



Sen. Edward D. Maloney

Filed: 3/2/2011

09700SB1645sam001

LRB097 09936 JDS 51821 a

1 AMENDMENT TO SENATE BILL 1645

2 AMENDMENT NO. _____. Amend Senate Bill 1645 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Freedom of Information Act is amended by
5 changing Sections 1, 2, and 9.5 and by adding Section 3.2 as
6 follows:

7 (5 ILCS 140/1) (from Ch. 116, par. 201)

8 Sec. 1. Pursuant to the fundamental philosophy of the
9 American constitutional form of government, it is declared to
10 be the public policy of the State of Illinois that all persons
11 are entitled to full and complete information regarding the
12 affairs of government and the official acts and policies of
13 those who represent them as public officials and public
14 employees consistent with the terms of this Act. Such access is
15 necessary to enable the people to fulfill their duties of
16 discussing public issues fully and freely, making informed

1 political judgments and monitoring government to ensure that it
2 is being conducted in the public interest.

3 The General Assembly hereby declares that it is the public
4 policy of the State of Illinois that access by all persons to
5 public records promotes the transparency and accountability of
6 public bodies at all levels of government. It is a fundamental
7 obligation of government to operate openly and provide public
8 records as expediently and efficiently as possible in
9 compliance with this Act.

10 This Act is not intended to cause an unwarranted invasion
11 of personal privacy, nor to allow the requests of a commercial
12 enterprise to unduly burden public resources, nor to allow
13 vexatious requests for records to unduly burden public
14 resources, nor ~~or~~ to disrupt the duly-undertaken work of any
15 public body independent of the fulfillment of any of the
16 fore-mentioned rights of the people to access to information.

17 This Act is not intended to create an obligation on the
18 part of any public body to maintain or prepare any public
19 record which was not maintained or prepared by such public body
20 at the time when this Act becomes effective, except as
21 otherwise required by applicable local, State or federal law.

22 Restraints on access to information, to the extent
23 permitted by this Act, are limited exceptions to the principle
24 that the people of this State have a right to full disclosure
25 of information relating to the decisions, policies,
26 procedures, rules, standards, and other aspects of government

1 activity that affect the conduct of government and the lives of
2 any or all of the people. The provisions of this Act shall be
3 construed in accordance with this principle. This Act shall be
4 construed to require disclosure of requested information as
5 expediently and efficiently as possible and adherence to the
6 deadlines established in this Act.

7 The General Assembly recognizes that this Act imposes
8 fiscal obligations on public bodies to provide adequate staff
9 and equipment to comply with its requirements. The General
10 Assembly declares that providing records in compliance with the
11 requirements of this Act is a primary duty of public bodies to
12 the people of this State, and this Act should be construed to
13 this end, fiscal obligations notwithstanding.

14 The General Assembly further recognizes that technology
15 may advance at a rate that outpaces its ability to address
16 those advances legislatively. To the extent that this Act may
17 not expressly apply to those technological advances, this Act
18 should nonetheless be interpreted to further the declared
19 policy of this Act that public records shall be made available
20 upon request except when denial of access furthers the public
21 policy underlying a specific exemption.

22 This Act shall be the exclusive State statute on freedom of
23 information, except to the extent that other State statutes
24 might create additional restrictions on disclosure of
25 information or other laws in Illinois might create additional
26 obligations for disclosure of information to the public.

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

2 (5 ILCS 140/2) (from Ch. 116, par. 202)

3 Sec. 2. Definitions. As used in this Act:

4 (a) "Public body" means all legislative, executive,
5 administrative, or advisory bodies of the State, state
6 universities and colleges, counties, townships, cities,
7 villages, incorporated towns, school districts and all other
8 municipal corporations, boards, bureaus, committees, or
9 commissions of this State, any subsidiary bodies of any of the
10 foregoing including but not limited to committees and
11 subcommittees thereof, and a School Finance Authority created
12 under Article 1E of the School Code. "Public body" does not
13 include a child death review team or the Illinois Child Death
14 Review Teams Executive Council established under the Child
15 Death Review Team Act.

16 (b) "Person" means any individual, corporation,
17 partnership, firm, organization or association, acting
18 individually or as a group.

19 (c) "Public records" means all records, reports, forms,
20 writings, letters, memoranda, books, papers, maps,
21 photographs, microfilms, cards, tapes, recordings, electronic
22 data processing records, electronic communications, recorded
23 information and all other documentary materials pertaining to
24 the transaction of public business, regardless of physical form
25 or characteristics, having been prepared by or for, or having

1 been or being used by, received by, in the possession of, or
2 under the control of any public body.

3 (c-5) "Private information" means unique identifiers,
4 including a person's social security number, driver's license
5 number, employee identification number, biometric identifiers,
6 personal financial information, passwords or other access
7 codes, medical records, home or personal telephone numbers, and
8 personal email addresses. Private information also includes
9 home address and personal license plates, except as otherwise
10 provided by law or when compiled without possibility of
11 attribution to any person.

12 (c-10) "Commercial purpose" means the use of any part of a
13 public record or records, or information derived from public
14 records, in any form for sale, resale, or solicitation or
15 advertisement for sales or services. For purposes of this
16 definition, requests made by news media and non-profit,
17 scientific, or academic organizations shall not be considered
18 to be made for a "commercial purpose" when the principal
19 purpose of the request is (i) to access and disseminate
20 information concerning news and current or passing events, (ii)
21 for articles of opinion or features of interest to the public,
22 or (iii) for the purpose of academic, scientific, or public
23 research or education.

