



Rep. Daniel Didech

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LRB104 15880 BDA 38063 a

1 AMENDMENT TO SENATE BILL 2715

2 AMENDMENT NO. _____. Amend Senate Bill 2715, AS AMENDED,
3 by inserting the following in its proper numeric sequence:

4 "Section 10. The Freedom of Information Act is amended by
5 changing Sections 2 and 11 as follows:

6 (5 ILCS 140/2) (from Ch. 116, par. 202)

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

8 (a) "Public body" means all legislative, executive,
9 administrative, or advisory bodies of the State, state
10 universities and colleges, counties, townships, cities,
11 villages, incorporated towns, school districts and all other
12 municipal corporations, boards, bureaus, committees, or
13 commissions of this State, any subsidiary bodies of any of the
14 foregoing including but not limited to committees and
15 subcommittees thereof, and a School Finance Authority created
16 under Article 1E of the School Code. "Public body" does not

1 include a child death review team or the Illinois Child Death
2 Review Teams Executive Council established under the Child
3 Death Review Team Act, or a regional youth advisory board or
4 the Statewide Youth Advisory Board established under the
5 Department of Children and Family Services Statewide Youth
6 Advisory Board Act.

7 (b) "Person" means any individual or any individual acting
8 as an agent of a corporation, partnership, firm, organization
9 or association, acting individually or as a group.

10 (c) "Public records" means all records, reports, forms,
11 writings, letters, memoranda, books, papers, maps,
12 photographs, microfilms, cards, tapes, recordings, electronic
13 data processing records, electronic communications, recorded
14 information and all other documentary materials pertaining to
15 the transaction of public business, regardless of physical
16 form or characteristics, having been prepared by or for, or
17 having been or being used by, received by, in the possession
18 of, or under the control of any public body. "Public records"
19 does not include junk mail.

20 (c-5) "Private information" means unique identifiers,
21 including a person's social security number, driver's license
22 number, employee identification number, biometric identifiers,
23 personal financial information, passwords or other access
24 codes, medical records, home or personal telephone numbers,
25 and personal email addresses. Private information also
26 includes home address and personal license plates, except as

1 otherwise provided by law or when compiled without possibility
2 of attribution to any person. For a public body that is a
3 HIPAA-covered entity, "private information" includes
4 electronic medical records and all information, including
5 demographic information, contained within or extracted from an
6 electronic medical records system operated or maintained by
7 the public body in compliance with State and federal medical
8 privacy laws and regulations, including, but not limited to,
9 the Health Insurance Portability and Accountability Act and
10 its regulations, 45 CFR Parts 160 and 164. As used in this
11 subsection, "HIPAA-covered entity" has the meaning given to
12 the term "covered entity" in 45 CFR 160.103.

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

25 (d) "Copying" means the reproduction of any public record
26 by means of any photographic, electronic, mechanical or other

1 process, device or means now known or hereafter developed and
2 available to the public body.

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

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

15 (g) "Recurrent requester", as used in Section 3.2 of this
16 Act, means a person that, in the 12 months immediately
17 preceding the request, has submitted to the same public body
18 (i) a minimum of 50 requests for records, (ii) a minimum of 15
19 requests for records within a 30-day period, or (iii) a
20 minimum of 7 requests for records within a 7-day period. For
21 purposes of this definition, requests made by news media and
22 non-profit, scientific, or academic organizations shall not be
23 considered in calculating the number of requests made in the
24 time periods in this definition when the principal purpose of
25 the requests is (i) to access and disseminate information
26 concerning news and current or passing events, (ii) for

1 articles of opinion or features of interest to the public, or
2 (iii) for the purpose of academic, scientific, or public
3 research or education.

4 For the purposes of this subsection (g), "request" means a
5 written document (or oral request, if the public body chooses
6 to honor oral requests) that is submitted to a public body via
7 personal delivery, mail, telefax, electronic mail, or other
8 means available to the public body and that identifies the
9 particular public record the requester seeks. One request may
10 identify multiple records to be inspected or copied.

11 (h) "Voluminous request" means a request that: (i)
12 includes more than 5 individual requests for more than 5
13 different categories of records or a combination of individual
14 requests that total requests for more than 5 different
15 categories of records in a period of 20 business days; or (ii)
16 requires the compilation of more than 500 letter or
17 legal-sized pages of public records unless a single requested
18 record exceeds 500 pages. "Single requested record" may
19 include, but is not limited to, one report, form, e-mail,
20 letter, memorandum, book, map, microfilm, tape, or recording.

21 "Voluminous request" does not include a request made by
22 news media and non-profit, scientific, or academic
23 organizations if the principal purpose of the request is: (1)
24 to access and disseminate information concerning news and
25 current or passing events; (2) for articles of opinion or
26 features of interest to the public; or (3) for the purpose of

1 academic, scientific, or public research or education.

