

CHAPTER 11
FREEDOM OF INFORMATION ACT (“FOIA”) RULES AND REGULATIONS

Section

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§1-11-1: PUBLIC RECORDS:

- (A) The Village recognizes that pursuant to 5 Illinois Compiled Statutes 140/1, the Illinois Freedom of Information Act (“FOIA”) provides that it is a primary obligation of public bodies to provide records.
- (B) The Village also recognizes that pursuant to 5 Illinois Compiled Statutes 140/3.3 of the FOIA, public bodies are not required to interpret or advise requesters as to the meaning or significance of public records.
- (C) The Village also recognizes that pursuant to 5 Illinois Compiled Statutes 140/1 of the FOIA, public bodies are not obligated to create a public record which was not already created or prepared by the public body.
- (D) Pursuant to the authority contained in the FOIA, the Village hereby promulgates as the following rules and regulations, but to the extent that said rules and regulations might otherwise be interpreted as inconsistent with the FOIA, the FOIA shall govern in all respects.

(Ord. 2011-8, 12-19-2011)

§1-11-2: FREEDOM OF INFORMATION ACT OFFICER:

- (A) Position Created:

There is hereby created the position of “Freedom of Information Act Officer” (“FOIA officer”). There may be one or more FOIA officer(s) designated. The corporate authorities of the Village will designate one or more officials or employees of the Village to act as a Freedom of Information Act Officer, and the Village shall disclose the identity of its FOIA officer(s) on either its website or by means of a list of such officers available for public access. The list of FOIA officer(s) shall also be provided to the state’s Public Access Counselor (“PAC”).

(B) Duties And Responsibilities: The FOIA officer(s), or his or her designee, shall have the following duties and responsibilities:

1. Training: Initially, within six (6) months after January 1, 2010, all FOIA officers shall successfully complete, via electronic means, a training course administered by the Illinois Public Access Counselor (the "PAC"). All FOIA officer(s) shall thereafter complete additional training on an annual basis. New FOIA officers must complete the curriculum within thirty (30) days after their appointment to the position.
2. Responsibility: The FOIA officer shall be responsible for:
 - (a) Receiving FOIA requests;
 - (b) Ensuring timely responses to FOIA requests;
 - (c) Issuing FOIA responses;
 - (d) Developing a list of documents or categories of records that the Village will immediately disclose upon request;
 - (e) Meeting with requesters to inspect records in his or her presence.
3. Acquisition of FOIA Request; Duties: Upon receiving an FOIA request, the FOIA officer shall do the following:
 - (a) Note the date the Village received the written request;
 - (b) Compute the day on which the period for response will expire and make a notation of that date on the written request;
 - (c) Maintain 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) Create a file for the retention of each original request, a copy of the response, a record of written communications with the requester, and a copy of other related communications.
4. Notice Issuance: The FOIA officer or his or her designee is authorized to issue notices of extension of time for production of records as well as notices of denial of production of records.

(C) Posting Of FOIA Officer And Related Information: In compliance with the provisions of the Illinois FOIA, the Village shall prominently display at its administrative office at the Village Hall, make available for inspection and copying, and send through the mail, if requested, any or all of the following:

1. A brief description of itself, including a short summary of its purpose, a block diagram giving its functional subdivisions, the total amount of its operating budget, the number and location of all of its separate offices, the approximate number of full and part time employees, and the identification and membership of any board, commission, committee, or council which operates in an advisory capacity relative to the operation of the public body, or which exercises control over its policies or procedures, or to which the public body is required to report and be answerable for its operations; and
2. A brief description of the methods whereby the public may request information and public records, a directory designating the Freedom of Information Act officer or officers, the address where requests for public records should be directed, and any fees allowable under the FOIA.

3. The Village shall also post this information on any website the Village maintains.
(Ord. 2011-8, 12-19-2011)

§1-11-3: PROCEDURE FOR FILING A FOIA REQUEST WITH THE VILLAGE:

(A) Request Procedure:

Pursuant to the Freedom of Information Act (“FOIA”), requests for inspection of or copies of records shall be made in writing and directed to the Village’s FOIA officer, but no standard form for such request is required. Requests may be made by mail, electronic mail, facsimile request, or personal delivery of a written request. If a requester wishes, the FOIA officer will provide the requester with a “Freedom of Information Act Request Form” for his or her use. The FOIA officer, at his or her discretion, may also consider verbal FOIA requests.

(B) Questions; Appointment:

Questions regarding access to Village records shall be directed to the FOIA officer, or his or her designee. In consideration of the type, size, and complexity of the document(s) requested, it may be necessary for a requester to make an appointment with the FOIA officer to answer questions or review documents.

