

SB0778



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB0778

Introduced 2/1/2017, by Sen. Daniel Biss

SYNOPSIS AS INTRODUCED:

5 ILCS 140/7

from Ch. 116, par. 207

Amends the Freedom of Information Act. In a provision establishing exemptions for disclosure under the Act, excludes from those exemptions the text of an agreement to invest in a private equity fund, hedge fund, or absolute return fund that is proposed or executed after January 1, 2018 and any modification to or amendment of such an agreement that modifies or alters any of the provisions. Provides that trade secrets in the text of the agreement are not subject to disclosure under the Act. Defines terms. Effective immediately.

LRB100 06749 RPS 16790 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State 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 Section 7 as follows:

6 (5 ILCS 140/7) (from Ch. 116, par. 207)

7 Sec. 7. Exemptions.

8 (1) When a request is made to inspect or copy a public
9 record that contains information that is exempt from disclosure
10 under this Section, but also contains information that is not
11 exempt from disclosure, the public body may elect to redact the
12 information that is exempt. The public body shall make the
13 remaining information available for inspection and copying.
14 Subject to this requirement, the following shall be exempt from
15 inspection and copying:

16 (a) Information specifically prohibited from
17 disclosure by federal or State law or rules and regulations
18 implementing federal or State law.

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

22 (b-5) Files, documents, and other data or databases
23 maintained by one or more law enforcement agencies and

1 specifically designed to provide information to one or more
2 law enforcement agencies regarding the physical or mental
3 status of one or more individual subjects.

4 (c) Personal information contained within public
5 records, the disclosure of which would constitute a clearly
6 unwarranted invasion of personal privacy, unless the
7 disclosure is consented to in writing by the individual
8 subjects of the information. "Unwarranted invasion of
9 personal privacy" means the disclosure of information that
10 is highly personal or objectionable to a reasonable person
11 and in which the subject's right to privacy outweighs any
12 legitimate public interest in obtaining the information.
13 The disclosure of information that bears on the public
14 duties of public employees and officials shall not be
15 considered an invasion of personal privacy.

16 (d) Records in the possession of any public body
17 created in the course of administrative enforcement
18 proceedings, and any law enforcement or correctional
19 agency for law enforcement purposes, but only to the extent
20 that disclosure would:

21 (i) interfere with pending or actually and
22 reasonably contemplated law enforcement proceedings
23 conducted by any law enforcement or correctional
24 agency that is the recipient of the request;

25 (ii) interfere with active administrative
26 enforcement proceedings conducted by the public body

1 that is the recipient of the request;

2 (iii) create a substantial likelihood that a
3 person will be deprived of a fair trial or an impartial
4 hearing;

5 (iv) unavoidably disclose the identity of a
6 confidential source, confidential information
7 furnished only by the confidential source, or persons
8 who file complaints with or provide information to
9 administrative, investigative, law enforcement, or
10 penal agencies; except that the identities of
11 witnesses to traffic accidents, traffic accident
12 reports, and rescue reports shall be provided by
13 agencies of local government, except when disclosure
14 would interfere with an active criminal investigation
15 conducted by the agency that is the recipient of the
16 request;

17 (v) disclose unique or specialized investigative
18 techniques other than those generally used and known or
19 disclose internal documents of correctional agencies
20 related to detection, observation or investigation of
21 incidents of crime or misconduct, and disclosure would
22 result in demonstrable harm to the agency or public
23 body that is the recipient of the request;

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

26 (vii) obstruct an ongoing criminal investigation

1 by the agency that is the recipient of the request.

2 (d-5) A law enforcement record created for law
3 enforcement purposes and contained in a shared electronic
4 record management system if the law enforcement agency that
5 is the recipient of the request did not create the record,
6 did not participate in or have a role in any of the events
7 which are the subject of the record, and only has access to
8 the record through the shared electronic record management
9 system.

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

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

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

20 (e-7) Records requested by persons committed to the
21 Department of Corrections if those materials are available
22 through an administrative request to the Department of
23 Corrections.

24 (f) Preliminary drafts, notes, recommendations,
25 memoranda and other records in which opinions are
26 expressed, or policies or actions are formulated, except

1 that a specific record or relevant portion of a record
2 shall not be exempt when the record is publicly cited and
3 identified by the head of the public body. The exemption
4 provided in this paragraph (f) extends to all those records
5 of officers and agencies of the General Assembly that
6 pertain to the preparation of legislative documents.

