



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB3137

Introduced 2/23/2011, by Rep. Roger L. Eddy

#### SYNOPSIS AS INTRODUCED:

5 ILCS 140/7  
5 ILCS 140/9.5

from Ch. 116, par. 207

Amends the Freedom of Information Act. Exempts the following types of information from disclosure: the date of birth of public employees, medical and health information of public employees, the names of applicants for public employment, applications for public employment, recommendations and opinions regarding the qualification of public employment applicants, investigative notes of public employees, and outlines or drafts of oral statements, presentations, or remarks. Removes a provision that required public bodies to seek pre-authorization from the Public Access Counselor before opting not to disclose these types of information.

LRB097 06930 JDS 47023 b

FISCAL NOTE ACT  
MAY APPLY

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 Sections 7 and 9.5 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.

9 For the purposes of this paragraph (c):

10 (i) "Personal information" includes, but is not  
11 limited to:

12 (A) the date of birth of public employees;

13 (B) medical or health information of public  
14 employees, such as treatment histories,  
15 descriptions of injuries, information regarding  
16 the hospital to which an injured person is taken,  
17 insurance policy numbers, and the pregnancy status  
18 of public employees;

19 (C) the names of applicants for public  
20 employment; and

21 (D) applications for public employment.

22 (ii) "Unwarranted invasion of personal privacy"  
23 means the disclosure of information that is highly  
24 personal or objectionable to a reasonable person and in  
25 which the subject's right to privacy outweighs any  
26 legitimate public interest in obtaining the

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

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

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

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

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

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

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

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

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

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

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

19 (f) Preliminary drafts, notes, recommendations,  
20 memoranda, recommendations and opinions regarding the  
21 qualification of public employment applicants,  
22 investigative notes of public employees, outlines or  
23 drafts of oral statements, presentations, or remarks, and  
24 any other records in which opinions are expressed, or  
25 policies or actions are formulated, except that a specific  
26 record or relevant portion of a record shall not be exempt

1           when the record is publicly cited and identified by the  
2           head of the public body. The exemption provided in this  
3           paragraph (f) extends to all those records of officers and  
4           agencies of the General Assembly that pertain to the  
5           preparation of legislative documents.

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

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

1 within the investment portfolio of a private equity fund,  
2 unless the disclosure of the identity of a privately held  
3 company may cause competitive harm.

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

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

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

26 (j) The following information pertaining to

1 educational matters:

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

26           (w) (Blank).

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

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

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

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

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

25           (cc) ~~(bb)~~ Information regarding interments,  
26 entombments, or inurnments of human remains that are

1 submitted to the Cemetery Oversight Database under the  
2 Cemetery Care Act or the Cemetery Oversight Act, whichever  
3 is applicable.

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

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

15 (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;  
16 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; 96-261, eff. 1-1-10;  
17 96-328, eff. 8-11-09; 96-542, eff. 1-1-10; 96-558, eff. 1-1-10;  
18 96-736, eff. 7-1-10; 96-863, eff. 3-1-10; 96-1378, eff.  
19 7-29-10; revised 9-2-10.)

20 (5 ILCS 140/9.5)

21 Sec. 9.5. Public Access Counselor; opinions.

22 (a) A person whose request to inspect or copy a public  
23 record is denied by a public body, except the General Assembly  
24 and committees, commissions, and agencies thereof, may file a  
25 request for review with the Public Access Counselor established

1 in the Office of the Attorney General not later than 60 days  
2 after the date of the final denial. The request for review must  
3 be in writing, signed by the requester, and include (i) a copy  
4 of the request for access to records and (ii) any responses  
5 from the public body.

6 (b) A public body that receives a request for records, and  
7 asserts that the records are exempt under subsection (1)(c) or  
8 (1)(f) of Section 7 of this Act, shall, within the time periods  
9 provided for responding to a request, provide written notice to  
10 the requester and the Public Access Counselor of its intent to  
11 deny the request in whole or in part. The notice shall include:  
12 (i) a copy of the request for access to records; (ii) the  
13 proposed response from the public body; and (iii) a detailed  
14 summary of the public body's basis for asserting the exemption.  
15 Upon receipt of a notice of intent to deny from a public body,  
16 the Public Access Counselor shall determine whether further  
17 inquiry is warranted. Within 5 working days after receipt of  
18 the notice of intent to deny, the Public Access Counselor shall  
19 notify the public body and the requester whether further  
20 inquiry is warranted. If the Public Access Counselor determines  
21 that further inquiry is warranted, the procedures set out in  
22 this Section regarding the review of denials, including the  
23 production of documents, shall also be applicable to the  
24 inquiry and resolution of a notice of intent to deny from a  
25 public body. Times for response or compliance by the public  
26 body under Section 3 of this Act shall be tolled until the

1 Public Access Counselor concludes his or her inquiry.

2 Notwithstanding any other provision of this subsection  
3 (b), a public body that receives a request for records and  
4 asserts that those records are exempt under subsection (1)(c)  
5 or (1)(f) of Section 7 of this Act has no duty to provide a  
6 written notice of its intent not to disclose the date of birth  
7 of a public employee, the medical or health information of a  
8 public employee, the names of applicants for public employment,  
9 requests for applications for public employment,  
10 recommendations and opinions regarding the qualification of  
11 public employment applicants, investigative notes of public  
12 employees, or outlines or drafts of oral statements,  
13 presentations, or remarks.

