claiming that public records submitted to the Agency are exempt from disclosure;
 - 4) A specific regulation requires that a determination of whether the public record is exempt from disclosure be made at the time the public record is submitted to the Agency; or
 - 5) Determination of the validity of the claim will facilitate the timely performance of Agency responsibilities.
- b) Following a determination that review of a claim is required under subsection (a) of this Section, the Agency shall review the claim for completeness. If the claim fails to meet all of the requirements of Section 1828.401, the Agency shall so notify the submitter in writing, within 30 days of the date that the Agency determines that review of the claim is required under subsection (a) of this Section. In such notice, the Agency must identify the deficiency or deficiencies in the claim and provide the opportunity to cure the deficiency or deficiencies within 10 business days of the date of the notification letter.
- c) In the absence of a contemporaneous FOIA request, the Agency shall determine whether the public record is exempt from disclosure within 45 days of the date that the Agency finds a claim to be complete in accordance with subsection (b) of this Section.
- d) In the absence of a contemporaneous FOIA request, the submitter may extend the time period for the Agency's decision by submitting a written waiver of the decision deadline to the Agency.

Section 1828.403 Agency Actions Following a Determination that a Public Record is Not Exempt from Disclosure

- a) If the Agency determines, in response to a claim of exemption from disclosure, that no exemption applies, the Agency shall deny the claim and shall give written notice of such denial to the submitter of the public record pursuant to subsection (b) of this Section.
- b) Written notice of the denial of a claim of exemption from disclosure shall be by certified mail, return receipt requested, and shall contain the following information:
 - 1) The name and title or position of the person responsible for the determination;
 - 2) A statement of the Agency's reason for denying the claim;
 - 3) A notification of the availability of review of the Agency's decision pursuant to the procedures prescribed in Section 1828.405; and
 - 4) A notification that the Agency will cease protecting the public record or the portion claimed exempt from disclosure unless the Agency is served with notice of the filing of a petition for review, pursuant to the procedures prescribed in Section 1828.405, within 35 days from the date of notice to the submitter.

(Source: Amended at 34 Ill. Reg. 9028, effective June 22, 2010)

Section 1828.404 Agency Actions Following a Determination that a Public Record is Exempt from Disclosure

If the Agency determines, in response to a claim of exemption from disclosure, that a public record or any portion thereof is exempt from disclosure, the Agency shall grant the claim and shall give written notice of such granting by first class mail to the submitter of the public record.

Section 1828.405 Review of Agency Determination

- a) A submitter who is adversely affected, in whole or in part, by a determination of the Agency pursuant to this Subpart may appeal the denial, within 35 days of the date of the Agency's final determination, to the Director of the Agency by filing a notice of appeal.
- b) The notice of appeal:
 - 1) must be made in writing;

- 2) must be clearly marked "APPEAL OF CLAIM OF EXEMPTION FROM DISCLOSURE"; and
 - 3) must include a copy of the denial received by the submitter and a statement of the reasons that the claim should be granted on appeal.
- c) Within 7 working days after receipt of a written notice of appeal, the Director shall notify the submitter, by certified mail, return-receipt requested, either that the Agency's denial has been confirmed or that the submitter's claim of exemption from disclosure is granted.
- d) In reviewing the decision, the Director shall consider:
- 1) Whether the procedures in this Subpart have been correctly applied; and
 - 2) Whether additional information available to the Director supports exempting the public record from disclosure.
- e) If the Director confirms the Agency's denial, the submitter may petition the Circuit Court for review within 35 days of the date of the Director's final determination.
- f) In instances of a contemporaneous claim of exemption from disclosure and FOIA request, the Agency, if properly served with notice of the filing of a petition for review of its determination on the claim of exemption from disclosure, shall notify the requester of such action.
- g) The Agency shall continue to protect the public record or the portion thereof that is claimed exempt from disclosure pending the exhaustion or lapse of the appeal rights of the submitter.

(Source: Amended at 34 Ill. Reg. 9028, effective June 22, 2010)

Section 1828.406 Agency's Treatment of Public Record Claimed or Determined To Be Exempt from Disclosure

- a) Where any public record, or portion thereof, is determined to be exempt from disclosure, the Agency shall:
- 1) Mark the public record or portion thereof, or the public record file, accordingly;
 - 2) Segregate the public record or portion thereof from public records that are open to public inspection;

- 3) Keep the public record or portion thereof secure from unauthorized access;
 - 4) Allow the public access to the claim letter and, if only a portion is exempt, to a copy of the public record with the exempt portion deleted; and
 - 5) Limit access to the public record or portion thereof to employees and officers who are authorized to review such public records.
- b) The Agency shall insure that all authorized employees and officers are given notice of the restrictions contained in this Part on disclosure to and use by the public. No Agency officer, employee, or authorized representative may disclose, except as authorized by this Subpart, or use for private gain or advantage, any public record or portion thereof that is determined to be exempt from disclosure.
- c) The Agency shall manage any public record or portion thereof claimed to be exempt from disclosure as exempt pending disposition of the claim.

