



Freedom of Information: Introduction

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INTRODUCING

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Freedom of Information: Introduction

Constitutional Right to Information

The First Amendment to the U. S. Constitution, and the Constitution of every U. S. State, guarantee freedom of speech. This is generally held to include the right to gather information, including information held by the government of the United States or a State or local government, by any legal means. The U. S. Supreme Court has held, however, that neither the public nor the news media, have a constitutional guarantee of access to government information or government sources of information in general. *Houchins v. KQED, Inc.*, 438 U.S. 1 (1978). The Courts of the United States and of the various States are an exception to this general rule. "Litigation is a public exercise; it consumes public resources. It follows that in all but the most extraordinary case – perhaps those involving matters of weighty national security – complaints must be public." *Levenstein v. Salafsky*, 164 F.3d 345, 348 (7th Cir. 1998). The U. S. Supreme Court has also noted the constitutional right to information of the public and the press in the context of criminal trials. *Globe Newspaper Co. v. Superior Court for the County of Norfolk*, 457 U.S.596 (1982). Even the right to information about court cases is still subject to regulation and restriction in certain instances. To address the desire of the public and the press to have access to information about the government, the Federal Government and every State have passed laws providing some right of access to government information.

Sunshine Laws Generally

The term "Sunshine Law" is used for any law that allows the public to be informed of the actions of government, thus opening government's

workings to allow the sun to shine on its actions for the public to see. The two main examples of Sunshine Laws include laws requiring legislative bodies to take action only in meetings open to the public and laws requiring government to provide access to governmental information upon request. The Illinois Freedom of Information Act, 5 ILCS 140/1, summarizes the importance of the public's interest in government information as follows: "Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act. Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.

The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act."

Federal/State variations

Many States base their laws regarding access to government information upon the Federal Freedom of Information Act, 5 U.S.C § 552, although there are, of course, variations from one State to another. Consistent across all States is the desire to balance the public's need for information with the privacy of others and the need for secrecy in some governmental actions to allow the government to act effectively and efficiently. This balancing is not always decided the same from one State to another but the general contours of the interests subject to balancing tend to

be the same from State to State. Knowing what one government decided on a particular issue is thus far less important than being able to recognize the various issues presented in Freedom of Information Act requests.

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