14 (c) Upon receipt of a request for review, the Public Access  
15 Counselor shall determine whether further action is warranted.  
16 If the Public Access Counselor determines that the alleged  
17 violation is unfounded, he or she shall so advise the requester  
18 and the public body and no further action shall be undertaken.  
19 In all other cases, the Public Access Counselor shall forward a  
20 copy of the request for review to the public body within 7  
21 working days after receipt and shall specify the records or  
22 other documents that the public body shall furnish to  
23 facilitate the review. Within 7 working days after receipt of  
24 the request for review, the public body shall provide copies of  
25 records requested and shall otherwise fully cooperate with the  
26 Public Access Counselor. If a public body fails to furnish

1 specified records pursuant to this Section, or if otherwise  
2 necessary, the Attorney General may issue a subpoena to any  
3 person or public body having knowledge of or records pertaining  
4 to a request for review of a denial of access to records under  
5 the Act. To the extent that records or documents produced by a  
6 public body contain information that is claimed to be exempt  
7 from disclosure under Section 7 of this Act, the Public Access  
8 Counselor shall not further disclose that information.

9 (d) Within 7 working days after it receives a copy of a  
10 request for review and request for production of records from  
11 the Public Access Counselor, the public body may, but is not  
12 required to, answer the allegations of the request for review.  
13 The answer may take the form of a letter, brief, or memorandum.  
14 The Public Access Counselor shall forward a copy of the answer  
15 to the person submitting the request for review, with any  
16 alleged confidential information to which the request pertains  
17 redacted from the copy. The requester may, but is not required  
18 to, respond in writing to the answer within 7 working days and  
19 shall provide a copy of the response to the public body.

20 (e) In addition to the request for review, and the answer  
21 and the response thereto, if any, a requester or a public body  
22 may furnish affidavits or records concerning any matter germane  
23 to the review.

24 (f) Unless the Public Access Counselor extends the time by  
25 no more than 21 business days by sending written notice to the  
26 requester and the public body that includes a statement of the



1 reasons for the extension in the notice, or decides to address  
2 the matter without the issuance of a binding opinion, the  
3 Attorney General shall examine the issues and the records,  
4 shall make findings of fact and conclusions of law, and shall  
5 issue to the requester and the public body an opinion in  
6 response to the request for review within 60 days after its  
7 receipt. The opinion shall be binding upon both the requester  
8 and the public body, subject to administrative review under  
9 Section 11.5.

10 In responding to any request under this Section 9.5, the  
11 Attorney General may exercise his or her discretion and choose  
12 to resolve a request for review by mediation or by a means  
13 other than the issuance of a binding opinion. The decision not  
14 to issue a binding opinion shall not be reviewable.

15 Upon receipt of a binding opinion concluding that a  
16 violation of this Act has occurred, the public body shall  
17 either take necessary action immediately to comply with the  
18 directive of the opinion or shall initiate administrative  
19 review under Section 11.5. If the opinion concludes that no  
20 violation of the Act has occurred, the requester may initiate  
21 administrative review under Section 11.5.

22 A public body that discloses records in accordance with an  
23 opinion of the Attorney General is immune from all liabilities  
24 by reason thereof and shall not be liable for penalties under  
25 this Act.

26 (g) If the requester files suit under Section 11 with

1 respect to the same denial that is the subject of a pending  
2 request for review, the requester shall notify the Public  
3 Access Counselor, and the Public Access Counselor shall take no  
4 further action with respect to the request for review and shall  
5 so notify the public body.

6 (h) The Attorney General may also issue advisory opinions  
7 to public bodies regarding compliance with this Act. A review  
8 may be initiated upon receipt of a written request from the  
9 head of the public body or its attorney, which shall contain  
10 sufficient accurate facts from which a determination can be  
11 made. The Public Access Counselor may request additional  
12 information from the public body in order to assist in the  
13 review. A public body that relies in good faith on an advisory  
14 opinion of the Attorney General in responding to a request is  
15 not liable for penalties under this Act, so long as the facts  
16 upon which the opinion is based have been fully and fairly  
17 disclosed to the Public Access Counselor.

18 (Source: P.A. 96-542, eff. 1-1-10.)