(Source: Amended at 34 Ill. Reg. 15377, effective September 23, 2010)

SUBPART E: AGENCY RESPONSE TO REQUESTS FOR PUBLIC RECORDS

Section 1828.501 Timeline for Agency Response

- a) Except as stated in subsection (b) or (c) below, the Agency will respond to any written request for public records within 5 business days after its receipt of the request. *Failure to comply with a written request, extend the time for response, or deny a request within 5 business days after its receipt shall be considered a denial of the request.* If the Agency fails to respond to a request within the requisite periods in this subsection (a) but thereafter provides the requester with copies of the requested public records, it may not impose a fee for such copies. If the Agency fails to respond to a request received, it may not treat the request as unduly burdensome under Section 1828.502. (Section 3(d) of FOIA) A written request from the Agency to provide additional information pursuant to Section 1828.303(f) shall be considered a response to the FOIA request.
- b) The time limits prescribed in subsection (a) of this Section *may be extended for not more than 5 business days from the original due date for any of the following reasons:*
- 1) *The requested records are stored in whole or in part at other locations than the office having charge of the requested records;*
 - 2) *The request requires the collection of a substantial number of specified records;*

- 3) *The request is couched in categorical terms and requires an extensive search for the records responsive to it;*
 - 4) *The requested records have not been located in the course of routine search and additional efforts are being made to locate them;*
 - 5) *The requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure under Section 7 or 7.5 of FOIA or should be revealed only with appropriate deletions;*
 - 6) *The request for records cannot be complied with by the Agency within the time limits prescribed by subsection (a) of this Section without unduly burdening or interfering with the operations of the Agency; or*
 - 7) *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. (Section 3(e) of FOIA)*
- c) *The person making a request and the Agency may agree in writing to extend the time for compliance for a period to be determined by the parties. If the requester and the Agency agree to extend the period for compliance, a failure by the Agency to comply with any previous deadlines shall not be treated as a denial of the request for the records. (Section 3(e) of FOIA)*
- d) *When additional time is required for any of the reasons set forth in subsection (b) of this Section, the Agency shall, within 5 business days after receipt of the request, notify the person making the request of the reasons for the extension and the date by which the response will be forthcoming. Failure to respond within the time permitted for extension shall be considered a denial of the request. If the Agency fails to respond to a request within the time permitted for extension but thereafter provides the requester with copies of the requested public records, it may not impose a fee for those copies. If the Agency requests an extension and subsequently fails to respond to the request, it may not treat the request as unduly burdensome under Section 1828.502. (Section 3(f) of FOIA)*

(Source: Amended at 34 Ill. Reg. 9028, effective June 22, 2010)

Section 1828.502 Requests for Public Records that the Agency Considers Unduly Burdensome

- a) *Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the Agency and there is no way to narrow the request and the burden on the Agency*

outweighs the public interest in the information. Before invoking this exemption, the Agency shall extend to the requester an opportunity to confer with it in an attempt to reduce the request to manageable proportions. (Section 3(g) of FOIA). The amended request must be in writing.

- b) *If the Agency determines that a request is unduly burdensome, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the Agency. Such a response shall be treated as a denial of the request for information. (Section 3(g) of FOIA)*
- c) *Repeated requests from the same person for the same records that are unchanged or identical to records previously provided or properly denied under this Part shall be deemed unduly burdensome. (Section 3(g) of FOIA)*

(Source: Amended at 34 Ill. Reg. 9028, effective June 22, 2010)

Section 1828.503 Requests for Public Records that Require Electronic Retrieval

- a) A request for public records that requires electronic retrieval will be treated the same as any other request for public records, with the same timeline and extensions as set forth in Section 1828.501.
- b) The Agency will retrieve and provide electronic public records only in a format and medium that is available to the Agency at its headquarters.

