



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2706

by Rep. Grant Wehrli

SYNOPSIS AS INTRODUCED:

5 ILCS 140/2.15

5 ILCS 140/7

from Ch. 116, par. 207

Amends the Freedom of Information Act. Provides that provisions allowing the withholding of specified information apply to all public bodies, regardless of whether the public body meets certain criteria. Exempts from disclosure records in the possession of any public body (instead of records in the possession of any public body "created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes"), but only to the extent that disclosure would interfere with law enforcement in one of several enumerated ways. Effective immediately.

LRB100 10634 HEP 20857 b

1 AN ACT concerning government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Freedom of Information Act is amended by
5 changing Sections 2.15 and 7 as follows:

6 (5 ILCS 140/2.15)

7 Sec. 2.15. Arrest reports and criminal history records.

8 (a) Arrest reports. The following chronologically
9 maintained arrest and criminal history information maintained
10 by State or local criminal justice agencies shall be furnished
11 as soon as practical, but in no event later than 72 hours after
12 the arrest, notwithstanding the time limits otherwise provided
13 for in Section 3 of this Act: (i) information that identifies
14 the individual, including the name, age, address, and
15 photograph, when and if available; (ii) information detailing
16 any charges relating to the arrest; (iii) the time and location
17 of the arrest; (iv) the name of the investigating or arresting
18 law enforcement agency; (v) if the individual is incarcerated,
19 the amount of any bail or bond; and (vi) if the individual is
20 incarcerated, the time and date that the individual was
21 received into, discharged from, or transferred from the
22 arresting agency's custody.

23 (b) Criminal history records. The following documents

1 maintained by a public body pertaining to criminal history
2 record information are public records subject to inspection and
3 copying by the public pursuant to this Act: (i) court records
4 that are public; (ii) records that are otherwise available
5 under State or local law; and (iii) records in which the
6 requesting party is the individual identified, except as
7 provided under Section 7(1)(d)(vi).

8 (c) Information described in items (iii) through (vi) of
9 subsection (a) may be withheld if it is determined that
10 disclosure would: (i) interfere with pending or actually and
11 reasonably contemplated law enforcement proceedings conducted
12 by any law enforcement agency; (ii) endanger the life or
13 physical safety of law enforcement or correctional personnel or
14 any other person; or (iii) compromise the security of any
15 correctional facility. This subsection applies to all public
16 bodies, regardless of whether the public body is described in
17 (i), (ii), or (iii) of this subsection.

18 (d) The provisions of this Section do not supersede the
19 confidentiality provisions for law enforcement or arrest
20 records of the Juvenile Court Act of 1987.

21 (Source: P.A. 99-298, eff. 8-6-15.)

22 (5 ILCS 140/7) (from Ch. 116, par. 207)

23 Sec. 7. Exemptions.

24 (1) When a request is made to inspect or copy a public
25 record that contains information that is exempt from disclosure

1 under this Section, but also contains information that is not
2 exempt from disclosure, the public body may elect to redact the
3 information that is exempt. The public body shall make the
4 remaining information available for inspection and copying.
5 Subject to this requirement, the following shall be exempt from
6 inspection and copying:

7 (a) Information specifically prohibited from
8 disclosure by federal or State law or rules and regulations
9 implementing federal or State law.

10 (b) Private information, unless disclosure is required
11 by another provision of this Act, a State or federal law or
12 a court order.

13 (b-5) Files, documents, and other data or databases
14 maintained by one or more law enforcement agencies and
15 specifically designed to provide information to one or more
16 law enforcement agencies regarding the physical or mental
17 status of one or more individual subjects.

18 (c) Personal information contained within public
19 records, the disclosure of which would constitute a clearly
20 unwarranted invasion of personal privacy, unless the
21 disclosure is consented to in writing by the individual
22 subjects of the information. "Unwarranted invasion of
23 personal privacy" means the disclosure of information that
24 is highly personal or objectionable to a reasonable person
25 and in which the subject's right to privacy outweighs any
26 legitimate public interest in obtaining the information.

1 The disclosure of information that bears on the public
2 duties of public employees and officials shall not be
3 considered an invasion of personal privacy.

