

# SB3040



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB3040

Introduced 2/4/2010, by Sen. William R. Haine

#### SYNOPSIS AS INTRODUCED:

5 ILCS 140/7

from Ch. 116, par. 207

Amends the Freedom of Information Act. Exempts from disclosure information relating to performance evaluations of law enforcement officers covered by the Illinois Law Enforcement Training and Standards Board and sworn peace officers employed by the State. Effective immediately.

LRB096 20113 JAM 35647 b

A BILL FOR

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 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:

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

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

23 (b-5) Files, documents, and other data or databases

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

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

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

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

26 (ii) interfere with active administrative

1 enforcement proceedings conducted by the public body  
2 that is the recipient of the request;

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

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

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

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

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

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

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

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

23 The information included under this exemption includes  
24 all ~~All~~ trade secrets and commercial or financial  
25 information obtained by a public body, including a public  
26 pension fund, from a private equity fund or a privately

1 held company within the investment portfolio of a private  
2 equity fund as a result of either investing or evaluating a  
3 potential investment of public funds in a private equity  
4 fund. The exemption contained in this item does not apply  
5 to the aggregate financial performance information of a  
6 private equity fund, nor to the identity of the fund's  
7 managers or general partners. The exemption contained in  
8 this item does not apply to the identity of a privately  
9 held company within the investment portfolio of a private  
10 equity fund, unless the disclosure of the identity of a  
11 privately held company may cause competitive harm.

12 Nothing contained in this paragraph (g) shall be  
13 construed to prevent a person or business from consenting  
14 to disclosure.

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

23 (i) Valuable formulae, computer geographic systems,  
24 designs, drawings and research data obtained or produced by  
25 any public body when disclosure could reasonably be  
26 expected to produce private gain or public loss. The

1 exemption for "computer geographic systems" provided in  
2 this paragraph (i) does not extend to requests made by news  
3 media as defined in Section 2 of this Act when the  
4 requested information is not otherwise exempt and the only  
5 purpose of the request is to access and disseminate  
6 information regarding the health, safety, welfare, or  
7 legal rights of the general public.

8 (j) The following information pertaining to  
9 educational matters:

10 (i) test questions, scoring keys and other  
11 examination data used to administer an academic  
12 examination;

13 (ii) information received by a primary or  
14 secondary school, college, or university under its  
15 procedures for the evaluation of faculty members by  
16 their academic peers;

17 (iii) information concerning a school or  
18 university's adjudication of student disciplinary  
19 cases, but only to the extent that disclosure would  
20 unavoidably reveal the identity of the student; and

21 (iv) course materials or research materials used  
22 by faculty members.

23 (j-5) Information related to the performance  
24 evaluation of (i) any law enforcement officer covered under  
25 the Illinois Law Enforcement Training and Standards Board,  
26 as defined in the Illinois Police Training Act, or (ii) any

1 sworn peace officer employed by the State.

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

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

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

26 (n) Records relating to a public body's adjudication of



1 employee grievances or disciplinary cases; however, this  
2 exemption shall not extend to the final outcome of cases in  
3 which discipline is imposed.

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

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

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

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

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

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

14 (t) Information contained in or related to  
15 examination, operating, or condition reports prepared by,  
16 on behalf of, or for the use of a public body responsible  
17 for the regulation or supervision of financial  
18 institutions or insurance companies, unless disclosure is  
19 otherwise required by State 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 be  
23 used to create electronic or digital signatures under the  
24 Electronic Commerce Security 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 community's  
2 population or systems, facilities, or installations, the  
3 destruction or contamination of which would constitute a  
4 clear and present danger to the health or safety of the  
5 community, but only to the extent that disclosure could  
6 reasonably be expected to jeopardize the effectiveness of  
7 the measures or the safety of the personnel who implement  
8 them or the public. Information exempt under this item may  
9 include such things as details pertaining to the  
10 mobilization or deployment of personnel or equipment, to  
11 the operation of communication systems or protocols, or to  
12 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 Agency  
22 Act and Section 16-111.5 of the Public Utilities Act that  
23 is determined to be confidential and proprietary by the  
24 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 (bb) Information regarding interments, entombments, or  
7 inurnments of human remains that are submitted to the  
8 Cemetery Oversight Database under the Cemetery Care Act or  
9 the Cemetery Oversight Act, whichever is applicable.