(C) Recurrent Requesters:

1. Pursuant to 5 Illinois Compiled Statutes 140/2(g) of the FOIA, a “recurrent requester” is defined as one who “in the twelve (12) months preceding the request, has submitted to the same public body: a) a minimum of fifty (50) requests for records, b) a minimum of fifteen (15) requests for records within a thirty (30) day period, or c) a minimum of seven (7) requests for records within a seven (7) day period”, excepting requests made by news media and nonprofit, scientific, or academic organizations “when the principal purpose of the request is: a) to access and disseminate information concerning news and current or passing events, b) for articles of opinion or features of interest to the public, or c) for the purpose of academic, scientific, or public research or education”.
2. Within five (5) business days after receipt of a request from a “recurrent requester”, the Village shall notify the requester in writing: a) that the Village is treating the request as a request under 5 Illinois Compiled Statutes 140/2(g) (“recurrent requester”) of the FOIA, b) the reason(s) the request is being treated in this way, and c) that the Village will send its initial response to the request within twenty one (21) days of receipt of the request.
3. Within twenty one (21) business days after receipt of such a request, the Village shall again respond to the requester, which response shall include an estimate of time required to fulfill the request; an estimate of the fees to be charged, and other estimated costs, and, if applicable, notification that the requester may be required to pay the fees and charges in full before the requested records are copied; and/or notification that the request is unduly burdensome and extend an opportunity to the requester to reduce the request to a manageable proportion; or provide the requested records.
4. If the requested records were not provided to the requester within the aforesaid twenty one (21) business day period, unless the records are exempt from disclosure, the requested records

shall be sent to the recurrent requester within a reasonable period thereafter, considering the size and complexity of the request.

(Ord. 2011-8, 12-19-2011)

§1-11-4: INSPECTION OF RECORDS; TIME AND PLACE FOR INSPECTION:

(A) Inspection:

The FOIA officer or his or her designee shall obtain the file or files requested and allow the requester to inspect them in his or her presence. Should the requester request copies of all or a portion of the information, the requester must indicate in writing, or on the FOIA request form what copies are desired, and the FOIA officer or his or her designee will make the requested copies and provide them to the requester within the time frame prescribed by the FOIA, provided, however, that such information is not determined to be exempt.

(B) Nonexempt Information:

For any request made to inspect and/or photocopy a public record containing information that is both exempt from disclosure and not exempt from disclosure, the Village shall make only the nonexempt information available for inspection and/or photocopying by redacting the exempt information from the document.

(C) Hours:

Public records may only be inspected at the Village hall during the hours when it is regularly open.

(D) Business Days:

Monday through Friday, both inclusive, except holidays, as defined or fixed by any statute of the state are hereby declared to be "business days".

(E) Search, Location And Reproduction Of Records:

Only Village personnel shall be permitted to search Village files to locate records requested, and only Village personnel shall be permitted to operate Village equipment to reproduce the requested copies.

(Ord. 2011-8, 12-19-2011)

§1-11-5: PROCEDURE FOR FULFILLING FOIA REQUESTS:

Upon receiving an FOIA request, the FOIA officer, or his or her designee, shall:

(A) Note the date the Village received the written request;

(B) Compute the day on which the period for response will expire and make a notation of that date on the written request (5 business days, or for requests for commercial purposes or for requests made by "recurrent requesters" as defined herein, 5 business days for an initial response, with a follow up

response within 21 days after receipt of the request, and a final response within a reasonable period thereafter, considering the size and complexity of the request);

- (C) Maintain 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;
- (D) Meet with requesters, if necessary, to inspect records in his or her presence;
- (E) Create a file for the retention of each original request, a copy of the response, a record of written communications with the requester, and a copy of other related communications;
- (F) Assemble and duplicate the requested records, except for records which are exempt, and redact any records which may be partially exempt, and/or coordinate retrieval of the requested records with the facility storing the records for the Village;
- (G) Keep, and/or request from the designated personnel, and maintain a record of those hours over eight (8) hours which were spent by personnel in retrieving a requested record; and
- (H) Notify the requester in writing of the status of production of the requested records, i.e., that such records are ready and available for the requester, that production of the records is denied in whole or in part and the reasons therefor, and/or the amount of any fees and/or costs associated with the request, where applicable, prior to copying and/or production of such requested records, and whether such fees and/or costs must be paid by the requester prior to the Village's copying of such records.

