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CHAPTER XXII: DEPARTMENT OF TRANSPORTATION

PART 1226
ACCESS TO RECORDS OF THE DEPARTMENT OF TRANSPORTATION

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AUTHORITY: Implementing and authorized by Section 3(h) of the Freedom of Information Act [5 ILCS 140/3(h)], implementing Section 5-625 of the Civil Administrative Code of Illinois [20 ILCS 5/5-625] and Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15].

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SUBPART A: INTRODUCTION

Section 1226.10 Summary and Purpose

- a) This Part states the policy of the Department of Transportation (Agency) for making its 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 records in the Agency's possession:
 - A) Records that will be disclosed; and
 - B) Records that will be withheld from disclosure.
 - 2) Contains the procedures by which requesters may obtain records in the Agency's possession; and
 - 3) Contains the procedures for claiming and determining that records submitted to the Agency are exempt from disclosure.

Section 1226.20 Definitions

Terms not defined in this Section shall have the same meaning as in the Freedom of Information Act [5 ILCS 140]. The following definitions are applicable for purposes of this Part:

"Agency" means the Department of Transportation.

"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:

to access and disseminate information concerning news and current or passing events;

for articles of opinion or features of interest to the public; or

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)

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

"Freedom of Information Officer" or "FOI Officer" means an individual or individuals responsible for receiving and responding to requests for public records.

"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 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 to that office by the Attorney General under 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)

"Recurrent Requester" means a person that, in the 12 months immediately preceding the request, has submitted to the Agency, a minimum of 50 requests for records, a minimum of 15 requests for records within a 30-day period, or a minimum of 7 requests for records within a 7-day period. For purposes of this definition, requests made by news media and non-profit, scientific, or academic organizations shall not be considered in calculating the number of requests made in the time periods in this definition when the principal purpose of the requests is to access and disseminate information concerning news and current or passing events, for articles of opinion or features of interest to the public, or for the purpose of academic, scientific, or public research or education. For the purposes of this definition, "request" means a written document (or oral request, if the Agency chooses to honor oral requests) that is submitted to the Agency via personal delivery, mail, telefax, electronic mail, or other means available to the Agency and that identifies the particular public record the requester seeks. One request may identify multiple records to be inspected or copied. (Section 2(g) of FOIA)

"Requester" is any person who has submitted to the Agency a written request, electronically or on paper, for records.

"Secretary" means the Secretary of the Agency.

"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)

SUBPART B: CLASSIFICATION OF RECORDS

Section 1226.100 Records that Will Be Disclosed

Upon a request meeting the requirements of this Part, the Agency shall disclose to the requester all records requested except that it shall not disclose certain records as provided in Section 1226.110 or 1226.120. 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 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 [820 ILCS 130] are records subject to inspection and copying in accordance with the provisions of FOIA; except that contractors' and employees' addresses, telephone numbers, and Social Security numbers will 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 records subject to inspection and copying by the public pursuant to FOIA:*
 - 1) *Court records that are public;*
 - 2) *Records that are otherwise available under State or local law; and*
 - 3) *Records in which the requesting party is the individual identified, except as provided under Section 1226.110(a)(5)(F) of this Part. (Section 2.15(b) of FOIA)*
- d) *Settlement agreements. All settlement agreements entered into by or on behalf of the Agency are records subject to inspection and copying by the public, provided that information exempt from disclosure under Section 1226.110 or 1226.120 of this Part may be redacted. (Section 2.20 of FOIA)*

Section 1226.110 Records that Will Be Withheld from Disclosure

When a request is made to inspect or copy a 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) of FOIA)

- a) *Subject to this requirement and Section 7 of FOIA, the following shall be exempt from inspection and copying:*
 - 1) *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)*
 - 2) *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)*
 - 3) *Files, documents, and other data or databases maintained by one or more law enforcement agencies and specifically designed to provide information to one or more law enforcement agencies regarding the physical or mental status of one or more individual subjects; (Section 7(1)(b-5) of FOIA)*
 - 4) *Personal information contained within 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; (Section 7(1)(c) of FOIA)*
 - 5) *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:*
 - A) *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;*

- B) *Interfere with active administrative enforcement proceedings conducted by the public body that is the recipient of the request;*
 - C) *Create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing;*
 - D) *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 Agency will provide traffic accident reports, the identities of witnesses to traffic accidents, and rescue reports, except when disclosure would interfere with an active criminal investigation;*
 - E) *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;*
 - F) *Endanger the life or physical safety of law enforcement personnel or any other person; or*
 - G) *Obstruct an ongoing criminal investigation by the Agency;*
(Section 7(1)(d) of FOIA)
- 6) *Records that relate to or affect the security of correctional institutions and detention facilities;* (Section 7(1)(e) of FOIA)
- 7) *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 (a)(7) 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)
- 8) *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. 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 subsection (a)(8) 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 subsection (a)(8) 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 in this subsection (a)(8) shall be construed to prevent a person or business from consenting to disclosure; (Section 7(1)(g) of FOIA)

