

**Q: What proactive steps can an employee take regarding their personnel file?**

A: An employee should review his/her personnel file periodically (the Personnel Records Act requires access at least twice a year). If the employee disagrees with any information contained in the file, he/she should request that it be removed. If the employer does not agree to remove it, the employee should write a response to be attached to the disputed portion of the file. Since your response would also become a part of the record accessible to the public, it is advised that you have it reviewed by an association representative prior to its submission. [Review any applicable collective bargaining agreement provision regarding responding to items in personnel files — some have a time limit for when responses can be added.] An employee also can engage in political action — assisting the IEA in achieving legislation that protects an employee's personnel file material from disclosure.

**Q: What proactive steps can an association take regarding protecting members' personnel files?**

A: Although associations and public employers cannot bargain to prevent disclosure of items that are not exempt under the FOIA, they can bargain such items as: pre-disclosure notice and opportunity to ensure that private information is redacted; content of final discipline documents, final grievance outcomes, and settlement documents (so that they divulge as little information as possible); the length of time disciplinary documents will remain in the file; how leave is requested, and how leave use is recorded. An association also can engage in political action — assisting the IEA in achieving legislation that protects an employee's personnel file material from disclosure.

*For more information please contact your UniServ director. IEA region office phone numbers are listed on the back panel of this brochure.*



**Contact Us**

Bloomington	309-663-6400
Carterville	618-733-4472
Champaign	217-384-2906
Chicago	312-407-0227
Decatur	217-875-9353
Edwardsville	618-656-0010
Effingham	217-342-2187
Elgin	847-428-7640
Libertyville	847-932-4140
Lombard	630-495-3250
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Peoria	309-691-2288
Rockford	815-398-0995
Rushville	217-322-2101
Skokie	847-329-7756
Springfield	217-787-7060
Sterling	815-626-3884



100 East Edwards Street  
Springfield, IL 62704-1999

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# Freedom of Information Act (FOIA) Changes: Impact on Employee Records



# Q & A

Illinois Education Association-NEA

**Q: What is the new timeline for responding to a FOIA request?**

A: Five business days after receipt of the request (unless an extension is granted by the public body for specified reasons).

**Q: Do you have to use a specific form when making a FOIA request?**

A: No, the public body cannot require that a specific form be used, or require that you state the reason for the request (except that the public body can request information to determine if the request is being made for a commercial purpose).

**Q: What can a public body charge for copies?**

A: The first 50 pages of copies, black and white, legal or letter size, are free. After that, the cost is supposed to be the actual cost of reproduction, not to exceed 15 cents per page.

**Q: Does the FOIA prohibit disclosure of exempt documents?**

A: The FOIA does not prohibit disclosure of exempt documents. The FOIA exemptions merely give a public body a legitimate excuse for not disclosing a document. In other words, just because something is exempt from disclosure under the FOIA doesn't mean the public body could not voluntarily disclose it. See *Roehborn v. Lambert*, 213 Ill. Dec. 923 (1st Dist. 1995). Other laws may prohibit disclosure (like the various laws protecting confidential medical information). Local associations may want to consider bargaining prohibitions. (e.g. "The District shall not disclose any documents considered "exempt" under the FOIA.")

**Q: Are all settlement agreements now subject to disclosure under the FOIA?**

A: Yes, however, "private information" as defined by the FOIA could be redacted.

**Q: What is "private information" as defined by the FOIA?**

A: "Private information" is defined as: unique identifiers, including a person's social security number, biometric identifiers, personal financial information (e.g. bank account numbers), passwords or other access codes, medical

records, home or personal telephone numbers, and personal e-mail addresses (and home addresses in some situations). Private information does not include a person's name.

**Q: Are all documents in a personnel file subject to disclosure under the FOIA?**

A: No. Letters of reference, peer evaluations, teacher, principal and superintendent evaluations, private information as defined by the Act and any unwarranted invasion of personal privacy are exempt. For example: copies of social security cards, ADA accommodation requests and authorizations for direct deposit should be exempt from disclosure. Note: Evaluations of those who are not teachers, principals and superintendents and other documents concerning the public duties of public employees (like job descriptions and teaching certificates) are subject to disclosure (although "private information" may be redacted).

**Q: Does the new law require a school district to post a teacher's evaluations (or salary) on the district website?**

A: No. The FOIA does not require that anything be posted on the website. However, different laws require that collective bargaining agreements and salary information for administrators (not rank and file employees) be posted on the website (if one exists). Although some evaluations are subject to disclosure under the FOIA, that does not mean that evaluations are required to be on the website. If your district is considering posting evaluations or other items from individuals' personnel files on the website, it is IEA's position that such a decision is a mandatory subject of bargaining and, absent a waiver of bargaining, would require bargaining prior to implementation.

**Q: Are test questions, scoring keys or other examination data subject to disclosure under the FOIA?**

A: No. There is a specific exemption for certain educational matters, including test questions, scoring keys or other examination data. However, an Illinois Appellate Court has held that test booklets with student markings or

other identifying information are "student records" and therefore, subject to disclosure to the parent or student. *Garlick v. Oak Park and River Forest High School District 200*, 329 Ill. Dec. 92 (1st Dist. 2009).

**Q: Are grievance or discipline documents subject to disclosure under the FOIA?**

A: Only the final grievance resolution and final disciplinary disposition, if discipline is imposed. Other documents related to the investigation or processing of grievances and discipline are exempt.

**Q: Is correspondence sent, received or opened on a public employer's e-mail/internet system subject to disclosure?**

A: Yes, unless they contain "private information" or the disclosure would constitute an "unwarranted invasion of personal privacy." Therefore, members and local association leaders should not use the employer e-mail/internet system for union business, unless they desire to have the communication made public. Whether an employer can or cannot impose discipline against an employee for use of the employer's e-mail/internet system for union business is a separate issue to be discussed with your UniServ Director.

**Q: Can an individual (or local association) request a list of who has been making FOIA requests?**

A: The new law does not specifically address this. However, there is a 2004 case where the 1st District Appellate Court found that a request for names and addresses of previous requesters of information was an unwarranted invasion of personal privacy. See *Chicago Alliance for Neighborhood Safety v. City of Chicago*, 283 Ill. Dec. 506 (1st Dist. 2004).

**Q: Are documents existing prior to the effective date of the new FOIA (1/1/10) subject to the new disclosure rules?**

A: Yes