

FOIA Rules and Regulations

VILLAGE OF SOMONAUK

Administrative Procedure - Access to and Copying of Village Public Records

The Village President appoints, or designates the , a Freedom of Information Officer to perform the duties of that office as specified in the Freedom of Information Act (FOIA) and is responsible for managing the Village of Somonauk's compliance with FOIA.

Determines from time-to-time by Village Board resolution:

1. Copying fees that are reasonably calculated to reimburse the Village for the actual costs of reproducing and certifying the records.
2. The amount by which copy fees will be reduced if the person making the request states a specific purpose for the request that is in the public interest (5 ILCS 140/6). A request is in the *public interest* if its purpose is to access and disseminate information regarding the health, safety and welfare, or the legal rights of the general public, and is not for the principal purpose of personal or commercial benefit. In setting the reduction, the Village Board may consider the amount of materials requested and the cost of copying them.

Monitors full compliance with FOIA and Board policy 2:250, *Access to Village Public Records*.

Budgets sufficient resources to enable full compliance with FOIA.

Receives the report from the FOIA Officer during regular meetings concerning each FOIA request and the status of the Village's response. 105 ILCS 5/10-16.

Manages FOIA compliance

The Freedom of Information Officer manages the Village's compliance with FOIA, 5 ILCS 140/, and performs the following duties as specified in FOIA, 5 ILCS 140/3.5:

1. Receives FOIA requests, ensures that the Village responds to requests in a timely fashion, and issues responses under FOIA.
2. Develops a list of documents or categories of records that will be immediately disclosed upon request. See 2:250-E2, *Immediately Available Public Records*.
3. Upon receiving a request for a public record, (a) notes the date the Village receives the written request; (b) computes the day on which the period for response will expire and makes a notation of that date on the written request; (c) maintains an electronic or paper copy of a written request, including all documents submitted with the request until the request has been complied with or denied; and (d) creates a file for the retention of the original request, a copy of the response, a record of written communications with the requester, and a copy of other communications.

Identifies other staff members to assist with FOIA compliance and delegates specific responsibilities to them. These individuals may include the information technology specialist and department heads.

Informs and/or trains staff members concerning their respective responsibilities regarding FOIA. This includes explaining the requirement that all FOIA requests must be immediately forwarded to the Freedom of Information Officer including those that are received via email.

Training requirements prior to July 1, 2010

Successfully completes the training program administered by the Public Access Counselor in the Attorney General's office.

Training requirements after July 1, 2010

Successfully completes the annual training program developed by the Public Access Counselor in the Attorney General's office. Each newly appointed Freedom of Information Officer must successfully complete the training program within 30 days after assuming the position.

Posting and availability requirements

Prominently displays at the Village Hall, and posts on the Village website, if any, the following: (1) a brief description of the Village and (2) the methods for requesting information and Village public records, directory information listing the Freedom of Information officer and where requests for public records should be directed, and any fees. 5 ILCS 140/4. This information must be copied and mailed if requested. Id.

Maintains and makes available for inspection and copying a reasonably current list of all types or categories of records under the Village's control. 5 ILCS 140/5. The following list contains both exempt and non-exempt records:

Board governance

Includes: Board meeting calendar and notices, Board meeting agendas and minutes, Board policy

Fiscal and business management

Includes: levy resolution and certificate of tax levy, audit, line-item budget, grant documents, account statements, accounts payable list, contracts, legal notices, bidding specifications, requests for proposals

Personnel

Includes: employee contact information, salary schedules, staff handbook, collective bargaining agreements, personnel file material

Copying fees

Recommends a copying fee schedule to the Board from time-to-time as appropriate that complies with 5 ILCS 140/6, including the following:

1. The copying fee, except when it is otherwise fixed by statute, must be reasonably calculated to reimburse the Village's actual cost for reproducing and certifying public records and for the use, by any person, of its equipment to copy records. The costs of any search for and review of the records or other personnel costs associated with reproducing the records are not included in the fee calculation.
2. Statutory fees applicable to copies of public records when furnished in a paper format are not applicable to those records when furnished in an electronic format.
3. No fee is charged for the first 50 pages of black and white, letter or legal sized copies furnished to a requester.
4. The fee for black and white, letter or legal sized copies shall not exceed 15 cents per page.
5. If the Village provides copies in color or in a size other than letter or legal, the fee may not be more than its actual cost for reproducing the records.