- 9) *Proposals and bids for any contract, grant, or agreement, including information that if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contract or 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)*
- 10) *Valuable formulae, computer geographic systems, designs, drawings and research data obtained or produced by the Agency when disclosure could reasonably be expected to produce private gain or public loss. The exemption for "computer geographic systems" provided in this subsection (a)(10) does not extend to requests made by news media as defined in Section 1226.20 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)*
- 11) *The following information pertaining to educational matters:*
 - A) *Test questions, scoring keys, and other examination data used to administer an academic exam;*

- B) *Information received by a primary or secondary school, college, or university under its procedure for the evaluation of faculty members by their academic peers;*
 - C) *Information concerning a school's or university's adjudication of student disciplinary cases, but only to the extent that disclosure would unavoidably reveal the identity of the student; and*
 - D) *Course materials or research materials used by faculty members; (Section 7(1)(j) of FOIA)*
- 12) *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)*
- 13) *Minutes of meetings of public bodies closed to the public as provided in the Open Meetings Act [5 ILCS 120] 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)*
- 14) *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 the Agency; (Section 7(1)(m) of FOIA)*
- 15) *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)*
- 16) *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)*
- 17) *Records relating to collective negotiating matters between the Agency and its employees or representatives, except that any final contract or agreement shall be subject to inspection and copying; (Section 7(1)(p) of FOIA)*
- 18) *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)*
- 19) *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 only until a sale is consummated; (Section 7(1)(r) of FOIA)*
- 20) *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; (Section 7(1)(s) of FOIA)*
- 21) *Information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a public body responsible for the regulation or supervision of financial institutions or insurance companies, unless disclosure is otherwise required by State law; (Section 7(1)(t) of FOIA)*
- 22) *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)*

- 23) *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 subsection (a)(23) 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; (Section 7(1)(v) of FOIA)*
 - 24) *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; (Section 7(1)(x) of FOIA)*
 - 25) *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 [20 ILCS 3855] and Section 16-111.5 of the Public Utilities Act [220 ILCS 5] that is determined to be confidential and proprietary by the Illinois Power Agency or by the Illinois Commerce Commission; (Section 7(1)(y) of FOIA)*
 - 26) *Information about students exempted from disclosure under Section 10-20.38 or 34-18.29 of the School Code, and information about undergraduate students enrolled at an institution of higher education exempted from disclosure under Section 25 of the Illinois Credit Card Marketing Act of 2009 [110 ILCS 26]; (Section 7(1)(z) of FOIA)*
 - 27) *Information the disclosure of which is exempted under the Viatical Settlements Act of 2009 [215 ILCS 158]; (Section 7(1)(aa) of FOIA)*
 - 28) *Information regarding interments, entombments, or inurnments of human remains that are submitted to the Cemetery Oversight Database under the Cemetery Care Act [760 ILCS 100] or the Cemetery Oversight Act [225 ILCS 411], whichever is applicable. (Section 7(1)(bb) of FOIA)*
- b) *A 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 record of the Agency for purposes of Subpart C. (Section 7(2) of FOIA)

Section 1226.120 Statutory Exemptions

To the extent provided for by the following statutes, 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) *Library circulation and order records identifying library users with specific materials under the Library Records Confidentiality Act [75 ILCS 70].*
- c) *Applications, related documents, and medical records received by the Experimental Organ Transplantation Procedures Board and any and all documents or other records prepared by the Experimental Organ Transplantation Procedures Board or its staff relating to applications it has received.*
- d) *Information and records held by the Department of Public Health and its authorized representatives relating to known or suspected cases of sexually transmissible disease or any information the disclosure of which is restricted under the Illinois Sexually Transmissible Disease Control Act [410 ILCS 325].*
- e) *Information the disclosure of which is exempted under Section 30 of the Radon Industry Licensing Act [420 ILCS 44].*
- f) *Firm performance evaluations under Section 55 of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535].*
- g) *Information the disclosure of which is restricted and exempted under Section 50 of the Illinois Prepaid Tuition Act [110 ILCS 979].*
- h) *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.*
- i) *Information contained in a local emergency energy plan submitted to a municipality in accordance with a local emergency energy plan ordinance that is adopted under Section 11-21.5-5 of the Illinois Municipal Code [65 ILCS 5].*

