



Northern Illinois University

Illinois Freedom of Information Act

Board of Trustees of Northern Illinois University

Compliance, Audit, Risk Management and Legal Affairs Committee

November 12, 2015

HISTORY



- Originally passed into law in Illinois in 1984
 - Illinois was the last state to adopt some form of Sunshine Law
- Massive Overhaul of FOIA, effective January 1, 2010. Key changes include:
 - Reduced time for public bodies to respond
 - Created Public Access Bureau for appeals
 - Capped fees that public bodies can charge requesters for responding
- FOIA is an unfunded mandate on public bodies.

NIU FOIA Office



- FOIA requires the designation of employee(s) or official(s) in order to assist in carrying out the Act.
- From 2002 until 2010, the FOIA Officer at NIU was the Vice President and General Counsel. This is reflected in Board of Trustees Regulations that were passed in February, 2010.
- On May 13, 2010, these Regulations were amended by the Board to make the Office of University Relations (now, Marketing and Communications) the FOIA Officer.
- The NIU FOIA Office is primarily staffed by one individual, with counsel support from the General Counsel's Office.

Presumptions under FOIA



- “All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a records is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.”
- “All records relating to the obligation, receipt, and use of public funds of the State ... are public records subject to inspection and copying by the public.”

Public Records



- Public Records: “means all records ... **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 or any public body.”
 - Does not matter what form the record is in: hard copy, electronic, audio, video, etc.
 - Does not matter whether on university equipment or not: records **pertaining to the transaction of public business**, even if on a personal phone, computer, or tablet can be a public record subject to FOIA.
 - Does not mean, though, that all records on a personal device become subject to FOIA – only those **pertaining to the transaction of public business**.

Responses to FOIA Requests



- Required to respond to a request for public records within 5 business days after receipt of the request, except for:
 - Commercial Requests, but still need to respond with 21 business days.
 - Recurrent Requesters, but still need to respond with 21 business days.
 - Voluminous Requests, but still need to respond within 10 business days.
 - Unduly Burdensome Requests, but still need to provide requester with an opportunity to confer on narrowing the request to manageable proportions.
- The FOIA Law does not allow a public body to not respond. Every FOIA request needs to be responded to.

FOIA Requests at NIU



The following data has been provided by the NIU FOIA Office:

- Fiscal Year (FY) 2013 - 212 requests
- Fiscal Year (FY) 2014 - 198 requests
- Fiscal Year (FY) 2015 - 398 requests
- Thus far in Fiscal Year (FY) 2016, from only July 1, 2015 to November 1, 2016 – approx. 145 requests
 - FY16 closes on June 30, 2016
 - On pace for 450-550 requests in FY16
 - Since January 1, 2015, 99 of the requests have come from 6 people.

Informal Survey of Other IL Publics



- Western Illinois University
 - FY15 – 98 FOIA requests
 - The FOIA Office has 3 full-time employees; also handles other duties and responsibilities
- Illinois State University
 - FY15 – 133 FOIA requests
 - The FOIA Office has 2 full-time employees and a graduate assistant; other duties and responsibilities
- Southern Illinois University System
 - FY15 – 329 FOIA requests
 - FY14 – 310 FOIA requests
 - One Chief FOIA Officer, whose sole responsibility is FOIA; also has one graduate student worker

Exempt Information



- Illinois FOIA allows public entities to redact information that is expressly exempt under FOIA or prohibited from disclosure by any other law.
- Select Exempt Information/Records Examples:
 - “Private Information” like personal telephone, e-mail or physical addresses, social security numbers, driver’s license numbers, etc.;
 - Identities of persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies, in the course of administrative enforcement proceedings;

Exempt Information (continued)



- Invasion of personal privacy that (1) is highly personal or objectionable to a reasonable person and (2) outweighs legitimate public interest;
- Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed or actions formulated (i.e., deliberative process);
- Trade secrets and commercial or financial information provided by a person or business (1) under a claim that it is proprietary, privileged or confidential and (2) which causes competitive harm to that person or business;

Exempt Information (continued)



- Proposals and bids for any contract, grant or agreement, until an award of final selection is made;
- Minutes of closed sessions of public bodies until that public body makes the minutes available to the public;
- Communications between and public body and an attorney or auditor that (1) are not subject to discovery in litigation; (2) are made at the direction of an attorney in anticipation of a criminal, civil or administrative proceeding; or (3) are made for internal audits.

Appeals a/k/a Requests for Review



- Since 2010, FOIA requesters have the ability to appeal to the Public Access Bureau.
 - The University usually receives a few appeals each year.
- For FOIA requesters, the appeal process: (1) is convenient, with minimal efforts; (2) has little to no cost; and (3) can be effective.
- Appeals can be made by requesters for any reason.
- Onus is on the public body to provide a legally and factually detailed explanation of the reasons why it redacted or withheld information.
 - Responses to these appeals are normally handled by the Office of General Counsel
- Since April 2015, there have been approximately 17 different FOIA appeals:
 - From only 5 different FOIA Requesters.
 - 8 appeals from one person alone; 4 appeals from one other.

Challenges



- The frequency of FOIA requests is increasing at rapid rate and the University has no ability to slow the pace of FOIA requests on its own;
 - Individualized assessments of “unduly burdensome” under the circumstances.
- The FOIA Office is rarely, if ever, the custodian of the records or information that is actually sought.
 - FOIA compliance requires the promptness and assistance of the entire University community.
- Appeals of the University’s responses to requests also appear to be on the rise.
- FOIA law is still evolving with legislative changes to the Act, and interpretations of the law from the Public Access Bureau and the Courts.

The Illinois Freedom of Information Act



THANK YOU

Questions?