



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3695

Introduced 1/21/2022, by Sen. Jacqueline Y. Collins

SYNOPSIS AS INTRODUCED:

5 ILCS 140/2
5 ILCS 140/7

from Ch. 116, par. 202
from Ch. 116, par. 207

Amends the Freedom of Information Act. Exempts from disclosure as private information all patient-related information that may be contained in any record held by a public hospital system outside of a medical records information system that alone or compiled, or under circumstances in which the patient information combined with other information could allow for patient identification, and also in compliance with State and federal medical privacy laws and regulations.

LRB102 24260 HEP 33491 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 and 7 as follows:

6 (5 ILCS 140/2) (from Ch. 116, par. 202)

7 Sec. 2. Definitions. As used in this Act:

8 (a) "Public body" means all legislative, executive,
9 administrative, or advisory bodies of the State, state
10 universities and colleges, counties, townships, cities,
11 villages, incorporated towns, school districts and all other
12 municipal corporations, boards, bureaus, committees, or
13 commissions of this State, any subsidiary bodies of any of the
14 foregoing including but not limited to committees and
15 subcommittees thereof, and a School Finance Authority created
16 under Article 1E of the School Code. "Public body" does not
17 include a child death review team or the Illinois Child Death
18 Review Teams Executive Council established under the Child
19 Death Review Team Act, or a regional youth advisory board or
20 the Statewide Youth Advisory Board established under the
21 Department of Children and Family Services Statewide Youth
22 Advisory Board Act.

23 (b) "Person" means any individual, corporation,

1 partnership, firm, organization or association, acting
2 individually or as a group.

3 (c) "Public records" means all records, reports, forms,
4 writings, letters, memoranda, books, papers, maps,
5 photographs, microfilms, cards, tapes, recordings, electronic
6 data processing records, electronic communications, recorded
7 information and all other documentary materials pertaining to
8 the transaction of public business, regardless of physical
9 form or characteristics, having been prepared by or for, or
10 having been or being used by, received by, in the possession
11 of, or under the control of any public body.

12 (c-5) "Private information" means unique identifiers,
13 including a person's social security number, driver's license
14 number, employee identification number, biometric identifiers,
15 personal financial information, passwords or other access
16 codes, medical records (including electronic medical records
17 and the information contained within or extracted from an
18 electronic medical records system, including patient
19 information that alone or compiled, or under circumstances in
20 which the patient information combined with other information
21 could allow for patient identification, in compliance with
22 State and federal medical privacy laws and regulations,
23 including, but not limited to, the Health Insurance
24 Portability and Accountability Act of 1996 (HIPAA) and its
25 regulations, 45 CFR Parts 160 and 164), home or personal
26 telephone numbers, and personal email addresses. Private

1 information also includes home address and personal license
2 plates, except as otherwise provided by law or when compiled
3 without possibility of attribution to any person.

4 (c-10) "Commercial purpose" means the use of any part of a
5 public record or records, or information derived from public
6 records, in any form for sale, resale, or solicitation or
7 advertisement for sales or services. For purposes of this
8 definition, requests made by news media and non-profit,
9 scientific, or academic organizations shall not be considered
10 to be made for a "commercial purpose" when the principal
11 purpose of the request is (i) to access and disseminate
12 information concerning news and current or passing events,
13 (ii) for articles of opinion or features of interest to the
14 public, or (iii) for the purpose of academic, scientific, or
15 public research or education.

16 (d) "Copying" means the reproduction of any public record
17 by means of any photographic, electronic, mechanical or other
18 process, device or means now known or hereafter developed and
19 available to the public body.

20 (e) "Head of the public body" means the president, mayor,
21 chairman, presiding officer, director, superintendent,
22 manager, supervisor or individual otherwise holding primary
23 executive and administrative authority for the public body, or
24 such person's duly authorized designee.

25 (f) "News media" means a newspaper or other periodical
26 issued at regular intervals whether in print or electronic

1 format, a news service whether in print or electronic format,
2 a radio station, a television station, a television network, a
3 community antenna television service, or a person or
4 corporation engaged in making news reels or other motion
5 picture news for public showing.