Section 1828.504 Denials of Requests for Public Records

- a) The Agency will deny requests for public records when:
 - 1) Compliance with the request would be unduly burdensome on the Agency, as determined pursuant to Section 1828.502, and the requester has not reduced the request to manageable proportions;
 - 2) The public records are exempt from disclosure pursuant to FOIA or Section 7 of the Act; or
 - 3) The public records are not available for inspection pursuant to 2 Ill. Adm. Code 130 (Identification and Protection of Trade Secrets);
- b) Where Section 1828.303(f) applies, the Agency may deny requests for public records when:
 - 1) The requester fails to respond to an Agency request for additional information within 10 business days after the date of the Agency's request; or

- 2) The requester fails to provide sufficient information in response to the Agency's request.
- c) The denial of a request for public records must be in writing by certified mail, return receipt requested. The notification shall include:
- 1) A description of the public records denied, the reason for the denial, *including a detailed factual basis for the application of any exemption claimed, and the names and titles or positions of each person responsible for the denial* (Section 9(a) of FOIA);
 - 2) *Each notice of denial shall also inform such person of the right to review by the Public Access Counselor and provide the address and phone number for the Public Access Counselor* (Section 9(a) of FOIA); and
 - 3) *When a request for public records is denied on the grounds that the records are exempt under Section 7 of FOIA, the notice of denial shall specify the exemption claimed to authorize the denial and the specific reasons for the denial, including a detailed factual basis and a citation to the supporting legal authority.* (Section 9(b) of FOIA)
- d) Unless the Agency has given written notice pursuant to Section 1828.501(d), a requester may treat the Agency's failure to provide the public records within 5 business days after receipt of the written request as a denial for purposes of the right to review by the Public Access Counselor.
- e) If the Agency has given written notice pursuant to Section 1828.501(d), failure to respond to a written request within the time permitted for extension may be treated as a denial for purposes of the right to review by the Public Access Counselor.
- f) *Any person making a request for public records shall be deemed to have exhausted his or her administrative remedies with respect to that request if the Agency fails to act within the time periods provided in Section 1828.501 of this Part.* (Section 9(c) of FOIA)

(Source: Amended at 34 Ill. Reg. 9028, effective June 22, 2010)

Section 1828.505 Requests for Review of Denials – Public Access Counselor

- a) *A person whose request to inspect or copy a public record is denied by the Agency may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the date of the final denial. The request for review must be in writing, signed by the requester, and include:*

- 1) *a copy of the request for access to records; and*
 - 2) *any responses from the Agency. (Section 9.5(a) of FOIA)*
- b) *If the Agency receives a request for records and asserts that the records are exempt under Section 1828.202(a)(1)(C) or Section 1828.202(a)(1)(E) of this Part, it shall, within the time periods provided for responding to a request, provide written notice to the requester and the Public Access Counselor of its intent to deny the request in whole or in part. The notice shall include:*
- 1) *a copy of the request for access to records;*
 - 2) *the proposed response from the Agency; and*
 - 3) *a detailed summary of the Agency's basis for asserting the exemption. (Section 9.5(b) of FOIA)*
- c) *Upon receipt of a notice of intent to deny from the Agency, the Public Access Counselor shall determine whether further inquiry is warranted. The Public Access Counselor will process the notification of intent to deny as detailed in Section 9.5(b) of FOIA. Times for response or compliance by the Agency under Section 1828.501 of this Part shall be tolled until the Public Access Counselor concludes his or her inquiry. (Section 9.5(b) of FOIA)*
- d) *Within 7 working days after receipt of the request for review, the Agency shall provide copies of records requested and shall otherwise fully cooperate with the Public Access Counselor. (Section 9.5(c) of FOIA)*
- e) *Within 7 working days after it receives a copy of a request for review and request for production of records from the Public Access Counselor, the Agency may, but is not required to, answer the allegations of the request for review. The answer may take the form of a letter, brief, or memorandum. The Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy. (Section 9.5(d) of FOIA)*
- f) *The requester may, but is not required to, respond in writing to the answer within 7 working days and shall provide a copy of the response to the Agency. (Section 9.5(d) of FOIA)*
- g) *In addition to the request for review, and the answer and response thereto, if any, a requester or the Agency may furnish affidavits or records concerning any matter germane to the review. (Section 9.5(e) of FOIA)*