(Ord. 2011-8, 12-19-2011)

§1-11-6: TIME FRAME FOR PRODUCTION OF RECORDS; EXTENSION OF TIME TO PRODUCE RECORDS:

- (A) Pursuant to the FOIA, the Village is generally required to produce the requested records within five (5) business days of receipt of the request, excluding the day the request was received by the Village, except where the request is made for commercial purposes, and except where the request is made by a "recurrent requester" as provided in this Chapter.
- (B) "Commercial enterprise" as used in the Illinois Freedom of Information Act (FOIA) shall include both profit and not for profit ventures, organizations and entities. The Village may inquire as to whether the records requested are sought to advance a commercial purpose, and if a requester attempts to procure a public record for a commercial purpose without disclosing that the use is for a commercial purpose, that constitutes a violation of the FOIA. The Village's response to such commercial requests shall be as follows:
 1. Within twenty one (21) business days after receipt of such a commercial request, the Village shall respond in writing to the requester, which response shall include an estimate of time required to fulfill the request; an estimate of the fees to be charged, and other associated costs as provided in Section 1-11-7 of this Chapter, and, if applicable, notification that the requester may be required to pay the fees and charges in full before the requested records are copied; and/or notification that the request is unduly burdensome, extending an opportunity to the requester to reduce the request to a manageable proportion; or provide the requested records.

2. If the requested records were not provided to the commercial requester within the aforesaid twenty one (21) business day period, unless the records are exempt from disclosure, the requested records shall be sent to the commercial requester within a reasonable period thereafter, considering the size and complexity of the request.
- (C) Notwithstanding the foregoing, if a request is delivered on a day which is not a business day, or after the close of business, the request shall be deemed made on the first business day subsequent thereto.
- (D) If, upon review of the request, the FOIA officer, or his or her designee, finds that he or she is not able to compile all of the necessary information immediately, another time may be arranged within the prescribed time frame for the requester to return to receive a response to the request.
- (E) The FOIA officer, or his or her designee, may extend the time limit for responding to a request by an additional five (5) business days where:
1. The requested record is in a place other than the office in charge of the record.
 2. The request requires an extensive search.
 3. The records have not been found in time and additional efforts are necessary to retrieve them.
 4. The record requires examination to determine if it should be exempt from viewing.
 5. Compliance with the request would cause undue burden or interfere with the operations of the Village. (Repeated requests for the same information by the same person shall be deemed unduly burdensome under this provision.)
- (F) If it is necessary to extend the time limit for production of records, the requester will be notified in writing by the FOIA officer or his or her designee within five (5) business days of receipt of the request and such notice will give the reason for the extension. Failure to respond to the request within five (5) business days is considered a denial of the request.

(Ord. 2011-8, 12-19-2011)

§1-11-7: FEES; REQUESTS FOR WAIVER OF FEES:

- (A) Each requester is required to pay to the Village the appropriate fees for copies of Village records and will receive a receipt for same. In the case of commercial requests, a requester shall also be required to pay to the Village other charges as set forth below. No records will be distributed to the requester unless and until all charges associated with the request are paid to the Village in full. The Village will charge the following fees as set forth in the FOIA:
1. Black and White, Letter or Legal Size Copies: There is no charge for providing the initial fifty (50) pages, after which the cost will be fifteen cents (\$0.15) per page.
 2. Color or Irregular Sized Copies: The fee for color or irregular sized copies shall be the actual cost incurred by the Village for reproducing the records.

3. Certification of Document: The fee for certification of a document shall be one dollar (\$1.00).
4. Records In Electronic Format: If the Village maintains the respective document(s) in electronic format, such document(s) must be furnished in the electronic format if the requester so requests. The Village is not required to produce records kept in electronic format in an alternate manner. The fee charged for producing records in an electronic format shall be the actual cost incurred by the Village for purchasing the recording medium.
5. Requests For Commercial Purposes: With respect to requests for commercial purposes, in addition to the fees set forth in subsections (A)1 through (A)4 of this Section, such requesters shall also be required to pay the following:
 - (a) The requester shall be required to pay to the Village ten dollars (\$10.00) per hour for each hour after the first eight (8) hours spent by personnel in searching for or retrieving a requested record.
 - (b) The requester shall be required to pay to the Village the actual cost of retrieving and transporting public records from an off-site storage facility when the public records are maintained by a third party storage company under contract with the Village.
 - (c) With respect to those charges provided for in subsections (A)5(a) and (A)5(b) of this Section, the Village shall provide to the requester an accounting of all fees, costs, and personnel hours expended in connection with the request.

(B) All payments for production of records shall be made in the form of cash or certified or cashier's check made payable to the Village.

