

## ACCESS TO PUBLIC RECORDS

### **POLICY NO. 4.7**

The LICA Board of Control recognizes that all persons are entitled to request information regarding the official acts, decisions, procedures and policies of the Cooperative. Accordingly, the Board shall designate at least two employees as its Freedom of Information Officers, shall maintain and make available public records, and shall grant and deny requests for such information as required by the Illinois *Freedom of Information Act*. The Board Chairperson or Executive Director shall, at each regular Board meeting, report any requests made of the Cooperative under provisions of the Illinois *Freedom of Information Act* and shall report the status of such requests.

The Executive Director is hereby authorized to establish procedures implementing this policy and prepare the records directory and Cooperative description required under the Act. Further, the Executive Director shall ensure that the Cooperative description and the procedures for requesting public records, including the names of the designated Freedom of Information Officers, the address where requests for public records should be directed, and any fees, are prominently displayed at the LICA Cooperative office and posted on the official LICA Cooperative website.

**Legal References:**    *Freedom of Information Act, 5 ILCS 140 et seq.*  
                              *School Code, 105 ILCS 5/10-16.*

**Board Adoption Date:**            April 28, 2010      
**Effective Date:**                    April 28, 2010

## **ADMINISTRATIVE PROCEDURES**

### **IMPLEMENTING BOARD POLICY NO. 4.7, "ACCESS TO PUBLIC RECORDS"**

#### **I. General**

##### **A. FOIA Obligation**

The Cooperative shall display and make available for public inspection and copying all public records as required by the Illinois *Freedom of Information Act* ("FOIA"). Any individual requesting to inspect or copy Cooperative records may do so in accordance with these procedures.

##### **B. Public Records**

As defined under FOIA, "public records," includes all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilm, 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, that were prepared by or for, or having been or being used by, received by, in the possession of or under the control of the Cooperative.

For purposes of FOIA, any public record that is not in the possession of the Cooperative but is in the possession of a party with whom the Cooperative has contracted to perform a governmental function on its behalf, and that directly relates to the governmental function and is not otherwise exempt under FOIA, shall be considered a public record of the Cooperative.

Further, under FOIA, certain records are expressly designated as public records subject to inspection and copying:

1. all records relating to the obligation, receipt, and use of public funds;
2. certified payroll records submitted to the Cooperative under the *Prevailing Wage Act* requirements, except that contractors' employees' addresses, telephone numbers, and social security numbers must be redacted prior to disclosure; and
3. settlement agreements entered into by or on behalf of the Cooperative, provided that information exempt from disclosure under FOIA may be redacted.

#### **II. Information to be Displayed**

The following information shall be prominently displayed and available for inspection, review, and copying, during normal business hours and days at the Cooperative's

administrative office at 1601 Feehanville Drive, Suite 400, Mount Prospect, Illinois 60056 and shall also be posted on the Cooperative's website:

- a brief description and a summary of the purpose of the Cooperative;
- a block diagram of the Cooperative's functional subdivisions;
- the amount of the Cooperative's operating budget;
- the number and location of all Cooperative offices and schools;
- the approximate number of full and part-time employees;
- the identification and membership of any board, commission, committee or council which operates in an advisory capacity relative to the operation of the Cooperative, or which exercises control over Cooperative policies or procedures, or to which the Cooperative is required to report and be answerable for its operations; and
- a description of the methods by which the public may request information and public records, including:
  1. a directory of names, titles, and addresses of the designated Freedom of Information Officers to whom the request for public records is to be made; and
  2. fees to be charged for copying and for certification of public records.

### **III. Records Available From the Cooperative**

All records within the scope of the Illinois *Freedom of Information Act* that are under the Cooperative's control shall be available pursuant to this policy. To aid persons in obtaining access to these public records, a reasonably current detailed list (e.g., local records maintenance and destruction schedule) of all types or categories of records within the control of the Cooperative shall be maintained and made available for inspection and copying. Upon request, the Cooperative shall also furnish an explanation of the manner in which any records stored by electronic data processing may be obtained in a form comprehensible to those lacking knowledge of computer language or printout format. (See IV.B.2 below regarding the need to develop a list of records that will be immediately disclosed.)

