



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB2902

Introduced 2/1/2012, by Sen. John J. Millner

SYNOPSIS AS INTRODUCED:

5 ILCS 140/7

from Ch. 116, par. 207

Amends the Freedom of Information Act. Exempts from the Act's copying and disclosure requirements records requested by persons committed to the Department of Corrections if those materials (i) are available in the library of the correctional facility where the inmate is confined, (ii) include records from staff members' personnel files, staff rosters, or other staffing assignment information, or (iii) are available through an administrative request to the Department of Corrections. Effective immediately.

LRB097 18214 JDS 63438 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 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 (e-5) Records requested by persons committed to the
5 Department of Corrections if those materials are available
6 in the library of the correctional facility where the
7 inmate is confined.

8 (e-6) Records requested by persons committed to the
9 Department of Corrections if those materials include
10 records from staff members' personnel files, staff
11 rosters, or other staffing assignment information.

12 (e-7) Records requested by persons committed to the
13 Department of Corrections if those materials are available
14 through an administrative request to the Department of
15 Corrections.

16 (f) Preliminary drafts, notes, recommendations,
17 memoranda and other records in which opinions are
18 expressed, or policies or actions are formulated, except
19 that a specific record or relevant portion of a record
20 shall not be exempt when the record is publicly cited and
21 identified by the head of the public body. The exemption
22 provided in this paragraph (f) extends to all those records
23 of officers and agencies of the General Assembly that
24 pertain to the preparation of legislative documents.

25 (g) Trade secrets and commercial or financial
26 information obtained from a person or business where the

1 trade secrets or commercial or financial information are
2 furnished under a claim that they are proprietary,
3 privileged or confidential, and that disclosure of the
4 trade secrets or commercial or financial information would
5 cause competitive harm to the person or business, and only
6 insofar as the claim directly applies to the records
7 requested.

8 The information included under this exemption includes
9 all trade secrets and commercial or financial information
10 obtained by a public body, including a public pension fund,
11 from a private equity fund or a privately held company
12 within the investment portfolio of a private equity fund as
13 a result of either investing or evaluating a potential
14 investment of public funds in a private equity fund. The
15 exemption contained in this item does not apply to the
16 aggregate financial performance information of a private
17 equity fund, nor to the identity of the fund's managers or
18 general partners. The exemption contained in this item does
19 not apply to the identity of a privately held company
20 within the investment portfolio of a private equity fund,
21 unless the disclosure of the identity of a privately held
22 company may cause competitive harm.

23 Nothing contained in this paragraph (g) shall be
24 construed to prevent a person or business from consenting
25 to disclosure.

26 (h) Proposals and bids for any contract, grant, or

1 agreement, including information which if it were
2 disclosed would frustrate procurement or give an advantage
3 to any person proposing to enter into a contractor
4 agreement with the body, until an award or final selection
5 is made. Information prepared by or for the body in
6 preparation of a bid solicitation shall be exempt until an
7 award or final selection is made.

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

19 (j) The following information pertaining to
20 educational matters:

21 (i) test questions, scoring keys and other
22 examination data used to administer an academic
23 examination;

24 (ii) information received by a primary or
25 secondary school, college, or university under its
26 procedures for the evaluation of faculty members by

1 their academic peers;

2 (iii) information concerning a school or
3 university's adjudication of student disciplinary
4 cases, but only to the extent that disclosure would
5 unavoidably reveal the identity of the student; and

6 (iv) course materials or research materials used
7 by faculty members.

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

20 (1) Minutes of meetings of public bodies closed to the
21 public as provided in the Open Meetings Act until the
22 public body makes the minutes available to the public under
23 Section 2.06 of the Open Meetings Act.

24 (m) Communications between a public body and an
25 attorney or auditor representing the public body that would
26 not be subject to discovery in litigation, and materials

1 prepared or compiled by or for a public body in
2 anticipation of a criminal, civil or administrative
3 proceeding upon the request of an attorney advising the
4 public body, and materials prepared or compiled with
5 respect to internal audits of public bodies.

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

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

20 (p) Records relating to collective negotiating matters
21 between public bodies and their employees or
22 representatives, except that any final contract or
23 agreement shall be subject to inspection and copying.

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

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

12 (s) Any and all proprietary information and records
13 related to the operation of an intergovernmental risk
14 management association or self-insurance pool or jointly
15 self-administered health and accident cooperative or pool.
16 Insurance or self insurance (including any
17 intergovernmental risk management association or self
18 insurance pool) claims, loss or risk management
19 information, records, data, advice or communications.

20 (t) Information contained in or related to
21 examination, operating, or condition reports prepared by,
22 on behalf of, or for the use of a public body responsible
23 for the regulation or supervision of financial
24 institutions or insurance companies, unless disclosure is
25 otherwise required by State law.

26 (u) Information that would disclose or might lead to

1 the disclosure of secret or confidential information,
2 codes, algorithms, programs, or private keys intended to be
3 used to create electronic or digital signatures under the
4 Electronic Commerce Security Act.

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

19 (w) (Blank).

20 (x) Maps and other records regarding the location or
21 security of generation, transmission, distribution,
22 storage, gathering, treatment, or switching facilities
23 owned by a utility, by a power generator, or by the
24 Illinois Power Agency.

25 (y) Information contained in or related to proposals,
26 bids, or negotiations related to electric power

1 procurement under Section 1-75 of the Illinois Power Agency
2 Act and Section 16-111.5 of the Public Utilities Act that
3 is determined to be confidential and proprietary by the
4 Illinois Power Agency or by the Illinois Commerce
5 Commission.

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

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

14 (bb) Records and information provided to a mortality
15 review team and records maintained by a mortality review
16 team appointed under the Department of Juvenile Justice
17 Mortality Review Team Act.

18 (cc) Information regarding interments, entombments, or
19 inurnments of human remains that are submitted to the
20 Cemetery Oversight Database under the Cemetery Care Act or
21 the Cemetery Oversight Act, whichever is applicable.

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

26 (ee) ~~(dd)~~ The names, addresses, or other personal

1 information of persons who are minors and are also
2 participants and registrants in programs of park
3 districts, forest preserve districts, conservation
4 districts, recreation agencies, and special recreation
5 associations.

6 (ff) ~~(ee)~~ The names, addresses, or other personal
7 information of participants and registrants in programs of
8 park districts, forest preserve districts, conservation
9 districts, recreation agencies, and special recreation
10 associations where such programs are targeted primarily to
11 minors.

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

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

23 (Source: P.A. 96-261, eff. 1-1-10; 96-328, eff. 8-11-09;
24 96-542, eff. 1-1-10; 96-558, eff. 1-1-10; 96-736, eff. 7-1-10;
25 96-863, eff. 3-1-10; 96-1378, eff. 7-29-10; 97-333, eff.
26 8-12-11; 97-385, eff. 8-15-11; 97-452, eff. 8-19-11; revised

1 9-2-11.)

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.