

SUBTITLE E

TITLE 2: GOVERNMENTAL ORGANIZATIONS
SUBTITLE E: MISCELLANEOUS STATE AGENCIES
CHAPTER XIV: ENVIRONMENTAL PROTECTION AGENCY

PART 1828

ACCESS TO PUBLIC RECORDS OF THE ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

SUBPART A: INTRODUCTION

Section

- 1828.101 Summary, Purpose and Compliance Date
- 1828.102 Definitions

SUBPART B: CLASSIFICATION OF PUBLIC RECORDS

Section

- 1828.201 Public Records that Shall be Disclosed
- 1828.202 Public Records that Shall Not be Disclosed
- 1828.203 Public Records that May be Disclosed to Governmental Requesters

SUBPART C: PROCEDURES FOR REQUESTING PUBLIC RECORDS FROM THE
AGENCY

Section

- 1828.301 Submittal of Requests for Public Records
- 1828.302 Form of Requests for Public Records
- 1828.303 Information to be Provided in Requests for Public Records
- 1828.304 Requests for Public Records Relating to Pending Litigation

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
- 1828.402 Agency Review of Claims of Exemption from Disclosure
- 1828.403 Agency Actions Following a Determination that a Public Record is Not Exempt from Disclosure
- 1828.404 Agency Actions Following a Determination that a Public Record is Exempt from Disclosure
- 1828.405 Review of Agency Determination
- 1828.406 Agency's Treatment of Public Record Claimed or Determined to be Exempt from

Disclosure

SUBPART E: AGENCY RESPONSE TO REQUESTS FOR PUBLIC RECORDS

Section

- 1828.501 Timeline for Agency Response
- 1828.502 Requests for Public Records that the Agency Considers Unduly Burdensome
- 1828.503 Requests for Public Records that Require Electronic Retrieval
- 1828.504 Denials of Requests for Public Records
- 1828.505 Appeals of Denials

SUBPART F: PROCEDURES FOR PROVIDING PUBLIC RECORDS TO REQUESTERS

Section

- 1828.601 Inspection of Public Records at the Agency
- 1828.602 Fees for Public Records
- 1828.603 Reduction and Waiver of Fees

APPENDIX A FEE SCHEDULE FOR DUPLICATION OF PUBLIC RECORDS

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.

AGENCY NOTE: These rules take effect on the effective date stated above but, pursuant to Section 1828.101(d), compliance is not required until January 1, 2000.

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;

SUBTITLE E

- 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 35 Ill. Adm. Code 120, promulgated by the Illinois Pollution Control Board.
- d) Compliance with the procedures set forth in this Part is required on and after January 1, 2000. This delayed compliance date is established to allow the Agency, requesters and submitters time to implement the procedures of this Part. This Part shall apply to any request or submittal pending before the Agency as of January 1, 2000.

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.

"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 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 3.07 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, a news service, a radio station, a television station, 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).

"Public records" means all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, recorded information and all other documentary materials, regardless of physical form or characteristics, having been prepared, or having been or being used, received, possessed or under the control of the Agency. (Section 2 (c) of FOIA).

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

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

SUBPART B: CLASSIFICATION OF PUBLIC RECORDS

Section 1828.201 Public Records that Shall 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.

Section 1828.202 Public Records that Shall Not be Disclosed

- a) 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 adopted under federal or State law;*
 - B) *Information that, if disclosed, 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. Information exempted*

under this subsection includes, but is not limited to:

- i) *Files and personal information maintained with respect to clients, patients, residents, students or other individuals receiving social, medical, educational, vocational, financial, supervisory or custodial care or services directly or indirectly from federal agencies or public bodies;*
 - ii) *Personnel files and personal information maintained with respect to employees, appointees or elected officials of any public body or applicants for those positions;*
 - iii) *Files and personal information maintained with respect to any applicant, registrant or licensee by any public body cooperating with or engaged in professional or occupational registration, licensure or discipline;*
 - iv) *Information required of any taxpayer in connection with the assessment or collection of any tax unless disclosure is otherwise required by State statute; and*
 - v) *Information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies.*
- C) *Records compiled by any public body for administrative enforcement proceedings and any law enforcement or correctional agency for law enforcement purposes or for internal matters of a public body, 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;*
 - ii) *Interfere with pending administrative enforcement proceedings conducted by any public body;*
 - iii) *Deprive a person of a fair trial or an impartial hearing;*
 - iv) *Unavoidably disclose the identity of a confidential source or confidential information furnished only by the confidential source;*
 - 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;*
 - vi) *Constitute an invasion of personal privacy under subsection (b) of this Section;*
 - vii) *Endanger the life or physical safety of law enforcement personnel or any other person; or*
 - viii) *Obstruct an ongoing criminal investigation.*
- D) *Criminal history record information maintained by State or local*