### **IV. Freedom of Information Officer**

#### **A. Designation**

The Board shall designate at least two employees to act as its Freedom of Information Officers and shall display their names and contact information at the Cooperative's administrative office and on the Cooperative's website.

#### **B. Duties**

1. The Officers shall receive all FOIA requests, ensure that the Cooperative

responds in a timely fashion, and issue responses as required under the law.

2. The Officers shall develop a list of documents or categories of records that the Cooperative shall immediately disclose upon request.
3. Upon receiving a FOIA request, the Officers shall:
  - a. note the date the Cooperative receives the 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; and
  - d. create a file for the retention of the original request, a copy of the response, a record of written communications with the requestor and a copy of other communications.

### **C. Training**

By July 1, 2010, the Officers must successfully complete an electronic training curriculum developed by the Public Access Counselor and thereafter complete an annual training program. Any new Officer must successfully complete the electronic training curriculum within thirty (30) days after assuming the position.

## **V. Procedures for Requests to Inspect or Copy Records**

### **A. Form and Scope of Request**

A request to inspect or copy records shall be made in writing and should be submitted to the designated Cooperative's Freedom of Information Officers via personal delivery, mail, electronic mail (e-mail), telefax, or other means available to the Cooperative. In the event that a written request is submitted to another officer or employee of the Cooperative, the request shall be immediately forwarded to the Freedom of Information Officers.

The request must specify the particular record(s) to be inspected or copied and may include a request for certification of a copy of a record. The Cooperative shall not require the requestor to specify its purpose, except to determine whether the request is for commercial purposes or whether to grant a request for a fee waiver. To assist with its processing of FOIA requests, the Cooperative will encourage any individual requesting records to use the standard form prepared by the Cooperative and posted on its website; however, it will process any request made in writing in any format.

## **B. Responses to Request**

### 1. Time for Response

- a. The Cooperative shall grant or deny a written request by letter within five (5) business days after its receipt, except for requests for commercial purposes (see V.B.3 below), or as additional time is necessary pursuant to V.B.1.b below or agreed to pursuant to V.B.1.d below. Day one (1) of the five (5) day timeline is the first business day after the request is received by any employee or officer of the Cooperative regardless of whether that employee or officer is a designated Freedom of Information Officer.
- b. The Cooperative may extend the time for response by an additional five (5) business days from the original due date if:
  - i. records are stored in whole or in part at another location;
  - ii. a substantial number of records must be collected;
  - iii. the request is couched in categorical terms and requires an extensive search;
  - iv. after a routine search, the records cannot be located and additional efforts are being made to locate them;
  - v. the requested records require an examination and evaluation by a competent person to determine whether the records are exempt under the FOIA law;
  - vi. timely compliance would be an undue burden or would interfere with regular operation of the Cooperative; or
  - vii. there is need for consultation with another public body which has a substantial interest in the determination or in the subject matter of the request.
- c. If additional time is required for any of the above reasons, the Freedom of Information Officer shall so notify in writing the person making the request within five (5) business days after receipt of the request. Notice shall include the reason for delay and the anticipated date the records will be available or denied.
- d. The Cooperative and the person making the request may also agree in writing to extend the time period for responding to the request for any period determined by the parties.

### 2. Requests for Records Maintained in Electronic Format

If the Cooperative receives a request for a record maintained in an electronic format, it should furnish the record in the electronic format requested, if feasible. If it is not feasible to provide the record in the electronic format requested, the Cooperative shall furnish the record in the

format in which it is maintained or in paper format at the option of the requester.

