

HB3303



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3303

by Rep. Elaine Nekritz

SYNOPSIS AS INTRODUCED:

5 ILCS 140/7

from Ch. 116, par. 207

Amends the Freedom of Information Act. Provides that law enforcement records relating to a juvenile victim or defendant remain permanently exempt from inspection and copying. Provides that all other records shall be made available for inspection and copying after a period of 5 years from the date the record is created, unless the record is otherwise exempt from inspection and copying under another provision of the Act. Exempts from disclosure information or materials that the disclosure of which would violate a Supreme Court Rule. Effective immediately.

LRB099 05805 HEP 25849 b

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 Records relating to a juvenile victim or juvenile
3 defendant that are exempt from inspection and copying under
4 subparagraph (i) of this paragraph (d) remain permanently
5 exempt. All other records that are exempt from inspection
6 and copying under subparagraph (i) of this paragraph (d)
7 shall be made available for inspection and copying after a
8 period of 5 years from the date the record is created,
9 unless the record is otherwise exempt from inspection and
10 copying under another provision of this Act.

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

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

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

25 (e-6) Records requested by persons committed to the
26 Department of Corrections if those materials include

1 records from staff members' personnel files, staff
2 rosters, or other staffing assignment information.

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

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

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

25 The information included under this exemption includes
26 all trade secrets and commercial or financial information

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

14 Nothing contained in this paragraph (g) shall be
15 construed to prevent a person or business from consenting
16 to disclosure.

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

25 (i) Valuable formulae, computer geographic systems,
26 designs, drawings and research data obtained or produced by

1 any public body when disclosure could reasonably be
2 expected to produce private gain or public loss. The
3 exemption for "computer geographic systems" provided in
4 this paragraph (i) does not extend to requests made by news
5 media as defined in Section 2 of this Act when the
6 requested information is not otherwise exempt and the only
7 purpose of the request is to access and disseminate
8 information regarding the health, safety, welfare, or
9 legal rights of the general public.

10 (j) The following information pertaining to
11 educational matters:

12 (i) test questions, scoring keys and other
13 examination data used to administer an academic
14 examination;

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

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

23 (iv) course materials or research materials used
24 by faculty members.

25 (k) Architects' plans, engineers' technical
26 submissions, and other construction related technical

1 documents for projects not constructed or developed in
2 whole or in part with public funds and the same for
3 projects constructed or developed with public funds,
4 including but not limited to power generating and
5 distribution stations and other transmission and
6 distribution facilities, water treatment facilities,
7 airport facilities, sport stadiums, convention centers,
8 and all government owned, operated, or occupied buildings,
9 but only to the extent that disclosure would compromise
10 security.

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

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

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

1 (o) Administrative or technical information associated
2 with automated data processing operations, including but
3 not limited to software, operating protocols, computer
4 program abstracts, file layouts, source listings, object
5 modules, load modules, user guides, documentation
6 pertaining to all logical and physical design of
7 computerized systems, employee manuals, and any other
8 information that, if disclosed, would jeopardize the
9 security of the system or its data or the security of
10 materials exempt under this Section.

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

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

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

1 information relating to a real estate sale shall be exempt
2 until a sale is consummated.

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

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

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

22 (v) Vulnerability assessments, security measures, and
23 response policies or plans that are designed to identify,
24 prevent, or respond to potential attacks upon a community's
25 population or systems, facilities, or installations, the
26 destruction or contamination of which would constitute a

1 clear and present danger to the health or safety of the
2 community, but only to the extent that disclosure could
3 reasonably be expected to jeopardize the effectiveness of
4 the measures or the safety of the personnel who implement
5 them or the public. Information exempt under this item may
6 include such things as details pertaining to the
7 mobilization or deployment of personnel or equipment, to
8 the operation of communication systems or protocols, or to
9 tactical operations.

10 (w) (Blank).

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

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

23 (z) Information about students exempted from
24 disclosure under Sections 10-20.38 or 34-18.29 of the
25 School Code, and information about undergraduate students
26 enrolled at an institution of higher education exempted

1 from disclosure under Section 25 of the Illinois Credit
2 Card Marketing Act of 2009.

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

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

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

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

17 (ee) The names, addresses, or other personal
18 information of persons who are minors and are also
19 participants and registrants in programs of park
20 districts, forest preserve districts, conservation
21 districts, recreation agencies, and special recreation
22 associations.

23 (ff) The names, addresses, or other personal
24 information of participants and registrants in programs of
25 park districts, forest preserve districts, conservation
26 districts, recreation agencies, and special recreation

1 associations where such programs are targeted primarily to
2 minors.

3 (gg) Confidential information described in Section
4 1-100 of the Illinois Independent Tax Tribunal Act of 2012.

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

9 (ii) Information or materials that the disclosure of
10 which would violate a Supreme Court Rule.

11 (1.5) Any information exempt from disclosure under the
12 Judicial Privacy Act shall be redacted from public records
13 prior to disclosure under this Act.

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

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

25 (Source: P.A. 97-333, eff. 8-12-11; 97-385, eff. 8-15-11;
26 97-452, eff. 8-19-11; 97-783, eff. 7-13-12; 97-813, eff.

1 7-13-12; 97-847, eff. 9-22-12; 97-1065, eff. 8-24-12; 97-1129,
2 eff. 8-28-12; 98-463, eff. 8-16-13; 98-578, eff. 8-27-13;
3 98-695, eff. 7-3-14.)

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.