4 (d) Records in the possession of any public body
5 ~~created in the course of administrative enforcement~~
6 ~~proceedings, and any law enforcement or correctional~~
7 ~~agency for law enforcement purposes,~~ but only to the extent
8 that disclosure would:

9 (i) interfere with pending or actually and
10 reasonably contemplated law enforcement proceedings
11 conducted by any law enforcement or correctional
12 agency that is the recipient of the request;

13 (ii) interfere with active administrative
14 enforcement proceedings conducted by the public body
15 that is the recipient of the request;

16 (iii) create a substantial likelihood that a
17 person will be deprived of a fair trial or an impartial
18 hearing;

19 (iv) unavoidably disclose the identity of a
20 confidential source, confidential information
21 furnished only by the confidential source, or persons
22 who file complaints with or provide information to
23 administrative, investigative, law enforcement, or
24 penal agencies; except that the identities of
25 witnesses to traffic accidents, traffic accident
26 reports, and rescue reports shall be provided by

1 agencies of local government, except when disclosure
2 would interfere with an active criminal investigation
3 conducted by the agency that is the recipient of the
4 request;

5 (v) disclose unique or specialized investigative
6 techniques other than those generally used and known or
7 disclose internal documents of correctional agencies
8 related to detection, observation or investigation of
9 incidents of crime or misconduct, and disclosure would
10 result in demonstrable harm to the agency or public
11 body that is the recipient of the request;

12 (vi) endanger the life or physical safety of law
13 enforcement personnel or any other person; or

14 (vii) obstruct an ongoing criminal investigation
15 by the agency that is the recipient of the request.

16 This paragraph (d) applies to all public bodies,
17 regardless of whether the public body is affected by items
18 (i) through (vii) of this paragraph.

19 (d-5) A law enforcement record created for law
20 enforcement purposes and contained in a shared electronic
21 record management system if the law enforcement agency that
22 is the recipient of the request did not create the record,
23 did not participate in or have a role in any of the events
24 which are the subject of the record, and only has access to
25 the record through the shared electronic record management
26 system.

1 (e) Records that relate to or affect the security of
2 correctional institutions and detention facilities.

3 (e-5) Records requested by persons committed to the
4 Department of Corrections if those materials are available
5 in the library of the correctional facility where the
6 inmate is confined.

7 (e-6) Records requested by persons committed to the
8 Department of Corrections if those materials include
9 records from staff members' personnel files, staff
10 rosters, or other staffing assignment information.

11 (e-7) Records requested by persons committed to the
12 Department of Corrections if those materials are available
13 through an administrative request to the Department of
14 Corrections.

15 (f) Preliminary drafts, notes, recommendations,
16 memoranda and other records in which opinions are
17 expressed, or policies or actions are formulated, except
18 that a specific record or relevant portion of a record
19 shall not be exempt when the record is publicly cited and
20 identified by the head of the public body. The exemption
21 provided in this paragraph (f) extends to all those records
22 of officers and agencies of the General Assembly that
23 pertain to the preparation of legislative documents.

24 (g) Trade secrets and commercial or financial
25 information obtained from a person or business where the
26 trade secrets or commercial or financial information are

1 furnished under a claim that they are proprietary,
2 privileged or confidential, and that disclosure of the
3 trade secrets or commercial or financial information would
4 cause competitive harm to the person or business, and only
5 insofar as the claim directly applies to the records
6 requested.

7 The information included under this exemption includes
8 all trade secrets and commercial or financial information
9 obtained by a public body, including a public pension fund,
10 from a private equity fund or a privately held company
11 within the investment portfolio of a private equity fund as
12 a result of either investing or evaluating a potential
13 investment of public funds in a private equity fund. The
14 exemption contained in this item does not apply to the
15 aggregate financial performance information of a private
16 equity fund, nor to the identity of the fund's managers or
17 general partners. The exemption contained in this item does
18 not apply to the identity of a privately held company
19 within the investment portfolio of a private equity fund,
20 unless the disclosure of the identity of a privately held
21 company may cause competitive harm.

22 Nothing contained in this paragraph (g) shall be
23 construed to prevent a person or business from consenting
24 to disclosure.

25 (h) Proposals and bids for any contract, grant, or
26 agreement, including information which if it were

1 disclosed would frustrate procurement or give an advantage
2 to any person proposing to enter into a contractor
3 agreement with the body, until an award or final selection
4 is made. Information prepared by or for the body in
5 preparation of a bid solicitation shall be exempt until an
6 award or final selection is made.