3. Request for Commercial Purposes

- a. The Cooperative shall respond to a request for records to be used for a commercial purpose within twenty-one (21) business days after receipt. "Commercial purpose" under FOIA refers to the use of any part of a public record or records, or information derived from such records, in any form for sale, resale, or solicitation or advertisement for sales or services.
- b. The response shall: (1) provide an estimate of the time required to provide the requested records and the fees to be charged, (2) deny the request as exempt under FOIA, (3) notify the requestor that the request is unduly burdensome and extend the opportunity to reduce the request to manageable proportions, or (4) provide the records requested.
- c. Unless the records are exempt from disclosure, the Cooperative shall comply with a request within a reasonable time considering the size and complexity of the request, and giving priority to records requested for non-commercial purposes.

4. Effect of Failure to Respond

A failure to respond to a FOIA request within the applicable time specified above shall be considered a denial of the request. Such failure shall bar the Cooperative from treating the request as unduly burdensome. If the Cooperative fails to respond to a request within the required timeline but thereafter provides the requested documents, it may not impose a fee for copies of those documents.

5. Granting of Request

If a request is granted, the Freedom of Information Officer or designee shall contact the requestor and arrange a time for inspection of the requested records during the Cooperative's regular business hours or shall arrange to have the requested records copied. Inspection will not be allowed when records are in immediate use by persons exercising official duties which require use of the records. Inspection of records is to be made at the Cooperative's administrative office. Records may not be removed from the office. All persons requesting records to inspect or copy shall provide a picture identification prior to inspection. Requestors are prohibited from bringing bags, briefcases, or other containers into the inspection area. The Freedom of Information Officer or designee shall be

present during the copying or inspection of records.

6. Fees for Copies and Certification

- a. No fees shall be charged for the first fifty (50) pages of black and white letter or legal sized copies. Thereafter, a fee of \$.15 per page may be charged for copying black and white letter or legal-size documents. If the Cooperative provides copies in color or in a size other than letter or legal, the fees shall be the actual cost incurred in reproducing for non-standardized documents as established in Section 6.b below. The Cooperative shall charge \$1.00 per document for certification of records. No charge shall be made for staff time spent searching for or reviewing records or other personnel costs associated with reproducing the records.
- b. If the Cooperative provides copies in color or in a size other than legal or letter, the Cooperative will charge \$.19 per page. These charges are reasonably calculated to reimburse the Cooperative for its actual costs for reproducing the records and for the use by any person of the Cooperative's equipment to copy records. Such fees are subject to change annually by Board resolution.
- c. If the Cooperative receives a request for a record maintained in an electronic format, it will charge the actual cost of purchasing the recording medium (e.g., disc, tape, etc).
- d. The Cooperative shall inform all persons requesting copies of public records of the cost of the copying prior to beginning the copying process. The Cooperative reserves the right to begin the copying process only upon the payment of fees.
- e. In the event the Cooperative deems it appropriate to refer the copying of color copies or copies in a size other than legal or letter to an outside printer or copying service, due to the size of the request, staffing limitations, or other reasons, the fee shall be the actual cost of the vendor charges.
- f. If a person requesting public records desires to have them delivered to him or her, the Cooperative will include the reasonable cost of postage in the fees charged.
- g. The Freedom of Information Officer may waive or reduce fees if the person requesting the documents states the specific purpose for the request and indicates that a fee waiver or reduction is in the public interest. Fee waiver or reduction is in the public interest if the principal purpose of the request is to access and disseminate information regarding the health, safety and welfare or legal rights of the general public and is not for the principal purpose of

personal or commercial benefit. In setting the amount of fee waiver or reduction, the Freedom of Information Officer may take into consideration the amount of materials requested and the cost of copying them.