- j) *Information and data concerning the distribution of surcharge moneys collected and remitted by wireless carriers under the Wireless Emergency Telephone Safety Act [20 ILCS 2605].*
- k) *Law enforcement officer identification information or driver identification information compiled by a law enforcement agency or the Department of Transportation under Section 11-212 of the Illinois Vehicle Code [625 ILCS 5].*
- l) *Records and information provided to a residential health care facility resident sexual assault and death review team or the Executive Council under the Abuse Prevention Review Team Act [210 ILCS 28].*
- m) *Information provided to the predatory lending database created pursuant to Article 3 of the Residential Real Property Disclosure Act [765 ILCS 77], except to the extent authorized under that Article.*
- n) *Defense budgets and petitions for certification of compensation and expenses for court appointed trial counsel as provided under Sections 10 and 15 of the Capital Crimes Litigation Act [725 ILCS 124]. This subsection (n) shall apply until the conclusion of the trial of the case, even if the prosecution chooses not to pursue the death penalty prior to trial or sentencing.*
- o) *Information that is prohibited from being disclosed under Section 4 of the Illinois Health and Hazardous Substances Registry Act [410 ILCS 525].*
- p) *Security portions of system safety program plans, investigation reports, surveys, schedules, lists, data, or information compiled, collected or prepared by or for the Regional Transportation Authority under Section 2.11 of the Regional Transportation Authority Act [70 ILCS 3615] or the St. Clair County Transit District under the Bi-State Transit Safety Act [45 ILCS 111].*
- q) *Information prohibited from being disclosed by the Personnel Records Review Act [820 ILCS 40].*
- r) *Information prohibited from being disclosed by the Illinois School Student Records Act [105 ILCS 10].*
- s) *Information the disclosure of which is restricted under Section 5-108 of the Public Utilities Act [220 ILCS 5]. (Section 7.5 of FOIA)*

SUBPART C: PROCEDURES FOR REQUESTING
RECORDS FROM THE AGENCY

Section 1226.200 Submittal of Requests for Records

- a) Contact information for the FOI Officer can be found online at www.dot.il.gov.
- b) FOIA requests may be submitted via mail, e-mail, fax or hand delivery. Requests should be mailed or hand delivered to:

Illinois Department of Transportation
2300 South Dirksen Parkway, Room 300
Springfield IL 62764
Attn.: FOIA Officer

- c) E-mailed requests should be sent to dot.foiaofficer@illinois.gov, contain the request in the body of the e-mail, and indicate in the subject line of the e-mail that it contains a FOIA request. Faxed FOIA requests should be faxed to 217/524-0198, Attn.: FOIA Officer.

Section 1226.210 Information To Be Provided in Requests for Records

A request for records should include:

- a) The complete name, mailing address and telephone number of the requester;
- b) As specific a description as possible of the records sought. Requests that the Agency considers unduly burdensome or categorical may be denied. (See Section 3(g) of FOIA and Section 1226.310 of this Part.);
- c) A statement as to the requested medium and format for the Agency to use in providing the 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 records sought: for example, inspection at Agency headquarters or providing paper or electronic copies;
- e) A statement as to whether the requester needs certified copies of all or any portion of the records, including reference to the specific documents that require certification; and
- f) A statement as to whether the request is for a commercial purpose.

Section 1226.220 Requests for Records for Commercial Purposes

- a) *It is a violation of FOIA for a person to knowingly obtain a 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(c) of FOIA)*
- b) *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 1226.110 or 1226.120;*
 - 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. (Section 3.1(a) of FOIA)*
- c) *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. (Section 3.1(b) of FOIA)*

SUBPART D: AGENCY RESPONSE TO REQUESTS FOR RECORDS

Section 1226.300 Timeline for Agency Response

- a) Except as stated in subsection (b) or (c), the Agency will respond to any written request for 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 records, it will not impose a fee for such copies. If the Agency fails to respond to a request received, it will not treat the request as unduly burdensome as provided under Section 1226.310. (Section 3(d) of FOIA) A written request from the Agency to provide additional information shall be considered a response to the FOIA request.
- b) *The time limits prescribed in subsection (a) 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 locations other 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) 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), the Agency will, 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 issues an extension and subsequently fails to respond to the request, it will not treat the request as unduly burdensome under Section 1226.310. (Section 3(f) of FOIA)*

Section 1226.310 Requests for Records that the Agency Considers Unduly Burdensome

- a) *The Agency will fulfill requests calling for all records falling within a category unless compliance with the request would unduly burden the Agency, 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 will 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 for records that are unchanged or identical to records previously provided or properly denied under this Part from the same person shall be deemed unduly burdensome. (Section 3(g) of FOIA)*