SUBTITLE E

criminal justice agencies, except the following which shall be open for public inspection and copying:

- i) *Chronologically maintained arrest information, such as traditional arrest logs or blotters;*
- ii) *The name of a person in the custody of a law enforcement agency and the charges for which that person is being held;*
- iii) *Court records that are public;*
- iv) *Records that are otherwise available under State or local law; or*
- v) *Records in which the requesting party is the individual identified, except as provided under subsection (a)(1)(C)(vii) of this Section.*

"Criminal history record information" means data identifiable to an individual and consisting of descriptions or notations of arrests, detentions, indictments, informations, pre-trial proceedings, trials, or other formal events in the criminal justice system or descriptions or notations of criminal charges (including criminal violations of local municipal ordinances) and the nature of any disposition arising therefrom, including sentencing, court or correctional supervision, rehabilitation and release. The term does not apply to statistical records and reports in which individuals are not identified and from which their identities are not ascertainable, or to information that is for criminal investigative or intelligence purposes;

- 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 public body. 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;*
- F) *Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or information are proprietary, privileged or confidential, or where disclosure of the trade secrets or information may cause competitive harm, including all information determined to be confidential under Section 4002 of the Technology Advancement and Development Act. Nothing contained in this subsection shall be construed to prevent a person or business from consenting to disclosure;*
- G) *Proposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate*

SUBTITLE E

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;

- H) *Valuable formulae, 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;*
- I) *Test questions, scoring keys and other examination data used to administer an academic examination or determined the qualifications of an applicant for a license or employment;*
- J) *Architects' plans and engineers' technical submissions for projects not constructed or developed in whole or in part with public funds and for projects constructed or developed with public funds, to the extent that disclosure would compromise security;*
- K) *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;*
- L) *Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies;*
- 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;*
- N) *Documents or materials 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;*
- O) *Drafts, notes, recommendations and memoranda pertaining to the financing and marketing transactions of the public body. The records of ownership, registration, transfer, and exchange of municipal debt obligations, and of persons to whom payment with*

SUBTITLE E

- respect to these obligations is made;*
- 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 Article VII of the Code of Civil Procedure, 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;*
 - Q) *Information related solely to the internal personnel rules and practices of a public body;*
 - R) *Information the disclosure of which is restricted under Section 5-108 of the Public Utilities Act;*
 - S) *Firm performance evaluations under Section 55 of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act; and*
 - T) *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 (Section 7 of FOIA); or*
- 2) Public records that are exempt from disclosure pursuant to Section 7 of the Act.
- 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.

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.

SUBPART C: PROCEDURES FOR REQUESTING PUBLIC RECORDS FROM THE AGENCY

Section 1828.301 Submittal of Requests for Public Records

Any request for public records must be submitted to the applicable FOIA sector or sectors at the Agency. The Agency has 6 FOIA sectors, located in the Bureau of Air, Bureau of Land (which also handles noise-related matters), Bureau of Water, Division of Public Water Supplies, Office of Chemical Safety, and Division of Legal Counsel. If a requester seeks public records from more than one FOIA sector, a separate written request for the public records must be submitted to each applicable FOIA sector. If a requester is uncertain as to which FOIA sector may possess the public records, the written request should be submitted to the Director's Office. The requester may use an internet form if such a form is available. Written requests should be sent to:

Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
Attn.: _____, FOIA Sector
E-mail Address: FOIA@epa.state.il.us

(Source: Amended at 26 Ill. Reg. 6525, effective April 18, 2002)

Section 1828.302 Form of Requests for Public Records

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 mail, facsimile or electronic transmittal.

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 overly broad or categorical may be denied in accordance with Section 1828.502;
- 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.

(Source: Amended at 26 Ill. Reg. 6525, effective April 18, 2002)

Section 1828.304 Requests for Public Records Relating to Pending Litigation

If the request relates to information that is the subject of pending proceedings before the Board or the courts, the Agency will request that the requester give to the Agency notice of service of the request on all parties to the proceeding before the Agency will respond. This Section shall not apply to rulemaking proceedings before the Board under the Act except adjusted standard proceedings.

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 invaded 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;

SUBTITLE E

- 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.

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

SUBTITLE E

- 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 within 35 days from the date of notice to the submitter.

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 Part 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 Part 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 26 Ill. Reg. 6525, effective April 18, 2002)

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.