7. Intent to Deny

If the Cooperative intends to deny a request on the grounds that the records are exempt because the information requested includes personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy (FOIA Section 7(1)(c)) or preliminary drafts or notes not publicly cited and identified by the Board (FOIA Section 7(1)(f)), then, within the timeframe for denying the request (see V.B.1 above), the Cooperative must notify both the requester and the Public Access Counselor of its intent to deny the request in whole or in part. The notice shall include: (1) a copy of the request; (2) the Cooperative's proposed response; and (3) a detailed summary of the Cooperative's basis for asserting the exemption.

If the Public Access Counselor notifies the Cooperative within five (5) working days after receipt of its intent to deny notice that further inquiry is warranted, the Cooperative will provide copies of any documents requested by the Public Access Counselor within seven (7) working days of the Counselor's notice and shall otherwise fully cooperate with the Counselor. Times for response or compliance by the Cooperative shall be tolled until the Public Access Counselor concludes his/her inquiry. Upon receipt of a binding opinion from the Public Access Counselor, the Cooperative shall either take necessary action immediately to comply with the directive of the opinion or shall initiate an administrative review action in court.

8. Denial of Request

If a request is denied, in whole or in part, the requester shall be notified in writing within the specified time period. (Note: See V.B.7 above if the Cooperative intends to deny a request on the grounds that the information requested includes personal information that constitutes a clearly unwarranted invasion of privacy pursuant to FOIA Section 7(1)(c), or preliminary drafts or notes pursuant to FOIA Section 7(1)(f).)

The written denial of the request shall provide:

- a. the reason for denial, including a detailed factual basis for the application of any exemption and a citation to supporting legal authority;
- b. the name and title of each person responsible for the denial;

- c. the requester's right to review by the Attorney General's Public Access Counselor along with the address and phone number of the Public Access Counselor; and
- d. the right to judicial review in court for declaratory or injunctive relief.

Copies of all denial notices shall be retained in a central Cooperative file open to the public and indexed by exemption and, to the extent feasible, by type of record requested.

If the Public Access Counselor receives a request for review of the denial and notifies the Cooperative that further inquiry is warranted, the Cooperative will adhere to the obligations set forth in V.B.7 above (see last paragraph).

9. Basis for Denial

A request for public records may be denied only if:

- a. the records are exempt from public access in accordance with the provisions of the Illinois *Freedom of Information Act* (See Exhibit A); or
- b. a request for all records falling within a category is unduly burdensome, there is no way to narrow the request, and the burden on the Cooperative outweighs the public interest in the information. The Freedom of Information Officer shall notify the requestor in writing of the reasons and the extent to which the request would unduly burden the operations of the Cooperative and provide the requestor with an opportunity to confer in order to reduce the request to manageable proportions. Repeated requests for the same public records by the same person shall be deemed unduly burdensome under this provision.

10. Status of Response

The LICA Board Chairperson or the Executive Director shall, at each regular or special Board meeting, report any FOIA requests made of the Cooperative and the status of the Cooperative's response.

**VI. Advisory Opinions**

The Cooperative may request the Attorney General's Public Access Counselor to issue an advisory opinion regarding compliance with FOIA. To request an advisory opinion, the LICA Board of Control or its attorney must send a written request to the Public Access Counselor. The request must contain sufficient accurate facts for the Public Access Counselor to make a determination. The Cooperative will not be liable for penalties

under the Act if it relies in good faith on an advisory opinion and has fully and fairly disclosed the facts upon which the opinion is based.

## **EXHIBIT A**

### **PUBLIC RECORDS EXEMPT FROM DISCLOSURE**

Under the Illinois *Freedom of Information Act*, all records in the custody or possession of a public body are presumed to be open to inspection or copying. If the Cooperative intends to prevent disclosure of any public records by asserting one of the statutory exemptions, it has the burden of proving by clear and convincing evidence that it is exempt.

The list below includes some of the typical exemptions that may apply to school Cooperative records, but does not reflect all of the available exemptions under the law. Because the new FOIA has revised numerous former exemptions and because penalties for non-disclosure are significant, the Freedom of Information Officer should exercise caution in using any of the exemptions and consult with legal counsel in advance.

