New open government legislation

By Helen W. Gunnarsson

A bill awaiting the governor’s signature would make the promise of open records real for more people, supporters say.

At presstime, both houses of the Illinois General Assembly had passed SB 0189, which amends the Open Meetings Act, 5 ILCS 120/1 et seq, the Freedom of Information Act, 5 ILCS 140/1 et seq, and the Attorney General Act, 15 ILCS 205/1 et seq. Though its supporters hail the bill as transparency legislation that will make it easier for citizens to gain access to records that are supposed to be public, critics wonder whether the new system will have its own shortcomings.

Key provisions

SB 0189 creates a public access counselor in the office of the attorney general with authority to issue binding opinions and resolve disputes involving potential violations of the Open Meetings Act or the Freedom of Information Act.

New section 7 of the Attorney General Act requires the public access counselor to be an attorney licensed to practice in Illinois. That individual is to establish and administer a training program for public officials, respond to informal inquiries from the public and public bodies, issue advisory opinions with respect to the Open Meetings Act and the Freedom of Information Act, and resolve disputes involving potential violations of those statutes, among other duties.
Subsection 7(f) gives the attorney general the authority to file an action in the circuit court of either Cook or Sangamon County to compel compliance with the public access counselor’s binding opinions or to prevent violations of the Open Meetings Act or the Freedom of Information Act.

Under the bill’s revision of the Open Meetings Act, any person who believes that a violation of the statute has occurred may file a request for review with the public access counselor within 60 days of the alleged violation. If the public access counselor does not determine that the request is unfounded, that officer is to investigate and resolve the request, either by issuance of a binding opinion within sixty days or through mediation or some other means. Binding opinions are subject to administrative review in the circuit court of Cook or Sangamon County.

The legislation extensively revises the Freedom of Information Act. New section 3.5 requires every public body to designate one or more employees as Freedom of Information officers. The section also imposes certain requirements, including training, on those employees.

New section 1.2 of FOIA provides that all records in the possession of a public body are presumptively open to public inspection and copying, and that any public body asserting an exemption from disclosure must prove the exemption by clear and convincing evidence. New section 2(c-5) provides a definition of “private information,” specifying that it means unique identifiers,” such as a person’s social security number, driver’s license number, or medical records, among other things.

In subsequent paragraphs, the legislation specifies several categories of records that are per se public: records relating to public funds; payroll records, save that the private information of contractors’ employees must be redacted prior to disclosure; settlement agreements; and, with certain exceptions, arrest reports and criminal history records.

Under new section 3(c) of the amended statute, public bodies may not require that requests for inspection or copies be submitted on a standard form or require the requester to specify the purpose for a request, except to determine whether the records are requested for a commercial purpose or qualify for a fee waiver. The legislation shortens the time for a public body to respond to FOIA requests from seven to five business days, though the public body and the requester may agree to extend this and other deadlines under the statute; if a request for records has a commercial purpose, the public body’s deadline to respond is 21 working days.

Public access counselor “a wonderful thing”

Springfield attorney Donald Craven, acting executive director of the Illinois Press Association who assisted in the bill’s drafting, finds several aspects of the bill particularly noteworthy.

He believes that “the public access counselor is a wonderful thing from the perspective of ordinary citizens looking for records. The attorney general now has the statutory authority to help those folks who before now have thrown up their hands in frustration at refusals on the parts of public bodies to provide records.” Craven also praises the legislation’s tightening up FOIA exemptions and making the FOIA process “shorter and better.”

But Addison attorney John Brechin expresses concern about the legislation.

Among other things, Brechin is concerned about conflicts on the part of the public access counselor, an employee of the attorney general — who, after all, is charged with representing many of the public bodies to whom the FOIA and Open Meetings Act apply. For the sake of transparency and avoiding conflicts, Brechin would prefer to see the public access counselor as a standalone office.

If signed by the governor, the legislation will take effect January 1, 2010.

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