6 (g) "Recurrent requester", as used in Section 3.2 of this
7 Act, means a person that, in the 12 months immediately
8 preceding the request, has submitted to the same public body
9 (i) a minimum of 50 requests for records, (ii) a minimum of 15
10 requests for records within a 30-day period, or (iii) a
11 minimum of 7 requests for records within a 7-day period. For
12 purposes of this definition, requests made by news media and
13 non-profit, scientific, or academic organizations shall not be
14 considered in calculating the number of requests made in the
15 time periods in this definition when the principal purpose of
16 the requests is (i) to access and disseminate information
17 concerning news and current or passing events, (ii) for
18 articles of opinion or features of interest to the public, or
19 (iii) for the purpose of academic, scientific, or public
20 research or education.

21 For the purposes of this subsection (g), "request" means a
22 written document (or oral request, if the public body chooses
23 to honor oral requests) that is submitted to a public body via
24 personal delivery, mail, telefax, electronic mail, or other
25 means available to the public body and that identifies the
26 particular public record the requester seeks. One request may

1 identify multiple records to be inspected or copied.

2 (h) "Voluminous request" means a request that: (i)
3 includes more than 5 individual requests for more than 5
4 different categories of records or a combination of individual
5 requests that total requests for more than 5 different
6 categories of records in a period of 20 business days; or (ii)
7 requires the compilation of more than 500 letter or
8 legal-sized pages of public records unless a single requested
9 record exceeds 500 pages. "Single requested record" may
10 include, but is not limited to, one report, form, e-mail,
11 letter, memorandum, book, map, microfilm, tape, or recording.

12 "Voluminous request" does not include a request made by
13 news media and non-profit, scientific, or academic
14 organizations if the principal purpose of the request is: (1)
15 to access and disseminate information concerning news and
16 current or passing events; (2) for articles of opinion or
17 features of interest to the public; or (3) for the purpose of
18 academic, scientific, or public research or education.

19 For the purposes of this subsection (h), "request" means a
20 written document, or oral request, if the public body chooses
21 to honor oral requests, that is submitted to a public body via
22 personal delivery, mail, telefax, electronic mail, or other
23 means available to the public body and that identifies the
24 particular public record or records the requester seeks. One
25 request may identify multiple individual records to be
26 inspected or copied.

1 (i) "Severance agreement" means a mutual agreement between
2 any public body and its employee for the employee's
3 resignation in exchange for payment by the public body.

4 (Source: P.A. 98-806, eff. 1-1-15; 98-1129, eff. 12-3-14;
5 99-78, eff. 7-20-15; 99-478, eff. 6-1-16.)

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
10 disclosure under this Section, but also contains information
11 that is not exempt from disclosure, the public body may elect
12 to redact the information that is exempt. The public body
13 shall make the remaining information available for inspection
14 and copying. Subject to this requirement, the following shall
15 be exempt from inspection and copying:

16 (a) Information specifically prohibited from
17 disclosure by federal or State law or rules and
18 regulations 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
24 specifically designed to provide information to one or
25 more law enforcement agencies regarding the physical or

1 mental status of one or more individual subjects.

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

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

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

24 (ii) interfere with active administrative
25 enforcement proceedings conducted by the public body
26 that is the recipient of the request;

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

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

16 (v) disclose unique or specialized investigative
17 techniques other than those generally used and known
18 or disclose internal documents of correctional
19 agencies related to detection, observation or
20 investigation of incidents of crime or misconduct, and
21 disclosure would result in demonstrable harm to the
22 agency or public body that is the recipient of the
23 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
5 that is the recipient of the request did not create the
6 record, did not participate in or have a role in any of the
7 events which are the subject of the record, and only has
8 access to the record through the shared electronic record
9 management system.

10 (d-6) Records contained in the Officer Professional
11 Conduct Database under Section 9.2 ~~9.4~~ of the Illinois
12 Police Training Act, except to the extent authorized under
13 that Section. This includes the documents supplied to the
14 Illinois Law Enforcement Training Standards Board from the
15 Illinois State Police and Illinois State Police Merit
16 Board.

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

19 (e-5) Records requested by persons committed to the
20 Department of Corrections, Department of Human Services
21 Division of Mental Health, or a county jail if those
22 materials are available in the library of the correctional
23 institution or facility or jail where the inmate is
24 confined.

25 (e-6) Records requested by persons committed to the
26 Department of Corrections, Department of Human Services

1 Division of Mental Health, or a county jail if those
2 materials include records from staff members' personnel
3 files, staff rosters, or other staffing assignment
4 information.

5 (e-7) Records requested by persons committed to the
6 Department of Corrections or Department of Human Services
7 Division of Mental Health if those materials are available
8 through an administrative request to the Department of
9 Corrections or Department of Human Services Division of
10 Mental Health.