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. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;  
22 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; 96-261, eff. 1-1-10;  
23 96-328, eff. 8-11-09; 96-542, eff. 1-1-10; 96-558, eff. 1-1-10;  
24 96-863, eff. 3-1-10; revised 1-26-10.)

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

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3 record that contains information that is exempt from disclosure  
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5 exempt from disclosure, the public body may elect to redact the  
6 information that is exempt. The public body shall make the  
7 remaining information available for inspection and copying.  
8 Subject to this requirement, the following shall be exempt from  
9 inspection and copying:

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11 disclosure by federal or State law or rules and regulations  
12 implementing federal or State law.

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14 by another provision of this Act, a State or federal law or  
15 a court order.

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17 maintained by one or more law enforcement agencies and  
18 specifically designed to provide information to one or more  
19 law enforcement agencies regarding the physical or mental  
20 status of one or more individual subjects.

21           (c) Personal information contained within public  
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24 disclosure is consented to in writing by the individual  
25 subjects of the information. "Unwarranted invasion of  
26 personal privacy" means the disclosure of information that

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2 and in which the subject's right to privacy outweighs any  
3 legitimate public interest in obtaining the information.  
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5 duties of public employees and officials shall not be  
6 considered an invasion of personal privacy.

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10 agency for law enforcement purposes, but only to the extent  
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15 agency that is the recipient of the request;

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17 enforcement proceedings conducted by the public body  
18 that is the recipient of the request;

19 (iii) create a substantial likelihood that a  
20 person will be deprived of a fair trial or an impartial  
21 hearing;

22 (iv) unavoidably disclose the identity of a  
23 confidential source, confidential information  
24 furnished only by the confidential source, or persons  
25 who file complaints with or provide information to  
26 administrative, investigative, law enforcement, or

1           penal agencies; except that the identities of  
2           witnesses to traffic accidents, traffic accident  
3           reports, and rescue reports shall be provided by  
4           agencies of local government, except when disclosure  
5           would interfere with an active criminal investigation  
6           conducted by the agency that is the recipient of the  
7           request;

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

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

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10 cause competitive harm to the person or business, and only  
11 insofar as the claim directly applies to the records  
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13 The information included under this exemption includes  
14 all ~~All~~ trade secrets and commercial or financial  
15 information obtained by a public body, including a public  
16 pension fund, from a private equity fund or a privately  
17 held company within the investment portfolio of a private  
18 equity fund as a result of either investing or evaluating a  
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24 distribution stations and other transmission and  
25 distribution facilities, water treatment facilities,  
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7 Section 2.06 of the Open Meetings Act.

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18 as may be allowed under discovery rules adopted by the  
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20 information relating to a real estate sale shall be exempt  
21 until a sale is consummated.

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

1           intergovernmental risk management association or self  
2           insurance pool) claims, loss or risk management  
3           information, records, data, advice or communications.

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

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

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

1 the operation of communication systems or protocols, or to  
2 tactical operations.

3 (w) (Blank).

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

9 (y) Information contained in or related to proposals,  
10 bids, or negotiations related to electric power  
11 procurement under Section 1-75 of the Illinois Power Agency  
12 Act and Section 16-111.5 of the Public Utilities Act that  
13 is determined to be confidential and proprietary by the  
14 Illinois Power Agency or by the Illinois Commerce  
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16 (z) Information about students exempted from  
17 disclosure under Sections 10-20.38 or 34-18.29 of the  
18 School Code, and information about undergraduate students  
19 enrolled at an institution of higher education exempted  
20 from disclosure under Section 25 of the Illinois Credit  
21 Card Marketing Act of 2009.

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

24 (bb) Information regarding interments, entombments, or  
25 inurnments of human remains that are submitted to the  
26 Cemetery Oversight Database under the Cemetery Care Act or

1 the Cemetery Oversight Act, whichever is applicable.

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

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

13 (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;  
14 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; 96-261, eff. 1-1-10;  
15 96-328, eff. 8-11-09; 96-542, eff. 1-1-10; 96-558, eff. 1-1-10;  
16 96-736, eff. 7-1-10; 96-863, eff. 3-1-10; revised 1-26-10.)

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

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