



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3342

Introduced 2/24/2011, by Rep. Kelly Burke

SYNOPSIS AS INTRODUCED:

5 ILCS 140/7

from Ch. 116, par. 207

605 ILCS 10/19.1 new

Amends the Toll Highway Act and the Freedom of Information Act. Provides that the Illinois State Toll Highway Authority may not sell or otherwise provide to third parties personally identifiable information obtained through its electronic toll collection system. Provides that the Authority may store personally identifiable information only if the information is required to perform account functions such as billing, account settlement, or toll violation enforcement activities. Provides that the Authority shall establish a privacy policy containing certain provisions by December 31, 2011. Provides that the Authority must discard personally identifiable information no more than 4 years after the closure date of the billing cycle, payment of the bill, and resolution of all applicable toll violations, and that the Authority shall purge personally identifiable information of a closed or terminated account no more than 4 years after account closure or termination. Provides exceptions to the prohibition on release of personally identifiable information. Defines terms. Provides that in any agreement allowing another public entity to use the Authority's toll collection system in a transportation facility, the Authority shall require the other public entity to comply with the stated privacy requirements. Provides that personally identifiable information generated through the Authority's toll collection process shall be exempt from release under the Illinois Freedom of Information Act.

LRB097 08287 HEP 48414 b

1 AN ACT concerning transportation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Freedom of Information Act is amended by
5 changing Section 7 as follows:

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

7 Sec. 7. Exemptions.

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

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

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

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

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

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

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

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

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

1 that is the recipient of the request;

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

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

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

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

26 (vii) obstruct an ongoing criminal investigation

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

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

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

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

22 The information included under this exemption includes
23 all trade secrets and commercial or financial information
24 obtained by a public body, including a public pension fund,
25 from a private equity fund or a privately held company
26 within the investment portfolio of a private equity fund as

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

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

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

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

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

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

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

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

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

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

22 (k) Architects' plans, engineers' technical
23 submissions, and other construction related technical
24 documents for projects not constructed or developed in
25 whole or in part with public funds and the same for
26 projects constructed or developed with public funds,

1 including but not limited to power generating and
2 distribution stations and other transmission and
3 distribution facilities, water treatment facilities,
4 airport facilities, sport stadiums, convention centers,
5 and all government owned, operated, or occupied buildings,
6 but only to the extent that disclosure would compromise
7 security.

8 (l) Minutes of meetings of public bodies closed to the
9 public as provided in the Open Meetings Act until the
10 public body makes the minutes available to the public under
11 Section 2.06 of the Open Meetings Act.

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

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

24 (o) Administrative or technical information associated
25 with automated data processing operations, including but
26 not limited to software, operating protocols, computer

1 program abstracts, file layouts, source listings, object
2 modules, load modules, user guides, documentation
3 pertaining to all logical and physical design of
4 computerized systems, employee manuals, and any other
5 information that, if disclosed, would jeopardize the
6 security of the system or its data or the security of
7 materials exempt under this Section.

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

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

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

26 (s) Any and all proprietary information and records

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

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

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

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

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

7 (w) (Blank).

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

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

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

26 (aa) Information the disclosure of which is exempted

1 under the Viatical Settlements Act of 2009.

2 (bb) Records and information provided to a mortality
3 review team and records maintained by a mortality review
4 team appointed under the Department of Juvenile Justice
5 Mortality Review Team Act.

6 (cc) ~~(bb)~~ Information regarding interments,
7 entombments, or inurnments of human remains that are
8 submitted to the Cemetery Oversight Database under the
9 Cemetery Care Act or the Cemetery Oversight Act, whichever
10 is applicable.

11 (dd) Personally identifiable information exempted from
12 disclosure by Section 19.1 of the Toll Highway Act.

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

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

24 (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;
25 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; 96-261, eff. 1-1-10;
26 96-328, eff. 8-11-09; 96-542, eff. 1-1-10; 96-558, eff. 1-1-10;

1 96-736, eff. 7-1-10; 96-863, eff. 3-1-10; 96-1378, eff.
2 7-29-10; revised 9-2-10.)

