



Sen. William R. Haine

Filed: 10/14/2009

09600SB0353sam001

LRB096 06361 JAM 29953 a

1 AMENDMENT TO SENATE BILL 353

2 AMENDMENT NO. _____. Amend Senate Bill 353 by replacing
3 everything after the enacting clause with the following:

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 (Text of Section before amendment by P.A. 96-736)

8 Sec. 7. Exemptions.

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

1 (a) Information specifically prohibited from
2 disclosure by federal or State law or rules and regulations
3 implementing federal or State law.

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

7 (b-5) Files, documents, and other data or databases
8 maintained by one or more law enforcement agencies and
9 specifically designed to provide information to one or more
10 law enforcement agencies regarding the physical or mental
11 status of one or more individual subjects.

12 (c) Personal information contained within public
13 records, the disclosure of which would constitute a clearly
14 unwarranted invasion of personal privacy, unless the
15 disclosure is consented to in writing by the individual
16 subjects of the information. "Unwarranted invasion of
17 personal privacy" means the disclosure of information that
18 is highly personal or objectionable to a reasonable person
19 and in which the subject's right to privacy outweighs any
20 legitimate public interest in obtaining the information.
21 The disclosure of information that bears on the public
22 duties of public employees and officials shall not be
23 considered an invasion of personal privacy, subject to the
24 other exemptions provided in this Section.

25 (d) Records in the possession of any public body
26 created in the course of administrative enforcement

1 proceedings, and any law enforcement or correctional
2 agency for law enforcement purposes, but only to the extent
3 that disclosure would:

4 (i) interfere with pending or actually and
5 reasonably contemplated law enforcement proceedings
6 conducted by any law enforcement or correctional
7 agency that is the recipient of the request;

8 (ii) interfere with active administrative
9 enforcement proceedings conducted by the public body
10 that is the recipient of the request;

11 (iii) create a substantial likelihood that a
12 person will be deprived of a fair trial or an impartial
13 hearing;

14 (iv) unavoidably disclose the identity of a
15 confidential source, confidential information
16 furnished only by the confidential source, or persons
17 who file complaints with or provide information to
18 administrative, investigative, law enforcement, or
19 penal agencies; except that the identities of
20 witnesses to traffic accidents, traffic accident
21 reports, and rescue reports shall be provided by
22 agencies of local government, except when disclosure
23 would interfere with an active criminal investigation
24 conducted by the agency that is the recipient of the
25 request;

26 (v) disclose unique or specialized investigative

1 techniques other than those generally used and known or
2 disclose internal documents of correctional agencies
3 related to detection, observation or investigation of
4 incidents of crime or misconduct, and disclosure would
5 result in demonstrable harm to the agency or public
6 body that is the recipient of the request;

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

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

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

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

22 (g) Trade secrets and commercial or financial
23 information obtained from a person or business where the
24 trade secrets or commercial or financial information are
25 furnished under a claim that they are proprietary,
26 privileged or confidential, and that disclosure of the

1 trade secrets or commercial or financial information would
2 cause competitive harm to the person or business, and only
3 insofar as the claim directly applies to the records
4 requested.

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

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

23 (h) Proposals and bids for any contract, grant, or
24 agreement, including information which if it were
25 disclosed would frustrate procurement or give an advantage
26 to any person proposing to enter into a contractor

1 agreement with the body, until an award or final selection
2 is made. Information prepared by or for the body in
3 preparation of a bid solicitation shall be exempt until an
4 award or final selection is made.

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

16 (j) The following information pertaining to
17 educational matters:

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

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

25 (iii) information concerning a school or
26 university's adjudication of student disciplinary

1 cases, but only to the extent that disclosure would
2 unavoidably reveal the identity of the student; and

3 (iv) course materials or research materials used
4 by faculty members.

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

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

21 (m) Communications between a public body and an
22 attorney or auditor representing the public body that would
23 not be subject to discovery in litigation, and materials
24 prepared or compiled by or for a public body in
25 anticipation of a criminal, civil or administrative
26 proceeding upon the request of an attorney advising the

1 public body, and materials prepared or compiled with
2 respect to internal audits of public bodies.