7 (g) Trade secrets and commercial or financial
8 information obtained from a person or business where the
9 trade secrets or commercial or financial information are
10 furnished under a claim that they are proprietary,
11 privileged or confidential, and that disclosure of the
12 trade secrets or commercial or financial information would
13 cause competitive harm to the person or business, and only
14 insofar as the claim directly applies to the records
15 requested.

16 The information included under this exemption includes
17 all trade secrets and commercial or financial information
18 obtained by a public body, including a public pension fund,
19 from a private equity fund or a privately held company
20 within the investment portfolio of a private equity fund as
21 a result of either investing or evaluating a potential
22 investment of public funds in a private equity fund. The
23 exemption contained in this item does not apply to the
24 aggregate financial performance information of a private
25 equity fund, nor to the identity of the fund's managers or
26 general partners. The exemption contained in this item does

1 not apply to the identity of a privately held company
2 within the investment portfolio of a private equity fund,
3 unless the disclosure of the identity of a privately held
4 company may cause competitive harm.

5 Nothing contained in this paragraph (g) shall be
6 construed to prevent a person or business from consenting
7 to disclosure.

8 (h) Proposals and bids for any contract, grant, or
9 agreement, including information which if it were
10 disclosed would frustrate procurement or give an advantage
11 to any person proposing to enter into a contractor
12 agreement with the body, until an award or final selection
13 is made. Information prepared by or for the body in
14 preparation of a bid solicitation shall be exempt until an
15 award or final selection is made.

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

1 (j) The following information pertaining to
2 educational matters:

3 (i) test questions, scoring keys and other
4 examination data used to administer an academic
5 examination;

6 (ii) information received by a primary or
7 secondary school, college, or university under its
8 procedures for the evaluation of faculty members by
9 their academic peers;

10 (iii) information concerning a school or
11 university's adjudication of student disciplinary
12 cases, but only to the extent that disclosure would
13 unavoidably reveal the identity of the student; and

14 (iv) course materials or research materials used
15 by faculty members.

16 (k) Architects' plans, engineers' technical
17 submissions, and other construction related technical
18 documents for projects not constructed or developed in
19 whole or in part with public funds and the same for
20 projects constructed or developed with public funds,
21 including but not limited to power generating and
22 distribution stations and other transmission and
23 distribution facilities, water treatment facilities,
24 airport facilities, sport stadiums, convention centers,
25 and all government owned, operated, or occupied buildings,
26 but only to the extent that disclosure would compromise

1 security.

2 (l) Minutes of meetings of public bodies closed to the
3 public as provided in the Open Meetings Act until the
4 public body makes the minutes available to the public under
5 Section 2.06 of the Open Meetings Act.

6 (m) Communications between a public body and an
7 attorney or auditor representing the public body that would
8 not be subject to discovery in litigation, and materials
9 prepared or compiled by or for a public body in
10 anticipation of a criminal, civil or administrative
11 proceeding upon the request of an attorney advising the
12 public body, and materials prepared or compiled with
13 respect to internal audits of public bodies.

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

18 (o) Administrative or technical information associated
19 with automated data processing operations, including but
20 not limited to software, operating protocols, computer
21 program abstracts, file layouts, source listings, object
22 modules, load modules, user guides, documentation
23 pertaining to all logical and physical design of
24 computerized systems, employee manuals, and any other
25 information that, if disclosed, would jeopardize the
26 security of the system or its data or the security of

1 materials exempt under this Section.

2 (p) Records relating to collective negotiating matters
3 between public bodies and their employees or
4 representatives, except that any final contract or
5 agreement shall be subject to inspection and copying.

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

9 (r) The records, documents, and information relating
10 to real estate purchase negotiations until those
11 negotiations have been completed or otherwise terminated.
12 With regard to a parcel involved in a pending or actually
13 and reasonably contemplated eminent domain proceeding
14 under the Eminent Domain Act, records, documents and
15 information relating to that parcel shall be exempt except
16 as may be allowed under discovery rules adopted by the
17 Illinois Supreme Court. The records, documents and
18 information relating to a real estate sale shall be exempt
19 until a sale is consummated.

20 (s) Any and all proprietary information and records
21 related to the operation of an intergovernmental risk
22 management association or self-insurance pool or jointly
23 self-administered health and accident cooperative or pool.
24 Insurance or self insurance (including any
25 intergovernmental risk management association or self
26 insurance pool) claims, loss or risk management

1 information, records, data, advice or communications.