- h) A binding opinion from the Attorney General pursuant to Section 9.5(f) of FOIA *shall be binding upon both the requester and the Agency, subject to administrative review under Section 1828.506 of this Part.* (Section 9.5(f) of FOIA)
- i) If the Attorney General decides to exercise his or her discretion to resolve a request for review by mediation or by a means other than issuance of a binding opinion, the *decision not to issue a binding opinion shall not be reviewable.* (Section 9.5(f) of FOIA)
- j) *Upon receipt of a binding opinion concluding that a violation of FOIA has occurred, the Agency shall either take necessary action immediately to comply with the directive of the opinion or shall initiate administrative review under Section 1828.506 of this Part. If the opinion concludes that no violation of FOIA has occurred, the requester may initiate administrative review under Section 1828.506 of this Part.* (Section 9.5(f) of FOIA)
- k) If the Agency *discloses records in accordance with an opinion of the Attorney General, the Agency is immune from all liabilities by reason thereof and shall not be liable for penalties under FOIA.* (Section 9.5(f) of FOIA)
- l) *If the requester files suit under Section 1828.506 of this Part with respect to the same denial that is the subject of a pending request for review, the requester shall notify the Public Access Counselor, and the Public Access Counselor shall take no further action with respect to the request for review and shall so notify the Agency.* (Section 9.5(g) of FOIA)
- m) *The Attorney General may also issue advisory opinions to the Agency regarding compliance with FOIA. A review may be initiated upon receipt of a written request from the Director of the Agency or the Agency's Chief Legal Counsel, which shall contain sufficient accurate facts from which a determination can be made. The Public Access Counselor may request additional information from the Agency in order to assist in the review. If the Agency relies in good faith on an advisory opinion of the Attorney General in responding to a request, the Agency is not liable for penalties under FOIA, so long as the facts upon which the opinion is based have been fully and fairly disclosed to the Public Access Counselor.* (Section 9.5(h) of FOIA)

(Source: Amended at 34 Ill. Reg. 9028, effective June 22, 2010)

Section 1828.506 Right to Review in Circuit Court

In addition to a requester's right to review by the Public Access Counselor, a requester also has a right to file suit for injunctive or declaratory relief in the Circuit Court for Sangamon County or for the county in which the requester resides, in accordance with the procedures set forth in

Section 11 of FOIA. However, if the requester files suit in Circuit Court, the requester shall also give notice to the Public Access Counselor, as is required in Section 1828.505(1).

(Source: Added at 34 Ill. Reg. 9028, effective June 22, 2010)

Section 1828.507 Administrative Review

A binding opinion issued by the Attorney General shall be considered a final decision of an administrative agency, for purposes of administrative review under the Administrative Review Law [735 ILCS 5/Art. III]. An action for administrative review of a binding opinion of the Attorney General shall be commenced in Cook or Sangamon County. An advisory opinion issued to the Agency shall not be considered a final decision of the Attorney General for purposes of this Section. (Section 11.5 of FOIA)

(Source: Added at 34 Ill. Reg. 9028, effective June 22, 2010)

SUBPART F: PROCEDURES FOR PROVIDING PUBLIC RECORDS TO REQUESTERS

Section 1828.601 Inspection of Public Records at the Agency

- a) Public records may be made available for personal inspection at the Agency's headquarters office located at 1021 North Grand Avenue East, Springfield, Illinois or may be provided in duplicate forms including, but not limited to, paper copies, data processing printouts, videotape, microfilm, audio tape, reel to reel microfilm, photographs, computer disks and diazo. No original record shall be removed from State-controlled premises except under constant supervision of Agency staff.
- b) The Agency will provide public records in requested formats or media only if the public records are kept in those formats or media at Agency headquarters. *When a person requests a copy of a record maintained in an electronic format, the Agency shall furnish it in the electronic format specified by the requester, if feasible. If it is not feasible to furnish the public records in the specified electronic format, then the Agency shall furnish it in the format in which it is maintained by the Agency, or in paper format at the option of the requester.* (Section 6(a) of FOIA)
- c) A requester may inspect public records at the Agency's headquarters by appointment only, scheduled subject to space availability. The Agency will schedule inspection appointments to take place during normal business hours, which are 8:30 AM to 5:00 PM Monday through Friday, exclusive of State holidays. If the requester must cancel the viewing appointment, the requester shall so inform the Agency as soon as possible before the appointment.
- d) In order to maintain routine Agency operations, the requester may be asked to leave the inspection area for a specified period of time.

- e) The requester will have access only to the designated inspection area at the Agency's headquarters.
- f) Requesters shall not be permitted to take briefcases, folders or similar materials into the room where the inspection takes place. An Agency employee may be present during the inspection.
- g) The requester shall segregate and identify the documents to be copied during the course of the inspection. The requester shall copy the documents at the Agency's headquarters or arrange for the copying of the documents at the Agency's headquarters by an outside service.
- h) Prior to inspecting records, the Agency may require the requester to provide a photo identification card.