Manages and collects the copying fees described above.

Response

Complies with or denies a request for inspection or copying within 5 business days of receiving a records request, unless the time for response is extended. 5 ILCS 140/3. Makes decisions whether to comply or deny the request according to Board policy 2:250, *Access to Village Public Records*.

Redacts any and all exempt portion(s) of requested records containing both exempt and non-exempt material and releases the remaining material. 5 ILCS 140/7. Reviewing past responses to FOIA requests will promote uniform treatment of requests for similar records.

Complies with the Personnel Record Review Act concerning a request for a disciplinary report, letter of reprimand, or other disciplinary action. Does not provide any of these documents that is more than 4 years old. Provides the employee with written notice on or before the day any such document is released, unless notice is not required under the Personnel Record Review Act. 5 ILCS 140/7.5(q); 820 ILCS 40/7 and 40/8.

Extension of time

Identifies the need to extend the time for a response for any of the reasons stated in 5 ILCS 140/3(e)(i-vii), quoted below:

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

Performs one of the following actions within 5 business days after receipt of the request:

1. Notifies the person making the request that the Village is extending its time for response for no longer than 5 business days from the original due date, and identifies the reason for the delay and the date on which a response will be made. 5 ILCS 140/3(e) and (f).
2. Confers with the person making the request in an attempt to reach an agreement on an extended compliance date. The agreement must be in writing. 5 ILCS 140/3(e).

Unduly burdensome requests

Confers with the person making an unduly burdensome request in an attempt to reduce the request to manageable proportions. A request may be unduly burdensome due, for example, to the request's breadth. Explains to the requester in writing when a request continues to be unduly burdensome specifying the reason why the request is unduly burdensome.

Requests for commercial purposes

Handles requests for commercial purposes according to 5 ILCS 140/3.1. *Commercial purpose* is defined in 5 ILCS 140/2(c-10) as:

[T]he use of any part of a public record or records, or information derived from public records, in any form for sale, resale, or solicitation or advertisement for sales or services. For purposes of this definition, requests made by news media and non-profit, scientific, or academic organizations shall not be considered to be made for a *commercial purpose* when the principal purpose of the request is (i) to access and disseminate information concerning news and current or passing events, (ii) for articles of opinion or features of interest to the public, or (iii) for the purpose of academic, scientific, or public research or education.

Responds to a request for records to be used for a commercial purpose within 21 working days after receipt. The response must be one of the following: (a) provide an estimate of the time required by the Village to provide the records and an estimate of the fees, which the requester may be required to pay in full before copying the requested documents, (b) deny the request pursuant to one or more of the exemptions, (c) notify the requester that the request is unduly burdensome and extend an opportunity to attempt to reduce the request to manageable proportions, or (d) provide the records requested.

Complies with a request, unless the records are exempt from disclosure, within a reasonable period considering the size and complexity of the request, and giving priority to records requested for non-commercial purposes.

Denying a request

Complies with 5 ILCS 140/9 by:

1. Providing the requester with a written response containing: (a) the reasons for the denial, including a detailed factual basis for the application of any exemption claimed, (b) the names and titles or positions of each person responsible for the denial, and (c) information about his or her right to review by the Public Access Counselor (include the address and phone number for the Public Access Counselor), and to judicial review under 5 ILCS 140/11.
2. Specifying the exemption claimed to authorize the denial and the specific reasons for the denial, including a detailed factual basis and a citation to supporting legal authority when the denial is based on the grounds that the records are exempt under 5 ILCS 140/7.
3. Provides written notice to the requester and the Public Access Counselor, within the time periods provided for responding to a request, of the Village's intent to deny the request in whole or in part under Section 7(1)(c) (personal information) or Section 7(1)(f) (preliminary drafts, notes, recommendations, memoranda. and other records in which opinions are expressed, or policies or actions are formulated). Includes in this notice: (a) a copy of the request, (b) the Village's proposed response, and (c) a detailed summary of the Village's basis for asserting the exemption. 5 ILCS 140/9(b).