24 (d) "Copying" means the reproduction of any public record
25 by means of any photographic, electronic, mechanical or other
26 process, device or means now known or hereafter developed and

1 available to the public body.

2 (e) "Head of the public body" means the president, mayor,
3 chairman, presiding officer, director, superintendent,
4 manager, supervisor or individual otherwise holding primary
5 executive and administrative authority for the public body, or
6 such person's duly authorized designee.

7 (f) "News media" means a newspaper or other periodical
8 issued at regular intervals whether in print or electronic
9 format, a news service whether in print or electronic format, a
10 radio station, a television station, a television network, a
11 community antenna television service, or a person or
12 corporation engaged in making news reels or other motion
13 picture news for public showing.

14 (g) "Vexatious request for records" means a request for
15 records that is made by a person who, in the 12 months
16 immediately preceding the request, has submitted to the same
17 public body (i) a minimum of 15 requests for records, (ii) a
18 minimum of 5 requests for records within a 30-day period, (iii)
19 a minimum of 5 requests for records that were deemed unduly
20 burdensome by the public body, or (iv) one or more requests for
21 records that have sought a minimum of 20 different categories
22 of records.

23 (Source: P.A. 96-261, eff. 1-1-10; 96-542, eff. 1-1-10;
24 96-1000, eff. 7-2-10.)

25 (5 ILCS 140/3.2 new)

1 Sec. 3.2. Vexatious request for records.

2 (a) Notwithstanding any provision to the contrary, a public
3 body shall respond to a vexatious request for records within 21
4 working days after receipt. The response shall (i) provide to
5 the requester an estimate of the time required by the public
6 body to provide the records requested and an estimate of the
7 fees to be charged, which the public body may require the
8 person to pay in full before copying the requested documents,
9 (ii) deny the request pursuant to one or more of the exemptions
10 set out in this Act, (iii) notify the requester that the
11 request is unduly burdensome and extend an opportunity to the
12 requester to attempt to reduce the request to manageable
13 proportions, or (iv) provide the records requested.

14 (b) Unless the records are exempt from disclosure, a public
15 body shall comply with a request within a reasonable period
16 considering the size and complexity of the request, and giving
17 priority to records requested for non-commercial or commercial
18 purposes.

19 (c) The Public Access Counselor shall adopt by
20 administrative rule procedures to create and maintain a log for
21 public bodies to use for tracking vexatious requests for
22 records. The log shall track all requests submitted by a person
23 who has filed a vexatious request for records within the
24 12-month period described in the definition of "vexatious
25 request for records" in Section 2 of this Act. Upon receiving a
26 vexatious request for records, a public body shall promptly

1 send to the Public Access Counselor any information that is
2 necessary to complete an entry in the log.

3 (5 ILCS 140/9.5)

4 Sec. 9.5. Public Access Counselor; opinions.

5 (a) A person whose request to inspect or copy a public
6 record is denied by a public body, except the General Assembly
7 and committees, commissions, and agencies thereof, may file a
8 request for review with the Public Access Counselor established
9 in the Office of the Attorney General not later than 60 days
10 after the date of the final denial. However, a person may not
11 file a request for review for a vexatious request for public
12 records. The request for review must be in writing, signed by
13 the requester, and include (i) a copy of the request for access
14 to records and (ii) any responses from the public body.

15 (b) A public body that receives a request for records, and
16 asserts that the records are exempt under subsection (1)(c) or
17 (1)(f) of Section 7 of this Act, shall, within the time periods
18 provided for responding to a request, provide written notice to
19 the requester and the Public Access Counselor of its intent to
20 deny the request in whole or in part. The notice shall include:
21 (i) a copy of the request for access to records; (ii) the
22 proposed response from the public body; and (iii) a detailed
23 summary of the public body's basis for asserting the exemption.
24 Upon receipt of a notice of intent to deny from a public body,
25 the Public Access Counselor shall determine whether further

1 inquiry is warranted. Within 5 working days after receipt of
2 the notice of intent to deny, the Public Access Counselor shall
3 notify the public body and the requester whether further
4 inquiry is warranted. If the Public Access Counselor determines
5 that further inquiry is warranted, the procedures set out in
6 this Section regarding the review of denials, including the
7 production of documents, shall also be applicable to the
8 inquiry and resolution of a notice of intent to deny from a
9 public body. Times for response or compliance by the public
10 body under Section 3 of this Act shall be tolled until the
11 Public Access Counselor concludes his or her inquiry.

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

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

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

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

22 (f) Unless the Public Access Counselor extends the time by
23 no more than 21 business days by sending written notice to the
24 requester and the public body that includes a statement of the
25 reasons for the extension in the notice, or decides to address
26 the matter without the issuance of a binding opinion, the

1 Attorney General shall examine the issues and the records,
2 shall make findings of fact and conclusions of law, and shall
3 issue to the requester and the public body an opinion in
4 response to the request for review within 60 days after its
5 receipt. The opinion shall be binding upon both the requester
6 and the public body, subject to administrative review under
7 Section 11.5.

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

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

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

24 (g) If the requester files suit under Section 11 with
25 respect to the same denial that is the subject of a pending
26 request for review, the requester shall notify the Public

1 Access Counselor, and the Public Access Counselor shall take no
2 further action with respect to the request for review and shall
3 so notify the public body.

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

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