(Source: Amended at 34 Ill. Reg. 15377, effective September 23, 2010)

Section 1828.602 Fees for Public Records

- a) In accordance with Section 1828.603, *unless a fee is otherwise fixed by statute, the Agency may charge fees reasonably calculated to reimburse its actual cost for reproducing and certifying public records and for the use, by any person, of the equipment of the Agency to copy records. No fees shall be charged for the first 50 pages of black and white, letter or legal sized copies requested by a requester. The fee for black and white, letter or legal sized copies shall not exceed 15 cents per page. If the Agency provides copies in color or in a size other than letter or legal, the Agency may not charge more than its actual cost for reproducing the records. In calculating its actual cost for reproducing records or for the use of the equipment of the Agency to reproduce records, the Agency shall not include the costs of any search for and review of the records or other personnel costs associated with reproducing the records.* (Section 6(b) of FOIA)
- b) The Agency will provide copies of public records and certifications of public records in accordance with the fee schedule set forth in Section 1828.Appendix A.
- c) In order to expedite the copying of public records that the Agency cannot copy, due to the volume of the request or the operational needs of the Agency, in the timelines established in Section 1828.501, the requester may provide, at the requester's expense, the copy machine, all necessary materials and the labor to copy the public records at the Agency headquarters in Springfield, Illinois. No original record shall be removed from State-controlled premises except under constant supervision of Agency staff.
- d) Copies of public records will be provided to the requester only upon payment of any fees due. *The Agency may charge the requester for the actual cost of*

purchasing the recording medium, whether disc, diskette, tape, or other medium, but the Agency 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. Payment must be by check or money order sent to the Agency, payable to "Treasurer, State of Illinois." (Section 6(a) of FOIA)

- e) If a contractor is used to inspect or copy public records, the following procedures shall apply:
- 1) The requester rather than the Agency must contract with the contractor;
 - 2) The requester is responsible for all fees charged by the contractor;
 - 3) The requester must notify the Agency of the contractor to be used prior to the scheduled on-site inspection or copying;
 - 4) Only Agency personnel may provide public records to the contractor;
 - 5) The Agency must have verification that the requester has paid the Agency, if payment is due, for the copying of the public records before providing the public records to the contractor; and
 - 6) The requester must provide to the Agency the contractor's written agreement to hold the public records secure, to copy the records only for the purpose stated by the requester, and to return the records at a specified date and time.

(Source: Amended at 34 Ill. Reg. 15377, effective September 23, 2010)

Section 1828.603 Reduction and Waiver of Fees

- a) Fees may be reduced or waived by the Agency if the requester states the specific purpose for the request and indicates that a waiver or reduction of the fee is in the public interest. In making this determination, the Agency shall consider the following:
- 1) Whether the principal purpose of the request is to disseminate information regarding the health, safety and welfare or the legal rights of the general public; and
 - 2) Whether the principal purpose of the request is personal or commercial benefit. *For purposes of this subsection, "commercial benefit" shall 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* (Section 6(c) of FOIA)

- b) Public records will be provided without charge to federal, State, and municipal agencies, Constitutional officers and members of the General Assembly, and not-for-profit organizations providing evidence of good standing with the Secretary of State's Office.
- c) *Except to the extent that the General Assembly expressly provides, statutory fees applicable to copies of public records when furnished in a paper format shall not be applicable to those records when furnished to a requester in an electronic format.* (Section 6(a) of FOIA)

(Source: Amended at 34 Ill. Reg. 9028, effective June 22, 2010)

Section 1828.APPENDIX A Fee Schedule for Duplication and Certification of Public Records

TYPE OF DUPLICATION	FEE (PER COPY)
Paper copy from original, up to and including 50 copies of black and white, letter or legal sized copies	No charge
Paper copy from original, in excess of 50 copies of black and white, letter or legal sized copies	\$.15/page
Paper copy from microfilm original	\$.15/page
Microfilm diazo from original	\$.50/diazo
VHS video copy	Actual cost of the reproduction
Audio tape copy	Actual cost of the reproduction
CD ROM	Actual cost of the reproduction
Photograph from negative (outside processing only)	Actual cost of the reproduction
Blueprints/oversized prints	Actual cost of the reproduction
Paper copies in color or in a size other than letter or legal	Actual cost of the reproduction
Certification fee	\$1.00/record

NOTE: Expense for delivery other than by First Class U.S. Mail must be borne by the requester.

(Source: Amended at 34 Ill. Reg. 9028, effective June 22, 2010)