SUBPART E: AGENCY RESPONSE TO REQUESTS FOR PUBLIC RECORDS

Section 1828.501 Timeline for Agency Response

- a) Except as stated in subsection (b) below, the Agency will respond to any written request for public records within 7 working days of receipt of the request. *Failure to respond to a written request within 7 working days after its receipt shall be considered a denial of the request.* (Section 3 (c) 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 an additional 7 working days 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 of FOIA or should be revealed only with appropriate deletions;*

- 6) *The request for records cannot be complied with by the public body 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(d) of FOIA)*
- c) *When additional time is required for any of the reasons set forth in subsection (b) of this Section, the Agency shall notify by letter the person making the written request within the time limits specified in subsection (a) of this Section of the reasons for the delay and the date by which the records will be made available or denial will be forthcoming. In no instance, may the delay in processing last longer than 7 working days. A failure to render a decision within 7 working days shall be considered a denial of the request. (Section 3(e) of FOIA)*

(Source: Amended at 26 Ill. Reg. 6525, effective April 18, 2002)

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(f) 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(f) of FOIA)*
- c) *Repeated requests for the same public records by the same person shall be deemed unduly burdensome. (Section 3(f) of FOIA).*

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 shall 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 35 Ill. Adm. Code 120 (Identification and Protection of Trade Secrets);
- b) Where Section 1828.30(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 and the names and titles or positions of each person responsible for the denial;
 - 2) *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 (Section 9(b) of FOIA); and*
 - 3) A statement advising the requester of the right to appeal the denial by sending a written notice of appeal to the Director of the Agency in accordance with Section 1828.505.
- d) Unless the Agency has given written notice pursuant to Section 1828.501(c), a requester may treat the Agency's failure to provide the public records within 7 working days of receipt of the written request as a denial for purposes of appeal to the Director.
- e) If the Agency has given written notice pursuant to Section 1828.501(c), failure to respond to a written request within 14 working days of receipt of the request may be treated as a denial for purposes of appeal to the Director.

(Source: Amended at 26 Ill. Reg. 6525, effective April 18, 2002)

Section 1828.505 Appeals of Denials

- a) A requester whose request has been denied by the Agency may appeal the denial to the Director of the Agency by filing a notice of appeal.
- b) The notice of appeal:

SUBTITLE E

- 1) must be made in writing;
 - 2) must be clearly marked "APPEAL OF FOIA REQUEST DENIAL"; and
 - 3) must include a copy of the original request, a copy of the denial received by the requester and a statement of the reasons that the request should be granted on appeal.
- c) The notice of appeal should be postmarked within 30 days of the date of mailing of the denial letter. If no written denial is issued, the notice of appeal should be postmarked within 30 days of the date that the final decision was due.
- d) Within 7 working days after receipt of a written notice of appeal of the Agency's denial of the request, the Director shall notify the requester, by certified mail, return-receipt requested, either that the Agency's denial has been confirmed or that the requested public records will be available at some indicated time and place.
- e) In reviewing the decision, the Director shall consider:
- 1) Whether the procedures in this Part have been correctly applied; and
 - 2) Whether additional information available to the Director supports disclosure of the information to the requester.
- f) If the Director confirms the Agency's denial of the request, the requester may 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.

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.
- 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.
- 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.

SUBTITLE E

- 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) The Agency will require the requester to provide a photo identification card prior to releasing the public records.

(Source: Amended at 26 Ill. Reg. 6525, effective April 18, 2002)

Section 1828.602 Fees for Public Records

- a) In accordance with Section 1828.603, 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. Such fees shall exclude the costs of any search for and review of the record, and shall not exceed the actual cost of reproduction and certification* (Section 6(a) 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.
- d) Copies of public records will be provided to the requester only upon payment of any fees due. Payment must be by check or money order sent to the Agency, payable to "Treasurer, State of Illinois."
- 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.

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 principle 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 principle 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(b) of FOIA).
- b) Public records shall be provided without charge to federal, state, and municipal agencies, Constitutional officers and members of the General Assembly, and not-for-profit organizations in good standing with the Secretary of State's office.

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 400 copies Charge	
Paper copy from original, in excess of 400 copies	\$.25/page
Paper copy from microfilm original	\$.25/page
Microfilm diazo from original	\$.50/diazo
VHS video copy	

of tape

Audio tape copy
of tape

CD ROM
of disk

Photograph from negative
of reproduction

(outside processing only)

Blueprints/oversized prints
of reproduction

Certification fee \$1.00/record

NOTE: Expense for delivery other than United States mail first class must be borne by the requester.