

NEW BILL TIGHTENS FOIA DEADLINES WHEN A BINDING OPINION IS ISSUED



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On July 19, 2016, Governor Bruce Rauner signed House Bill 4715, which imposes two new requirements upon public bodies responding to Freedom of Information Act (FOIA or the Act), 5 ILCS 140/1 *et seq.* requests. The law will go into effect January 1, 2017.

As a brief background, requesters may sue for injunctive or declaratory relief if denied access to inspect or copy any public record by a public body. Currently, a court may impose a civil penalty of not less than \$2,500 and not more than \$5,000 for each occurrence if it determines that the public body willfully and intentionally failed to comply with the Act.

Under HB 4715, the court may also impose an additional penalty of up to \$1,000 for each day the violation continues if the public body fails to comply with the court order after 30 days. This additional penalty is not applicable if the order is on appeal or stayed, or if the court granted the public body additional time to respond.

HB 4715 also creates a new section addressing a public body's noncompliance with a binding opinion issued by the Attorney General's Public Access Counselor (PAC). The bill permits requesters to sue for injunctive or declaratory relief where the Attorney General issued a binding opinion pursuant to Section 9.5 of the Act and the public body has not sought administrative review or complied with the binding opinion within 35 days.

The bill also creates a presumption that the public body willfully and intentionally failed to comply with the Act, which may be rebutted by a showing of good faith efforts to comply with the binding opinion. This section will only apply to binding PAC opinions issued after the bill is signed into

law, so any noncompliance with a prior provision would not trigger this section's cause of action or presumption.

These changes put increased pressure on public bodies to respond to FOIA requests in a timely manner, and to diligently track the progress of any requests under review by the Attorney General. A failure to respond in a timely manner, if shown to be willful and intentional, can lead to the imposition of large fines.

Therefore, it is essential that public bodies continue to do the following:

- » Document all correspondence and exchanges with the requester;
- » Document any issues that may lead to a delay in responding to the request, and communicate those issues to the requester;
- » Support any denial with citations to case law, binding opinions, and affidavits; and
- » Monitor any request under review with the Attorney General and maintain open lines of communication with the PAC.

If you have any questions concerning this Alert or Tressler's Local Government Law Group, please contact:

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