2 (t) Information contained in or related to
3 examination, operating, or condition reports prepared by,
4 on behalf of, or for the use of a public body responsible
5 for the regulation or supervision of financial
6 institutions or insurance companies, unless disclosure is
7 otherwise required by State law.

8 (u) Information that would disclose or might lead to
9 the disclosure of secret or confidential information,
10 codes, algorithms, programs, or private keys intended to be
11 used to create electronic or digital signatures under the
12 Electronic Commerce Security Act.

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

1 (w) (Blank).

2 (x) Maps and other records regarding the location or
3 security of generation, transmission, distribution,
4 storage, gathering, treatment, or switching facilities
5 owned by a utility, by a power generator, or by the
6 Illinois Power Agency.

7 (y) Information contained in or related to proposals,
8 bids, or negotiations related to electric power
9 procurement under Section 1-75 of the Illinois Power Agency
10 Act and Section 16-111.5 of the Public Utilities Act that
11 is determined to be confidential and proprietary by the
12 Illinois Power Agency or by the Illinois Commerce
13 Commission.

14 (z) Information about students exempted from
15 disclosure under Sections 10-20.38 or 34-18.29 of the
16 School Code, and information about undergraduate students
17 enrolled at an institution of higher education exempted
18 from disclosure under Section 25 of the Illinois Credit
19 Card Marketing Act of 2009.

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

22 (bb) Records and information provided to a mortality
23 review team and records maintained by a mortality review
24 team appointed under the Department of Juvenile Justice
25 Mortality Review Team Act.

26 (cc) Information regarding interments, entombments, or

1 inurnments of human remains that are submitted to the
2 Cemetery Oversight Database under the Cemetery Care Act or
3 the Cemetery Oversight Act, whichever is applicable.

4 (dd) Correspondence and records (i) that may not be
5 disclosed under Section 11-9 of the Illinois Public Aid
6 Code or (ii) that pertain to appeals under Section 11-8 of
7 the Illinois Public Aid Code.

8 (ee) The names, addresses, or other personal
9 information of persons who are minors and are also
10 participants and registrants in programs of park
11 districts, forest preserve districts, conservation
12 districts, recreation agencies, and special recreation
13 associations.

14 (ff) The names, addresses, or other personal
15 information of participants and registrants in programs of
16 park districts, forest preserve districts, conservation
17 districts, recreation agencies, and special recreation
18 associations where such programs are targeted primarily to
19 minors.

20 (gg) Confidential information described in Section
21 1-100 of the Illinois Independent Tax Tribunal Act of 2012.

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

26 (ii) Records requested by persons committed to or

1 detained by the Department of Human Services under the
2 Sexually Violent Persons Commitment Act or committed to the
3 Department of Corrections under the Sexually Dangerous
4 Persons Act if those materials: (i) are available in the
5 library of the facility where the individual is confined;
6 (ii) include records from staff members' personnel files,
7 staff rosters, or other staffing assignment information;
8 or (iii) are available through an administrative request to
9 the Department of Human Services or the Department of
10 Corrections.

11 (jj) Confidential information described in Section
12 5-535 of the Civil Administrative Code of Illinois.

13 (1.5) Any information exempt from disclosure under the
14 Judicial Privacy Act shall be redacted from public records
15 prior to disclosure under this Act.

16 (1.10) Neither the exemption contained in paragraph (g) of
17 subsection (1), nor any other exemption under this Act, applies
18 to the text of a new agreement involving a public pension fund;
19 except for trade secrets in the text of that new agreement.

20 As used in this subsection:

21 "New agreement" means an agreement to invest in a private
22 equity fund, hedge fund, or absolute return fund that is
23 proposed or executed after January 1, 2018, and includes any
24 modification to or amendment of such an agreement that modifies
25 or alters any of the provisions.

26 "Private equity fund" means a pooled investment entity that

1 is, or holds itself out as being, engaged primarily, or
2 proposes to engage primarily, in investment strategies
3 involving equity or debt financings that are provided for
4 purchasing or expanding private or public companies, or for
5 related purposes such as financing for capital, research and
6 development, introduction of a product or process into the
7 marketplace, or similar needs requiring risk capital. This
8 includes, but is not limited to, financing classified as
9 venture capital, mezzanine, buyout, or growth funds.

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

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

21 (Source: P.A. 98-463, eff. 8-16-13; 98-578, eff. 8-27-13;
22 98-695, eff. 7-3-14; 99-298, eff. 8-6-15; 99-346, eff. 1-1-16;
23 99-642, eff. 7-28-16; revised 10-25-16.)

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.