3 Section 10. The Toll Highway Act is amended by adding
4 Section 19.1 as follows:

5 (605 ILCS 10/19.1 new)

6 Sec. 19.1. Confidentiality of personally identifiable
7 information obtained through electronic toll collection
8 system.

9 (a) Except as otherwise provided in this Section, the
10 Authority may not sell or otherwise provide to any person or
11 entity personally identifiable information of any electronic
12 toll collection system user that the Authority obtains through
13 the operation of its electronic toll collection system.

14 (b) The Authority may, within practical business and cost
15 constraints, store personally identifiable information of an
16 electronic toll collection system user only if the information
17 is required to perform account functions such as billing,
18 account settlement, or toll violation enforcement activities.

19 (c) By no later than December 31, 2011, the Authority shall
20 establish a privacy policy regarding the collection and use of
21 personally identifiable information. Upon its adoption, the
22 policy shall be posted on the Authority's website and a copy
23 shall be included with each transponder transmitted to a user.
24 The policy shall include but need not be limited to the

1 following:

2 (1) A description of the types of personally
3 identifiable information collected by the Authority.

4 (2) The categories of third-party persons or entities
5 with whom the Authority may share personally identifiable
6 information and for what purposes that information is
7 shared.

8 (3) The process by which the Authority notifies
9 electronic toll collection system users of material
10 changes to its privacy policy.

11 (4) The process by which an electronic toll collection
12 system user may review and request changes to any of his or
13 her personally identifiable information.

14 (5) The effective date of the privacy policy.

15 (d) After December 31, 2011, the Authority shall discard
16 personally identifiable information no more than 4 years after
17 the closure date of the billing cycle, payment of the bill, and
18 resolution of all toll violations, if applicable.

19 (e) After December 31, 2011, the Authority shall purge
20 personally identifiable information of a closed or terminated
21 account no more than 4 years after the date the account is
22 closed or terminated.

23 (f) This Section does not prohibit the Authority from:

24 (1) providing aggregated traveler information derived
25 from collective data relating to a group or category of
26 electronic toll collection system users from which

1 personally identifiable information has been removed;

2 (2) sharing data with another transportation agency or
3 third-party vendor to comply with interoperability
4 specifications and standards regarding electronic toll
5 collection devices and technologies, provided that the
6 other transportation agency or third-party vendor may not
7 use personally identifiable information obtained under
8 this Section for a purpose other than described in this
9 Section;

10 (3) performing financial, legal and accounting
11 functions such as billing, account settlement, toll
12 violation enforcement, or other activities required to
13 operate and manage its toll collection system;

14 (4) communicating about products and services offered
15 by itself, a business partner, or another public agency;

16 (5) using personally identifiable information in
17 research projects, provided that appropriate
18 confidentiality restrictions are employed to protect
19 against the unauthorized release of such information;

20 (6) releasing personally identifiable information in
21 response to a warrant, subpoena or lawful order from a
22 court of competent jurisdiction; or

23 (7) releasing personally identifiable information to
24 law enforcement agencies in the case of an emergency when
25 obtaining a warrant or subpoena would be impractical.

26 (g) For purposes of this Section:

1 "Electronic toll collection system" is a system where a
2 transponder, camera-based vehicle identification system, or
3 other electronic medium is used to deduct payment of a toll
4 from a subscriber's account or to establish an obligation to
5 pay a toll.

6 "Electronic toll collection system user" means any natural
7 person who subscribes to an electronic toll collection system
8 or any natural person who uses a tolled transportation facility
9 that employs the Authority's electronic toll collection
10 system.

11 "Personally identifiable information" means any
12 information that identifies or describes an electronic toll
13 collection system user, including but not limited to travel
14 pattern data, address, telephone number, e-mail address,
15 license plate number, photograph, bank account information, or
16 credit card number.

17 (h) In any agreement allowing another public entity to use
18 the Authority's toll collection system in a transportation
19 facility, the Authority shall require the other public entity
20 to comply with the requirements of this Section.

21 (i) Notwithstanding any other law, personally identifiable
22 information generated through the Authority's toll collection
23 process shall be exempt from release under the Illinois Freedom
24 of Information Act.