(C) Requests to waive any fee(s) for reproduction of document(s) must be made in writing to an FOIA officer of the Village and must state how the information requested "primarily benefits the general public". The FOIA officer shall be authorized to determine whether such request for a waiver shall be honored.

(D) Each copy, other than electronic media, may be certified if requested and paid for by the requester. Documents may be furnished without charge if the requester is unable to pay for them, and the purpose of such request is determined by the FOIA officer to be in the public interest.

(Ord. 2011-8, 12-19-2011)

§1-11-8: EXEMPT AND NONEXEMPT RECORDS:

(A) The FOIA officer, or his or her designee, may not give out information which is in a file marked by an asterisk (*) in the catalog of existing files. This information has been predetermined to be exempt from disclosure under the Illinois Freedom of Information Act (5 ILCS 140).

(B) Any record marked with a double asterisk (**) has been determined to be partially exempt. One or more authorized officers or employees of the Village shall review the file and will provide any nonexempt information to requester. Records having both exempt and nonexempt material shall be provided to the requester in a redacted format revealing only the nonexempt material.

- (C) In addition, while not so marked, information may be withheld as exempt from disclosure if it falls within one or more of the exempt categories as specified from time to time in the Illinois Freedom of Information Act.

(Ord. 2011-8, 12-19-2011; amd. 2014 Code)

§1-11-9: DENIAL OF RECORDS; REQUEST FOR REVIEW BY PUBLIC ACCESS COUNSELOR (“PAC”):

- (A) If information is requested for a commercial purpose, and the request is denied by the Village, the requester may not file a request for review with the Public Access Counselor (“PAC”).
- (B) If a request for information is treated by the Village as a request for a commercial purpose and the request is denied by the Village, the requester may file a request for review with the PAC for the limited purpose of reviewing whether the Village properly determined that the request was made for a commercial purpose.

(Ord. 2011-8, 12-19-2011)

§1-11-10: DENIAL OF RECORDS; EXEMPTION(S):

If requested information cannot be released due to its exempt nature, or if a request is unduly burdensome, the FOIA officer, or his or her designee, shall complete a “denial of request for records” form and mail same to the requester along with a blank “notice of appeal” form. The denial of request for records form shall include: a) the decision to deny the request; b) the reasons for the denial, including a detailed factual basis for the application of any exemption claimed; c) the names and titles or positions of each person responsible for the denial; d) the right to review by the Public Access Counselor, if applicable, and the address and phone number for the Public Access Counselor; and e) the right to judicial review. If an exemption is claimed, then the denial shall include the specific reason(s) for the denial, including a detailed factual basis and a citation to support legal authority.

A copy of each such denial letter and the completed request form shall also be provided to the Village President and the Village Attorney. Copies of all notices of denial shall be retained by the FOIA officer, or his or her designee, in a central file that is publicly accessible and indexed by type of exemption.

(Ord. 2011-8, 12-19-2011)

§1-11-11: APPEAL TO DENIAL OF REQUEST:

If a request for records is denied, and the requester has a right to seek judicial review of such denial pursuant to 5 Illinois Compiled Statutes 140/11, or has a right to seek judicial review of the Village’s determination that the request was made for commercial purposes, the requester may, within sixty (60) days from receipt of such denial, pursuant to 5 Illinois Compiled Statutes 140/9.5, file an appeal to the denial of production of records directed to the Illinois Public Access Counselor, whose address is:

Public Access Counselor Office of the Attorney General 100 West Randolph, 12 th Floor Chicago, IL 60601 Tel. (312) 814-5526	Public Access Counselor Office of the Attorney General 500 S. Second Street Springfield, IL 62706 Tel.: (877) 299-3642 Fax: (217) 782-1396 E-mail: publicaccess@atg.state.il.us
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The Illinois Public Access Counselor will respond to such appeal and issue a binding opinion within sixty (60) days after the request for review (appeal) unless a request for extension of thirty (30) business days is given by the PAC. The PAC's binding opinion must make findings of fact and conclusions of law and shall be issued to the requester and public body. The PAC's binding opinion is subject to administrative review by either party.

(Ord. 2011-8, 12-19-2011)

§1-11-12: BINDING OPINION:

A binding opinion issued by the Attorney General shall be considered final for the purpose of administrative review. Any action for administrative review of a binding opinion must be commenced in Cook or Sangamon County. (Ord. 2011-8, 12-19-2011)

§1-11-13: LIABILITY:

Notwithstanding any provision of this Chapter to the contrary, the rules and regulations set forth in this Chapter are not intended to and do not impose liability for noncompliance therewith on officers or employees of the Village, including, but not limited to, any duly designated FOIA officer(s) of the Village. (Ord. 2011-8, 12-19-2011)