



Rep. Barbara Flynn Currie

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LRB098 12336 HEP 62500 a

1 AMENDMENT TO SENATE BILL 2799

2 AMENDMENT NO. _____. Amend Senate Bill 2799 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 7 and 11 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

1 disclosure by federal or State law or rules and regulations
2 implementing federal or State law.

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

6 (b-5) Files, documents, and other data or databases
7 maintained by one or more law enforcement agencies and
8 specifically designed to provide information to one or more
9 law enforcement agencies regarding the physical or mental
10 status of one or more individual subjects.

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

23 (d) Records in the possession of any public body
24 created in the course of administrative enforcement
25 proceedings, and any law enforcement or correctional
26 agency for law enforcement purposes, but only to the extent

1 that disclosure would:

2 (i) interfere with pending or actually and
3 reasonably contemplated law enforcement proceedings
4 conducted by any law enforcement or correctional
5 agency that is the recipient of the request;

6 (ii) interfere with active administrative
7 enforcement proceedings conducted by the public body
8 that is the recipient of the request;

9 (iii) create a substantial likelihood that a
10 person will be deprived of a fair trial or an impartial
11 hearing;

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

24 (v) disclose unique or specialized investigative
25 techniques other than those generally used and known or
26 disclose internal documents of correctional agencies

1 related to detection, observation or investigation of
2 incidents of crime or misconduct, and disclosure would
3 result in demonstrable harm to the agency or public
4 body that is the recipient of the request;

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

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

9 (d-5) A law enforcement record created for law
10 enforcement purposes and contained in a shared electronic
11 record management system if the law enforcement agency that
12 is the recipient of the request did not create the record,
13 did not participate in or have a role in any of the events
14 which are the subject of the record, and only has access to
15 the record through the shared electronic record management
16 system.

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

19 (e-5) Records requested by persons committed to the
20 Department of Corrections if those materials are available
21 in the library of the correctional facility where the
22 inmate is confined.

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

1 (e-7) Records requested by persons committed to the
2 Department of Corrections if those materials are available
3 through an administrative request to the Department of
4 Corrections.

5 (f) Preliminary drafts, notes, recommendations,
6 correspondence, memoranda and other records in which
7 opinions are expressed, or policies or actions are
8 formulated, except that a specific record or relevant
9 portion of a record shall no longer be exempt if and only
10 if the specific record not be exempt when the record is
11 publicly cited and identified by the head of the public
12 body. If the specific record is publicly cited and
13 identified by the head of the public body, then only those
14 portions of the specific record publicly cited and
15 identified shall no longer be exempt and may be disclosed.
16 Records exempt from disclosure under this subsection and
17 not publicly cited and identified by the head of the public
18 body, including, but not limited to, purely factual
19 material, shall remain exempt regardless of whether the
20 record was adopted or incorporated into a final decision of
21 the public body. The exemption provided in this paragraph
22 (f) extends, as an independent basis, 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) 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) 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 (gg) Confidential information described in Section
13 1-100 of the Illinois Independent Tax Tribunal Act of 2012.

14 (hh) The report submitted to the State Board of
15 Education by the School Security and Standards Task Force
16 under item (8) of subsection (d) of Section 2-3.160 of the
17 School Code and any information contained in that report.

18 (1.5) Any information exempt from disclosure under the
19 Judicial Privacy Act shall be redacted from public records
20 prior to disclosure under this Act.

21 (2) A public record that is not in the possession of a
22 public body but is in the possession of a party with whom the
23 agency has contracted to perform a governmental function on
24 behalf of the public body, and that directly relates to the
25 governmental function and is not otherwise exempt under this
26 Act, shall be considered a public record of the public body,

1 for purposes of this Act.

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

6 (Source: P.A. 97-333, eff. 8-12-11; 97-385, eff. 8-15-11;
7 97-452, eff. 8-19-11; 97-783, eff. 7-13-12; 97-813, eff.
8 7-13-12; 97-847, eff. 9-22-12; 97-1065, eff. 8-24-12; 97-1129,
9 eff. 8-28-12; 98-463, eff. 8-16-13; 98-578, eff. 8-27-13;
10 98-695, eff. 7-3-14.)