11 (e-8) Records requested by a person committed to the
12 Department of Corrections, Department of Human Services
13 Division of Mental Health, or a county jail, the
14 disclosure of which would result in the risk of harm to any
15 person or the risk of an escape from a jail or correctional
16 institution or facility.

17 (e-9) Records requested by a person in a county jail
18 or committed to the Department of Corrections or
19 Department of Human Services Division of Mental Health,
20 containing personal information pertaining to the person's
21 victim or the victim's family, including, but not limited
22 to, a victim's home address, home telephone number, work
23 or school address, work telephone number, social security
24 number, or any other identifying information, except as
25 may be relevant to a requester's current or potential case
26 or claim.

1 (e-10) Law enforcement records of other persons
2 requested by a person committed to the Department of
3 Corrections, Department of Human Services Division of
4 Mental Health, or a county jail, including, but not
5 limited to, arrest and booking records, mug shots, and
6 crime scene photographs, except as these records may be
7 relevant to the requester's current or potential case or
8 claim.

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

18 (g) Trade secrets and commercial or financial
19 information obtained from a person or business where the
20 trade secrets or commercial or financial information are
21 furnished under a claim that they are proprietary,
22 privileged, or confidential, and that disclosure of the
23 trade secrets or commercial or financial information would
24 cause competitive harm to the person or business, and only
25 insofar as the claim directly applies to the records
26 requested.

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

16 Nothing contained in this paragraph (g) shall be
17 construed to prevent a person or business from consenting
18 to disclosure.

19 (h) Proposals and bids for any contract, grant, or
20 agreement, including information which if it were
21 disclosed would frustrate procurement or give an advantage
22 to any person proposing to enter into a contractor
23 agreement with the body, until an award or final selection
24 is made. Information prepared by or for the body in
25 preparation of a bid solicitation shall be exempt until an
26 award or final selection is made.

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

12 (j) The following information pertaining to
13 educational matters:

14 (i) test questions, scoring keys and other
15 examination data used to administer an academic
16 examination;

17 (ii) information received by a primary or
18 secondary school, college, or university under its
19 procedures for the evaluation of faculty members by
20 their academic peers;

21 (iii) information concerning a school or
22 university's adjudication of student disciplinary
23 cases, but only to the extent that disclosure would
24 unavoidably reveal the identity of the student; and

25 (iv) course materials or research materials used
26 by faculty members.

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

13 (1) Minutes of meetings of public bodies closed to the
14 public as provided in the Open Meetings Act until the
15 public body makes the minutes available to the public
16 under Section 2.06 of the Open Meetings Act.

17 (m) Communications between a public body and an
18 attorney or auditor representing the public body that
19 would not be subject to discovery in litigation, and
20 materials prepared or compiled by or for a public body in
21 anticipation of a criminal, civil, or administrative
22 proceeding upon the request of an attorney advising the
23 public body, and materials prepared or compiled with
24 respect to internal audits of public bodies.

25 (n) Records relating to a public body's adjudication
26 of employee grievances or disciplinary cases; however,

1 this exemption shall not extend to the final outcome of
2 cases in which discipline is imposed.

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

13 (p) Records relating to collective negotiating matters
14 between public bodies and their employees or
15 representatives, except that any final contract or
16 agreement shall be subject to inspection and copying.

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

20 (r) The records, documents, and information relating
21 to real estate purchase negotiations until those
22 negotiations have been completed or otherwise terminated.
23 With regard to a parcel involved in a pending or actually
24 and reasonably contemplated eminent domain proceeding
25 under the Eminent Domain Act, records, documents, and
26 information relating to that parcel shall be exempt except

1 as may be allowed under discovery rules adopted by the
2 Illinois Supreme Court. The records, documents, and
3 information relating to a real estate sale shall be exempt
4 until a sale is consummated.

5 (s) Any and all proprietary information and records
6 related to the operation of an intergovernmental risk
7 management association or self-insurance pool or jointly
8 self-administered health and accident cooperative or pool.
9 Insurance or self insurance (including any
10 intergovernmental risk management association or self
11 insurance pool) claims, loss or risk management
12 information, records, data, advice or communications.

13 (t) Information contained in or related to
14 examination, operating, or condition reports prepared by,
15 on behalf of, or for the use of a public body responsible
16 for the regulation or supervision of financial
17 institutions, insurance companies, or pharmacy benefit
18 managers, unless disclosure is otherwise required by State
19 law.

