



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB4596

Introduced 2/1/2012, by Rep. Jim Durkin

SYNOPSIS AS INTRODUCED:

5 ILCS 140/7

from Ch. 116, par. 207

Amends the Freedom of Information Act. With respect to the disclosure exemption for administrative enforcement and law enforcement records, extends the exemption to records the disclosure of which would affect enforcement proceedings and investigations of any public body (now, the public body that receives the request). Requires a public body that receives any administrative enforcement or law enforcement records request but that is not the public body or law enforcement or correctional agency contemplating or conducting a proceeding or investigation to transmit the request to such body or agency. Effective immediately.

LRB097 17855 JDS 63077 b

1 AN ACT concerning government.

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

4 Section 5. The Freedom of Information Act is amended by
5 changing 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 any ~~the~~ public

1 body ~~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 For the purposes of this paragraph (d), if the
3 recipient of the request for records is other than the
4 public body that is contemplating or conducting the
5 administrative enforcement proceeding or investigation or
6 other than the law enforcement or correctional agency that
7 is contemplating or conducting the law enforcement
8 proceeding or investigation, then the recipient of the
9 request shall transmit the request to the public body or
10 law enforcement or correctional agency that is
11 contemplating or conducting such proceeding or
12 investigation within 2 business days after the receipt of
13 the request by any means described in subsection (c) of
14 Section 3. In such event, and concurrently with the
15 transmission of the request, the recipient of the request
16 shall notify the requesting party that the request for
17 records has been transmitted to a public body or law
18 enforcement or correctional agency that is contemplating
19 or conducting an administrative enforcement or law
20 enforcement proceeding or investigation and shall identify
21 that public body or law enforcement or correctional agency
22 to the requesting party. Upon receipt of the transmitted
23 request, that public body or law enforcement or
24 correctional agency shall respond to the request within the
25 time limits set forth in subsection (d) of Section 3 or in
26 Section 3.1, as appropriate.

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

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

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

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

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

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

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

21 (i) Valuable formulae, computer geographic systems,
22 designs, drawings and research data obtained or produced by
23 any public body when disclosure could reasonably be
24 expected to produce private gain or public loss. The
25 exemption for "computer geographic systems" provided in
26 this paragraph (i) does not extend to requests made by news

1 media as defined in Section 2 of this Act when the
2 requested information is not otherwise exempt and the only
3 purpose of the request is to access and disseminate
4 information regarding the health, safety, welfare, or
5 legal rights of the general public.

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

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

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

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

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

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

1 distribution stations and other transmission and
2 distribution facilities, water treatment facilities,
3 airport facilities, sport stadiums, convention centers,
4 and all government owned, operated, or occupied buildings,
5 but only to the extent that disclosure would compromise
6 security.

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

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

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

23 (o) Administrative or technical information associated
24 with automated data processing operations, including but
25 not limited to software, operating protocols, computer
26 program abstracts, file layouts, source listings, object

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

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

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

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

25 (s) Any and all proprietary information and records
26 related to the operation of an intergovernmental risk

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

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

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

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

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

6 (w) (Blank).

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

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

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

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

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

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

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

13 (ee) ~~(dd)~~ The names, addresses, or other personal
14 information of persons who are minors and are also
15 participants and registrants in programs of park
16 districts, forest preserve districts, conservation
17 districts, recreation agencies, and special recreation
18 associations.

19 (ff) ~~(ee)~~ The names, addresses, or other personal
20 information of participants and registrants in programs of
21 park districts, forest preserve districts, conservation
22 districts, recreation agencies, and special recreation
23 associations where such programs are targeted primarily to
24 minors.

25 (2) A public record that is not in the possession of a
26 public body but is in the possession of a party with whom the

1 agency has contracted to perform a governmental function on
2 behalf of the public body, and that directly relates to the
3 governmental function and is not otherwise exempt under this
4 Act, shall be considered a public record of the public body,
5 for purposes of this Act.

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

10 (Source: P.A. 96-261, eff. 1-1-10; 96-328, eff. 8-11-09;
11 96-542, eff. 1-1-10; 96-558, eff. 1-1-10; 96-736, eff. 7-1-10;
12 96-863, eff. 3-1-10; 96-1378, eff. 7-29-10; 97-333, eff.
13 8-12-11; 97-385, eff. 8-15-11; 97-452, eff. 8-19-11; revised
14 9-2-11.)

15 Section 99. Effective date. This Act takes effect upon
16 becoming law.