3 (n) Records relating to a public body's investigation,
4 settlement, and adjudication of employee grievances or
5 disciplinary cases; however, this exemption shall not
6 extend to cases in which criminal charges are filed for
7 which disclosure of information shall be governed by that
8 which may be disclosed under the provisions of subsection
9 (a) of Section 2.15 until there is a final non-appealable
10 conviction ~~the final outcome of cases in which discipline~~
11 ~~is imposed.~~

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

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

26 (q) Test questions, scoring keys, and other

1 examination data used to determine the qualifications of an
2 applicant for a license or employment.

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

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

22 (t) Information contained in or related to
23 examination, operating, or condition reports prepared by,
24 on behalf of, or for the use of a public body responsible
25 for the regulation or supervision of financial
26 institutions or insurance companies, unless disclosure is

1 otherwise required by State law.

2 (u) Information that would disclose or might lead to
3 the disclosure of secret or confidential information,
4 codes, algorithms, programs, or private keys intended to be
5 used to create electronic or digital signatures under the
6 Electronic Commerce Security Act.

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

21 (w) (Blank).

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

1 (y) Information contained in or related to proposals,
2 bids, or negotiations related to electric power
3 procurement under Section 1-75 of the Illinois Power Agency
4 Act and Section 16-111.5 of the Public Utilities Act that
5 is determined to be confidential and proprietary by the
6 Illinois Power Agency or by the Illinois Commerce
7 Commission.

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

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

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

25 (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;
26 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; 96-261, eff. 1-1-10;

1 96-328, eff. 8-11-09; 96-542, eff. 1-1-10; 96-558, eff. 1-1-10;
2 revised 9-25-09.)

3 (Text of Section after amendment by P.A. 96-736)

4 Sec. 7. Exemptions.

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

13 (a) Information specifically prohibited from
14 disclosure by federal or State law or rules and regulations
15 implementing federal or State law.

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

19 (b-5) Files, documents, and other data or databases
20 maintained by one or more law enforcement agencies and
21 specifically designed to provide information to one or more
22 law enforcement agencies regarding the physical or mental
23 status of one or more individual subjects.

24 (c) Personal information contained within public
25 records, the disclosure of which would constitute a clearly

1 unwarranted invasion of personal privacy, unless the
2 disclosure is consented to in writing by the individual
3 subjects of the information. "Unwarranted invasion of
4 personal privacy" means the disclosure of information that
5 is highly personal or objectionable to a reasonable person
6 and in which the subject's right to privacy outweighs any
7 legitimate public interest in obtaining the information.
8 The disclosure of information that bears on the public
9 duties of public employees and officials shall not be
10 considered an invasion of personal privacy, subject to the
11 other exemptions provided in this Section.

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

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

21 (ii) interfere with active administrative
22 enforcement proceedings conducted by the public body
23 that is the recipient of the request;

24 (iii) create a substantial likelihood that a
25 person will be deprived of a fair trial or an impartial
26 hearing;

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

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

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

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

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

26 (f) Preliminary drafts, notes, recommendations,

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

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

18 The information included under this exemption includes
19 all ~~(i) All~~ trade secrets and commercial or financial
20 information obtained by a public body, including a public
21 pension fund, from a private equity fund or a privately
22 held company within the investment portfolio of a private
23 equity fund as a result of either investing or evaluating a
24 potential investment of public funds in a private equity
25 fund. The exemption contained in this item does not apply
26 to the aggregate financial performance information of a

1 private equity fund, nor to the identity of the fund's
2 managers or general partners. The exemption contained in
3 this item does not apply to the identity of a privately
4 held company within the investment portfolio of a private
5 equity fund, unless the disclosure of the identity of a
6 privately held company may cause competitive harm.

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

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

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

1 information regarding the health, safety, welfare, or
2 legal rights of the general public.

3 (j) The following information pertaining to
4 educational matters:

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

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

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

16 (iv) course materials or research materials used
17 by faculty members.