11 (5 ILCS 140/11) (from Ch. 116, par. 211)

12 Sec. 11. (a) Any person denied access to inspect or copy
13 any public record by a public body may file suit for injunctive
14 or declaratory relief.

15 (b) Where the denial is from a public body of the State,
16 suit may be filed in the circuit court for the county where the
17 public body has its principal office or where the person denied
18 access resides.

19 (c) Where the denial is from a municipality or other public
20 body, except as provided in subsection (b) of this Section,
21 suit may be filed in the circuit court for the county where the
22 public body is located.

23 (d) The circuit court shall have the jurisdiction to enjoin
24 the public body from withholding public records and to order
25 the production of any public records improperly withheld from

1 the person seeking access. If the public body can show that
2 exceptional circumstances exist, and that the body is
3 exercising due diligence in responding to the request, the
4 court may retain jurisdiction and allow the agency additional
5 time to complete its review of the records.

6 (e) On motion of the plaintiff, prior to or after in camera
7 inspection, the court shall order the public body to provide an
8 index of the records to which access has been denied. The index
9 shall include the following:

10 (i) A description of the nature or contents of each
11 document withheld, or each deletion from a released
12 document, provided, however, that the public body shall not
13 be required to disclose the information which it asserts is
14 exempt; and

15 (ii) A statement of the exemption or exemptions claimed
16 for each such deletion or withheld document.

17 (f) In any action considered by the court, the court shall
18 consider the matter de novo, and shall conduct such in camera
19 examination of the requested records as it finds appropriate to
20 determine if such records or any part thereof may be withheld
21 under any provision of this Act. The burden shall be on the
22 public body to establish that its refusal to permit public
23 inspection or copying is in accordance with the provisions of
24 this Act. Any public body that asserts that a record is exempt
25 from disclosure has the burden of proving that it is exempt by
26 clear and convincing evidence.

1 (g) In the event of noncompliance with an order of the
2 court to disclose, the court may enforce its order against any
3 public official or employee so ordered or primarily responsible
4 for such noncompliance through the court's contempt powers.

5 (h) Except as to causes the court considers to be of
6 greater importance, proceedings arising under this Section
7 shall take precedence on the docket over all other causes and
8 be assigned for hearing and trial at the earliest practicable
9 date and expedited in every way.

10 (i) If a person seeking the right to inspect or receive a
11 copy of a public record prevails in a proceeding under this
12 Section, the court shall award such person reasonable
13 attorneys' fees and costs. If the public body produces the
14 records after a suit has been filed under this Section, but
15 before the court renders a final judgment, the court shall
16 award reasonable attorney's fees and costs if the court imposes
17 a civil penalty under subsection (j). In determining what
18 amount of attorney's fees is reasonable, the court shall
19 consider the degree to which the relief obtained relates to the
20 relief sought. For purposes of this subsection, a requester
21 "prevails" if the person obtains relief through: (i) a
22 court-approved settlement or consent decree; or (ii) a final
23 unappealable judgment from a court of competent jurisdiction.
24 The changes by Public Act 96-542 contained in this subsection
25 apply to an action filed on or after January 1, 2010 (the
26 effective date of Public Act 96-542) ~~this amendatory Act of the~~

1 ~~96th General Assembly.~~ The changes to this subsection by this
2 amendatory Act of the 98th General Assembly apply to an action
3 filed on or after the effective date of this amendatory Act of
4 the 98th General Assembly.

5 (j) If the court determines that a public body willfully
6 and intentionally failed to comply with this Act, or otherwise
7 acted in bad faith, the court shall also impose upon the public
8 body a civil penalty of not less than \$2,500 nor more than
9 \$5,000 for each occurrence. In assessing the civil penalty, the
10 court shall consider in aggravation or mitigation the budget of
11 the public body and whether the public body has previously been
12 assessed penalties for violations of this Act. The changes
13 contained in this subsection apply to an action filed on or
14 after the effective date of this amendatory Act of the 96th
15 General Assembly.

16 (Source: P.A. 96-542, eff. 1-1-10; 97-813, eff. 7-13-12.)".