Retains copies of all notices of denial in a single central office file that is open to the public and indexed according to the type of exemption asserted and, to the extent feasible, according to the types of records requested. 5 ILCS 140/9.1.

Consults with the Board Attorney

Consults with the Board Attorney:

1. As necessary for legal advice concerning compliance with FOIA and responses to specific requests. For legal advice when communicating with or upon receiving communications from the office of the Illinois Attorney General or Public Access Counselor.

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

Text from P.A. 96-542 containing some of the more utilized FOIA exemptions

Section 7. Exemptions (5 ILCS 140/7)

- (1) When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying. Subject to this requirement, the following shall be exempt from inspection and copying:
 - (a) Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.
 - (b) Private information, unless disclosure is required by another provision of this Act, a State or federal law or a court order.
 - (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. "Unwarranted invasion of personal privacy" means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.
 - (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.

- (f) 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 paragraph (f) extends to all those records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents.
- (g) 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.
 - (i) All trade secrets and commercial or financial information obtained by a public body, including a public pension fund, from a private equity fund or a privately held company within the investment portfolio of a private equity fund as a result of either investing or evaluating a potential investment of public funds in a private equity fund. The exemption contained in this item does not apply to the aggregate financial performance information of a private equity fund, nor to the identity of the fund's managers or general partners. The exemption contained in this item does not apply to the identity of a privately held company within the investment portfolio of a private equity fund, unless the disclosure of the identity of a privately held company may cause competitive harm.

Nothing contained in this paragraph (g) shall be construed to prevent a person or business from consenting to disclosure.

- (h) 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.
- (i) 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 paragraph (i) does not extend to requests made by news media as defined in Section 2 of this Act 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.
- (j) The following information pertaining to educational matters:
 - (i) test questions, scoring keys and other examination data used to administer an academic examination;
 - (ii) information received by a primary or secondary school, college, or university under its procedures for the evaluation of faculty members by their academic peers;
 - (iii) information concerning a school or university's adjudication of student disciplinary cases, but only to the extent that disclosure would unavoidably reveal the identity of the student; and
 - (iv) course materials or research materials used by faculty members.

- (k) Architects' plans, engineers' technical submissions, and other construction related technical documents for projects not constructed or developed in whole or in part with public funds and the same 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.
- (l) 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.
- (m) 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.
- (n) Records relating to a public body'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.
- (o) 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.
- (p) 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.
- (q) Test questions, scoring keys, and other examination data used to determine the qualifications of an applicant for a license or employment.
- (r) 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, 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.
- (s) Any and all proprietary information and records related to the operation of an intergovernmental risk management association or self insurance pool or jointly self administered health and accident cooperative or pool. Insurance or self insurance (including any intergovernmental risk management association or self insurance pool) claims, loss or risk management information, records, data, advice or communications.

- (v) Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.
- (x) Maps and other records regarding the location or security of generation, transmission, distribution, storage, gathering, treatment, or switching facilities owned by a utility, by a power generator, or by the Illinois Power Agency.
- (y) Information contained in or related to proposals, bids, or negotiations related to electric power procurement under Section 1.75 of the Illinois Power Agency Act and Section 16.111.5 of the Public Utilities Act that is determined to be confidential and proprietary by the Illinois Power Agency or by the Illinois Commerce Commission.

Section 7.5. Statutory Exemptions (5 ILCS 140/7.5)

To the extent provided for by the statutes referenced below, the following shall be exempt from inspection and copying:

- (b) Library circulation and order records identifying library users with specific materials under the Library Records Confidentiality Act.

- (h) Information the disclosure of which is exempted under the State Officials and Employees Ethics Act, 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.

- (q) Information prohibited from being disclosed by the Personnel Records Review Act.
- (r) Information prohibited from being disclosed by the Illinois School Student Records Act.