18 (k) Architects' plans, engineers' technical
19 submissions, and other construction related technical
20 documents for projects not constructed or developed in
21 whole or in part with public funds and the same for
22 projects constructed or developed with public funds,
23 including but not limited to power generating and
24 distribution stations and other transmission and
25 distribution facilities, water treatment facilities,
26 airport facilities, sport stadiums, convention centers,

1 and all government owned, operated, or occupied buildings,
2 but only to the extent that disclosure would compromise
3 security.

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

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

16 (n) Records relating to a public body's investigation,
17 settlement, and adjudication of employee grievances or
18 disciplinary cases; however, this exemption shall not
19 extend to cases in which criminal charges are filed for
20 which disclosure of information shall be governed by that
21 which may be disclosed under the provisions of subsection
22 (a) of Section 2.15 until there is a final non-appealable
23 conviction ~~the final outcome of cases in which discipline~~
24 ~~is imposed.~~

25 (o) Administrative or technical information associated
26 with automated data processing operations, including but

1 not limited to software, operating protocols, computer
2 program abstracts, file layouts, source listings, object
3 modules, load modules, user guides, documentation
4 pertaining to all logical and physical design of
5 computerized systems, employee manuals, and any other
6 information that, if disclosed, would jeopardize the
7 security of the system or its data or the security of
8 materials exempt under this Section.

9 (p) Records relating to collective negotiating matters
10 between public bodies and their employees or
11 representatives, except that any final contract or
12 agreement shall be subject to inspection and copying.

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

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

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

9 (t) Information contained in or related to
10 examination, operating, or condition reports prepared by,
11 on behalf of, or for the use of a public body responsible
12 for the regulation or supervision of financial
13 institutions or insurance companies, unless disclosure is
14 otherwise required by State law.

15 (u) Information that would disclose or might lead to
16 the disclosure of secret or confidential information,
17 codes, algorithms, programs, or private keys intended to be
18 used to create electronic or digital signatures under the
19 Electronic Commerce Security Act.

20 (v) Vulnerability assessments, security measures, and
21 response policies or plans that are designed to identify,
22 prevent, or respond to potential attacks upon a community's
23 population or systems, facilities, or installations, the
24 destruction or contamination of which would constitute a
25 clear and present danger to the health or safety of the
26 community, but only to the extent that disclosure could

1 reasonably be expected to jeopardize the effectiveness of
2 the measures or the safety of the personnel who implement
3 them or the public. Information exempt under this item may
4 include such things as details pertaining to the
5 mobilization or deployment of personnel or equipment, to
6 the operation of communication systems or protocols, or to
7 tactical operations.

8 (w) (Blank).

9 (x) Maps and other records regarding the location or
10 security of generation, transmission, distribution,
11 storage, gathering, treatment, or switching facilities
12 owned by a utility, by a power generator, or by the
13 Illinois Power Agency.

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

21 (z) ~~(tt)~~ Information about students exempted from
22 disclosure under Sections 10-20.38 or 34-18.29 of the
23 School Code, and information about undergraduate students
24 enrolled at an institution of higher education exempted
25 from disclosure under Section 25 of the Illinois Credit
26 Card Marketing Act of 2009.

1 (aa) ~~(tt)~~ Information the disclosure of which is
2 exempted under the Viatical Settlements Act of 2009.

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

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

14 (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;
15 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; 96-261, eff. 1-1-10;
16 96-328, eff. 8-11-09; 96-542, eff. 1-1-10; 96-558, eff. 1-1-10;
17 96-736, eff. 7-1-10; revised 9-25-09.)

18 Section 95. No acceleration or delay. Where this Act makes
19 changes in a statute that is represented in this Act by text
20 that is not yet or no longer in effect (for example, a Section
21 represented by multiple versions), the use of that text does
22 not accelerate or delay the taking effect of (i) the changes
23 made by this Act or (ii) provisions derived from any other
24 Public Act.

1 Section 99. Effective date. This Act takes effect January
2 1, 2010.".