#### **GENERAL EXEMPTIONS (5 ILCS 140/7)**

(NOTE: The letter designations used below correspond to the labeling used in Section 7 of the FOIA law.)

The following records are exempt from inspection and copying:

- (a) Information specifically prohibited from disclosure by federal or Illinois law or rules and regulations implementing federal or Illinois law.
- (b) Private information, unless disclosure is required by another provision of this Act, an Illinois or federal law or a court order. “Private information” means unique identifiers, including social security numbers, driver license numbers, employee identification numbers, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal e-mail addresses. It also includes home addresses and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person. (See also Section I.B of the Administrative Procedures regarding the redaction of certain information on certified payroll records.)
- (c) Personal information contained within public 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. (NOTE: See also V.B.7 of the Administrative Procedures).

- (f) 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 public body. The exemption provided in this paragraph (f) extends to all those records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents. (NOTE: See V.B.7 of the Administrative Procedures).
- (g) 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.
  - (i) 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 item 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 item 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 contained in this paragraph (g) shall be construed to prevent a person or business from consenting to disclosure.

- (h) Proposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor 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.
- (i) Valuable formulae, computer geographic systems, designs, drawings and research data obtained or produced by any public body when disclosure could reasonably be expected to produce private gain or public loss. The exemption for "computer geographic systems" provided in this paragraph (i) does not extend to requests made by news media as defined in Section 2 of FOIA 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.
- (j) The following information pertaining to educational matters:

- (i) test questions, scoring keys and other examination data used to administer an academic examination;
  - (ii) information received by a primary or secondary school, college, or university under its procedures for the evaluation of faculty members by their academic peers;
  - (iii) information concerning a school or university's adjudication of student disciplinary cases, but only to the extent that disclosure would unavoidably reveal the identity of the student; and
  - (iv) course materials or research materials used by faculty members.
- (k) Architects' plans, engineers' technical submissions, and other construction related technical documents for projects not constructed or developed in whole or in part with public funds and the same for projects constructed or developed with public funds, including but not limited to power generating and distribution stations and other transmission and distribution facilities, sports stadiums, convention centers, and all government owned, operated, or occupied buildings, but only to the extent that disclosure would compromise security.
- (l) Minutes of meetings of public bodies closed to the public as provided in the Open Meetings Act until the public body makes the minutes available to the public under Section 2.06 of the *Open Meetings Act*.
- (m) Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.
- (n) Records relating to a public body'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.
- (o) 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.
- (p) Records relating to collective negotiating matters between public bodies and their employees or representatives, except that any final contract or agreement shall be subject to inspection and copying.

- (q) Test questions, scoring keys, and other examination data used to determine the qualifications of an applicant for a license or employment.
- (r) 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*, 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 until a sale is consummated.
- (s) 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.
- (t) 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 Illinois law.
- (v) 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 item 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.

## **STATUTORY EXEMPTIONS (5 ILCS 140/7.5)**

**(NOTE:** The letter designations used below correspond to the labeling used in Section 7.5 of the FOIA law.)

To the extent provided for by the statutes referenced below, 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*.

- (b) Library circulation and order records identifying library users with specific materials under the *Library Records Confidentiality Act*.
- (e) Information the disclosure of which is exempted under Section 30 of the *Radon Industry Licensing Act*.
- (f) Firm performance evaluations under Section 55 of the *Architectural, Engineering, and Land Surveying Qualifications Based Selection Act*.
- (h) Information the disclosure of which is exempted under the *State Officials and Employees Ethics Act*, and records of any lawfully created Illinois or local inspector general's office that would be exempt if created or obtained by an Executive Inspector General's office under that Act.
- (q) Information prohibited from being disclosed by the *Personnel Records Review Act*.
- (r) Information prohibited from being disclosed by the *Illinois School Student Records Act*.