Section 1226.315 Recurrent Requesters

- a) *Notwithstanding any provision of this Part to the contrary, the Agency will respond to a request from a recurrent requester, as defined in Section 1226.20, within 21 business days after receipt. The response will:*
 - 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 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) *Within 5 business days after receiving a request from a recurrent requester, the Agency will notify the requestor that the Agency is treating the request as a recurrent request, and that the Agency will send an initial response within 21 business days after receipt in accordance with subsection (a). The Agency will also notify the requester of the proposed responses that can be asserted pursuant to subsection (a).*
- c) *Unless the records are exempt from disclosure, the Agency will comply with a request within a reasonable period considering the size and complexity of the request. (Section 3.2 of FOIA)*

Section 1226.320 Requests for Records that Require Electronic Retrieval

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

Section 1226.330 Denials of Requests for Records

- a) The Agency will deny requests for records when:
 - 1) Compliance with the request would unduly burden the Agency, as determined pursuant to Section 1226.310, and the requester has not reduced the request to manageable proportions; or
 - 2) The records are exempt from disclosure pursuant to Section 7 or 7.5 of FOIA or Section 1226.110 or 1226.120.
- b) The denial of a request for records must be in writing.
 - 1) The notification shall include a description of the 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 records is denied on the grounds that the records are exempt under Section 7 or 7.5 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).
- c) A requester may treat the Agency's failure to respond to a request for 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.
- d) If the Agency has given written notice pursuant to Section 1226.300(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.
- e) *Any person making a request for 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 1226.300.* (Section 9(c) of FOIA)

Section 1226.340 Requests for Review of Denials – Public Access Counselor

- a) *A person whose request to inspect or copy a 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. (Section 9.5(a) of FOIA)*
- b) *Within 7 business days after the Agency receives a request for review from the Public Access Counselor, the Agency shall provide copies of records requested and shall otherwise fully cooperate with the Public Access Counselor. (Section 9.5(c) of FOIA)*
- c) *Within 7 business 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)*
- d) *The requester may, but is not required to, respond in writing to the answer within 7 business days and shall provide a copy of the response to the Agency. (Section 9.5(d) of FOIA)*
- e) *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)*
- f) *A binding opinion from the Attorney General shall be binding upon both the requester and the Agency, subject to administrative review under Section 1226.360. (Section 9.5(f) of FOIA)*
- g) *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)*
- h) *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 1226.360. If the opinion concludes that no violation of FOIA has*

occurred, the requester may initiate administrative review under Section 1226.360. (Section 9.5(f) of FOIA)

- i) *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)*
- j) *If the requester files suit under Section 1226.350 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 so notify the Agency. (Section 9.5(g) of FOIA)*
- k) *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 Secretary 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)*

Section 1226.350 Circuit Court Review

A requester also has the 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.

Section 1226.360 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 County 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)

SUBPART E: PROCEDURES FOR PROVIDING RECORDS TO REQUESTERS

Section 1226.400 Inspection and Copying of Records

- a) The Agency may make available records for personal inspection at the Agency's headquarters office located at 2300 South Dirksen Parkway, Springfield, Illinois, or at another Agency facility agreed to by both the Agency and the requester. No original record shall be removed from State-controlled premises except under constant supervision of the agency responsible for maintaining the record. The Agency may provide records 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) *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 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 records at the Agency's headquarters or at another Agency facility agreed to by both the Agency and the requester 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 a.m. to 5:00 p.m. 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.
- 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.

Section 1226.410 Copying of Records; Fees

- a) In accordance with Section 1226.420, unless a fee is otherwise fixed by statute, the Agency will provide copies of records and certifications of records in accordance with the fee schedule set forth in Appendix A.
- b) *In calculating its actual cost for reproducing records or for the use of the equipment of the Agency to reproduce records, the Agency will 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)
- c) In order to expedite the copying of 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 1226.300, 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 Section 1226.400, or at another Agency facility agreed to by both the Agency and the requester. No original record shall be removed from State-controlled premises except under constant supervision of the agency responsible for maintaining the record.
- d) Copies of 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 will 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.* (Section 6(a) of FOIA) 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 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 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 records before providing the records to the contractor; and
- 6) The requester must provide to the Agency the contractor's written agreement to hold the records secure and to copy the records only for the purpose stated by the requester.

Section 1226.420 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 will consider the following:*
 - 1) *Whether the principal purpose of the request is to disseminate information regarding the health, safety, welfare or 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 (a), "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, welfare or legal rights of the general public. (Section 6(c) of FOIA)*
- b) The Agency will provide copies of records 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 will not be applicable to those records when furnished to a requester in an electronic format. (Section 6(a) of FOIA)*

Section 1226.APPENDIX A Fee Schedule for Duplication and Certification of 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 of tape	Actual cost of the reproduction
Audio tape copy of tape	Actual cost of the reproduction
CD ROM disk	Actual cost of the reproduction
Photograph from negative	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.