7 (i) Valuable formulae, computer geographic systems,
8 designs, drawings and research data obtained or produced by
9 any public body when disclosure could reasonably be
10 expected to produce private gain or public loss. The
11 exemption for "computer geographic systems" provided in
12 this paragraph (i) does not extend to requests made by news
13 media as defined in Section 2 of this Act when the
14 requested information is not otherwise exempt and the only
15 purpose of the request is to access and disseminate
16 information regarding the health, safety, welfare, or
17 legal rights of the general public.

18 (j) The following information pertaining to
19 educational matters:

20 (i) test questions, scoring keys and other
21 examination data used to administer an academic
22 examination;

23 (ii) information received by a primary or
24 secondary school, college, or university under its
25 procedures for the evaluation of faculty members by
26 their academic peers;

1 (iii) information concerning a school or
2 university's adjudication of student disciplinary
3 cases, but only to the extent that disclosure would
4 unavoidably reveal the identity of the student; and

5 (iv) course materials or research materials used
6 by faculty members.

7 (k) Architects' plans, engineers' technical
8 submissions, and other construction related technical
9 documents for projects not constructed or developed in
10 whole or in part with public funds and the same for
11 projects constructed or developed with public funds,
12 including but not limited to power generating and
13 distribution stations and other transmission and
14 distribution facilities, water treatment facilities,
15 airport facilities, sport stadiums, convention centers,
16 and all government owned, operated, or occupied buildings,
17 but only to the extent that disclosure would compromise
18 security.

19 (l) Minutes of meetings of public bodies closed to the
20 public as provided in the Open Meetings Act until the
21 public body makes the minutes available to the public under
22 Section 2.06 of the Open Meetings Act.

23 (m) Communications between a public body and an
24 attorney or auditor representing the public body that would
25 not be subject to discovery in litigation, and materials
26 prepared or compiled by or for a public body in

1 anticipation of a criminal, civil or administrative
2 proceeding upon the request of an attorney advising the
3 public body, and materials prepared or compiled with
4 respect to internal audits of public bodies.

5 (n) Records relating to a public body's adjudication of
6 employee grievances or disciplinary cases; however, this
7 exemption shall not extend to the final outcome of cases in
8 which discipline is imposed.

9 (o) Administrative or technical information associated
10 with automated data processing operations, including but
11 not limited to software, operating protocols, computer
12 program abstracts, file layouts, source listings, object
13 modules, load modules, user guides, documentation
14 pertaining to all logical and physical design of
15 computerized systems, employee manuals, and any other
16 information that, if disclosed, would jeopardize the
17 security of the system or its data or the security of
18 materials exempt under this Section.

19 (p) Records relating to collective negotiating matters
20 between public bodies and their employees or
21 representatives, except that any final contract or
22 agreement shall be subject to inspection and copying.

23 (q) Test questions, scoring keys, and other
24 examination data used to determine the qualifications of an
25 applicant for a license or employment.

26 (r) The records, documents, and information relating

1 to real estate purchase negotiations until those
2 negotiations have been completed or otherwise terminated.
3 With regard to a parcel involved in a pending or actually
4 and reasonably contemplated eminent domain proceeding
5 under the Eminent Domain Act, records, documents and
6 information relating to that parcel shall be exempt except
7 as may be allowed under discovery rules adopted by the
8 Illinois Supreme Court. The records, documents and
9 information relating to a real estate sale shall be exempt
10 until a sale is consummated.

11 (s) Any and all proprietary information and records
12 related to the operation of an intergovernmental risk
13 management association or self-insurance pool or jointly
14 self-administered health and accident cooperative or pool.
15 Insurance or self insurance (including any
16 intergovernmental risk management association or self
17 insurance pool) claims, loss or risk management
18 information, records, data, advice or communications.

19 (t) Information contained in or related to
20 examination, operating, or condition reports prepared by,
21 on behalf of, or for the use of a public body responsible
22 for the regulation or supervision of financial
23 institutions or insurance companies, unless disclosure is
24 otherwise required by State law.

25 (u) Information that would disclose or might lead to
26 the disclosure of secret or confidential information,

1 codes, algorithms, programs, or private keys intended to be
2 used to create electronic or digital signatures under the
3 Electronic Commerce Security Act.