20 (u) Information that would disclose or might lead to
21 the disclosure of secret or confidential information,
22 codes, algorithms, programs, or private keys intended to
23 be used to create electronic signatures under the Uniform
24 Electronic Transactions Act.

25 (v) Vulnerability assessments, security measures, and
26 response policies or plans that are designed to identify,

1 prevent, or respond to potential attacks upon a
2 community's population or systems, facilities, or
3 installations, the destruction or contamination of which
4 would constitute a clear and present danger to the health
5 or safety of the community, but only to the extent that
6 disclosure could reasonably be expected to jeopardize the
7 effectiveness of the measures or the safety of the
8 personnel who implement them or the public. Information
9 exempt under this item may include such things as details
10 pertaining to the mobilization or deployment of personnel
11 or equipment, to the operation of communication systems or
12 protocols, or to tactical operations.

13 (w) (Blank).

14 (x) Maps and other records regarding the location or
15 security of generation, transmission, distribution,
16 storage, gathering, treatment, or switching facilities
17 owned by a utility, by a power generator, or by the
18 Illinois Power Agency.

19 (y) Information contained in or related to proposals,
20 bids, or negotiations related to electric power
21 procurement under Section 1-75 of the Illinois Power
22 Agency Act and Section 16-111.5 of the Public Utilities
23 Act that is determined to be confidential and proprietary
24 by the Illinois Power Agency or by the Illinois Commerce
25 Commission.

26 (z) Information about students exempted from

1 disclosure under Sections 10-20.38 or 34-18.29 of the
2 School Code, and information about undergraduate students
3 enrolled at an institution of higher education exempted
4 from disclosure under Section 25 of the Illinois Credit
5 Card Marketing Act of 2009.

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

8 (bb) Records and information provided to a mortality
9 review team and records maintained by a mortality review
10 team appointed under the Department of Juvenile Justice
11 Mortality Review Team Act.

12 (cc) Information regarding interments, entombments, or
13 inurnments of human remains that are submitted to the
14 Cemetery Oversight Database under the Cemetery Care Act or
15 the Cemetery Oversight Act, whichever is applicable.

16 (dd) Correspondence and records (i) that may not be
17 disclosed under Section 11-9 of the Illinois Public Aid
18 Code or (ii) that pertain to appeals under Section 11-8 of
19 the Illinois Public Aid Code.

20 (ee) The names, addresses, or other personal
21 information of persons who are minors and are also
22 participants and registrants in programs of park
23 districts, forest preserve districts, conservation
24 districts, recreation agencies, and special recreation
25 associations.

26 (ff) The names, addresses, or other personal

1 information of participants and registrants in programs of
2 park districts, forest preserve districts, conservation
3 districts, recreation agencies, and special recreation
4 associations where such programs are targeted primarily to
5 minors.

6 (gg) Confidential information described in Section
7 1-100 of the Illinois Independent Tax Tribunal Act of
8 2012.

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

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

24 (jj) Confidential information described in Section
25 5-535 of the Civil Administrative Code of Illinois.

26 (kk) The public body's credit card numbers, debit card

1 numbers, bank account numbers, Federal Employer
2 Identification Number, security code numbers, passwords,
3 and similar account information, the disclosure of which
4 could result in identity theft or impersonation or defrauding
5 of a governmental entity or a person.

6 (ll) Records concerning the work of the threat
7 assessment team of a school district.

8 (mm) All patient-related information that may be
9 contained in any record held by a public hospital system
10 outside of a medical records information system that alone
11 or compiled, or under circumstances in which the patient
12 information combined with other information could allow
13 for patient identification, and also in compliance with
14 State and federal medical privacy laws and regulations,
15 including, but not limited to, the Health Insurance
16 Portability and Accountability Act of 1996 (HIPAA) and its
17 regulations, 45 CFR Parts 160 and 164.

18 (1.5) Any information exempt from disclosure under the
19 Judicial Privacy Act shall be redacted from public records
20 prior to disclosure under this Act.

21 (2) A public record that is not in the possession of a
22 public body but is in the possession of a party with whom the
23 agency has contracted to perform a governmental function on
24 behalf of the public body, and that directly relates to the
25 governmental function and is not otherwise exempt under this
26 Act, shall be considered a public record of the public body,

1 for purposes of this Act.

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

6 (Source: P.A. 101-434, eff. 1-1-20; 101-452, eff. 1-1-20;
7 101-455, eff. 8-23-19; 101-652, eff. 1-1-22; 102-38, eff.
8 6-25-21; 102-558, eff. 8-20-21; revised 11-22-21.)