4 (v) Vulnerability assessments, security measures, and
5 response policies or plans that are designed to identify,
6 prevent, or respond to potential attacks upon a community's
7 population or systems, facilities, or installations, the
8 destruction or contamination of which would constitute a
9 clear and present danger to the health or safety of the
10 community, but only to the extent that disclosure could
11 reasonably be expected to jeopardize the effectiveness of
12 the measures or the safety of the personnel who implement
13 them or the public. Information exempt under this item may
14 include such things as details pertaining to the
15 mobilization or deployment of personnel or equipment, to
16 the operation of communication systems or protocols, or to
17 tactical operations.

18 (w) (Blank).

19 (x) Maps and other records regarding the location or
20 security of generation, transmission, distribution,
21 storage, gathering, treatment, or switching facilities
22 owned by a utility, by a power generator, or by the
23 Illinois Power Agency.

24 (y) Information contained in or related to proposals,
25 bids, or negotiations related to electric power
26 procurement under Section 1-75 of the Illinois Power Agency

1 Act and Section 16-111.5 of the Public Utilities Act that
2 is determined to be confidential and proprietary by the
3 Illinois Power Agency or by the Illinois Commerce
4 Commission.

5 (z) Information about students exempted from
6 disclosure under Sections 10-20.38 or 34-18.29 of the
7 School Code, and information about undergraduate students
8 enrolled at an institution of higher education exempted
9 from disclosure under Section 25 of the Illinois Credit
10 Card Marketing Act of 2009.

11 (aa) Information the disclosure of which is exempted
12 under the Viatical Settlements Act of 2009.

13 (bb) Records and information provided to a mortality
14 review team and records maintained by a mortality review
15 team appointed under the Department of Juvenile Justice
16 Mortality Review Team Act.

17 (cc) Information regarding interments, entombments, or
18 inurnments of human remains that are submitted to the
19 Cemetery Oversight Database under the Cemetery Care Act or
20 the Cemetery Oversight Act, whichever is applicable.

21 (dd) Correspondence and records (i) that may not be
22 disclosed under Section 11-9 of the Illinois Public Aid
23 Code or (ii) that pertain to appeals under Section 11-8 of
24 the Illinois Public Aid Code.

25 (ee) The names, addresses, or other personal
26 information of persons who are minors and are also

1 participants and registrants in programs of park
2 districts, forest preserve districts, conservation
3 districts, recreation agencies, and special recreation
4 associations.

5 (ff) The names, addresses, or other personal
6 information of participants and registrants in programs of
7 park districts, forest preserve districts, conservation
8 districts, recreation agencies, and special recreation
9 associations where such programs are targeted primarily to
10 minors.

11 (gg) Confidential information described in Section
12 1-100 of the Illinois Independent Tax Tribunal Act of 2012.

13 (hh) The report submitted to the State Board of
14 Education by the School Security and Standards Task Force
15 under item (8) of subsection (d) of Section 2-3.160 of the
16 School Code and any information contained in that report.

17 (ii) Records requested by persons committed to or
18 detained by the Department of Human Services under the
19 Sexually Violent Persons Commitment Act or committed to the
20 Department of Corrections under the Sexually Dangerous
21 Persons Act if those materials: (i) are available in the
22 library of the facility where the individual is confined;
23 (ii) include records from staff members' personnel files,
24 staff rosters, or other staffing assignment information;
25 or (iii) are available through an administrative request to
26 the Department of Human Services or the Department of

1 Corrections.

2 (jj) Confidential information described in Section
3 5-535 of the Civil Administrative Code of Illinois.

4 (1.5) Any information exempt from disclosure under the
5 Judicial Privacy Act shall be redacted from public records
6 prior to disclosure under this Act.

7 (2) A public record that is not in the possession of a
8 public body but is in the possession of a party with whom the
9 agency has contracted to perform a governmental function on
10 behalf of the public body, and that directly relates to the
11 governmental function and is not otherwise exempt under this
12 Act, shall be considered a public record of the public body,
13 for purposes of this Act.

14 (3) This Section does not authorize withholding of
15 information or limit the availability of records to the public,
16 except as stated in this Section or otherwise provided in this
17 Act.

18 (Source: P.A. 98-463, eff. 8-16-13; 98-578, eff. 8-27-13;
19 98-695, eff. 7-3-14; 99-298, eff. 8-6-15; 99-346, eff. 1-1-16;
20 99-642, eff. 7-28-16; revised 10-25-16.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.