2 For the purposes of this subsection (h), "request" means a
3 written document, or oral request, if the public body chooses
4 to honor oral requests, that is submitted to a public body via
5 personal delivery, mail, telefax, electronic mail, or other
6 means available to the public body and that identifies the
7 particular public record or records the requester seeks. One
8 request may identify multiple individual records to be
9 inspected or copied.

10 (i) "Severance agreement" means a mutual agreement between
11 any public body and its employee for the employee's
12 resignation in exchange for payment by the public body.

13 (j) "Junk mail" means (i) any unsolicited commercial mail
14 sent to a public body and not responded to by an official,
15 employee, or agent of the public body or (ii) any unsolicited
16 commercial electronic communication sent to a public body and
17 not responded to by an official, employee, or agent of the
18 public body.

19 (k) "Vexatious litigant" means a person who, in the 12
20 months immediately preceding the commencement of an action
21 under this Act, has (i) commenced 10 or more civil actions
22 under this Act in any court; or (ii) been declared a vexatious
23 litigant in a prior action under this Act by any court.

24 (Source: P.A. 103-554, eff. 1-1-24; 104-438, eff. 1-1-26.)

25 (5 ILCS 140/11) (from Ch. 116, par. 211)

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

4 (a-5) In accordance with Section 11.6 of this Act, a
5 requester may file an action to enforce a binding opinion
6 issued under Section 9.5 of this Act.

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

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

15 (d) The circuit court shall have the jurisdiction to
16 enjoin the public body from withholding public records and to
17 order the production of any public records improperly withheld
18 from the person seeking access. If the public body can show
19 that exceptional circumstances exist, and that the body is
20 exercising due diligence in responding to the request, the
21 court may retain jurisdiction and allow the agency additional
22 time to complete its review of the records.

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

1 (i) A description of the nature or contents of each
2 document withheld, or each deletion from a released
3 document, provided, however, that the public body shall
4 not be required to disclose the information which it
5 asserts is exempt; and

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

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

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

23 (h) Except as to causes the court considers to be of
24 greater importance, proceedings arising under this Section
25 shall take precedence on the docket over all other causes and
26 be assigned for hearing and trial at the earliest practicable

1 date and expedited in every way.

2 (i) In any action pending in any court under this Act, the
3 public body may move that the court enter an order declaring
4 the plaintiff to be a vexatious litigant. The motion shall be
5 supported by a showing that the plaintiff meets the definition
6 of vexatious litigant in Section 2 of this Act.

7 If the public body establishes that the plaintiff is a
8 vexatious litigant, the court shall declare the plaintiff a
9 vexatious litigant and shall order the vexatious litigant to
10 post security in an amount calculated to cover the public
11 body's reasonable attorney's fees and costs and within such
12 time as the court deems appropriate. The court shall not
13 proceed to the merits of the action until the issue of a
14 vexatious litigant is determined and, if applicable, the
15 vexatious litigant posts the ordered security.

16 A court determining whether a person is a vexatious
17 litigant under this Section shall consider the person's
18 litigation history under this Act, and the finding shall be
19 made notwithstanding any other law.

20 (i-5) If a vexatious litigant fails to post security
21 required by an order of the court under this Section, the court
22 may issue an order dismissing the action with prejudice as to
23 the moving party for whose benefit the security was ordered.

24 (i-10) If the motion for an order declaring the plaintiff
25 to be a vexatious litigant under this Section is filed before
26 the trial in an action, the action shall be automatically

1 stayed and the moving party need not plead or otherwise
2 respond to the vexatious litigant's complaint, pleading,
3 request for relief, or other document until 10 business days
4 after the motion is denied. If the motion is granted, the
5 moving party shall respond or plead no later than 10 business
6 days after the required security has been furnished.

7 (i-15) If a defendant prevails against a vexatious
8 litigant, the court shall award the defendant its costs and
9 attorney's fees. If the defendant prevails in a proceeding
10 under this Section and the plaintiff is not a vexatious
11 litigant, the court may award the defendant all or a portion of
12 the defendant's attorney's fees and costs.

13 (i-20) If a person seeking the right to inspect or receive
14 a copy of a public record prevails in a proceeding under this
15 Section, the court shall award such person reasonable
16 attorney's fees and costs. In determining what amount of
17 attorney's fees is reasonable, the court shall consider the
18 degree to which the relief obtained relates to the relief
19 sought. The changes contained in this subsection apply to an
20 action filed on or after January 1, 2010 (the effective date of
21 Public Act 96-542).

22 (j) If the court determines that a public body willfully
23 and intentionally failed to comply with this Act, or otherwise
24 acted in bad faith, the court shall also impose upon the public
25 body a civil penalty of not less than \$2,500 nor more than
26 \$5,000 for each occurrence. In assessing the civil penalty,

1 the court shall consider in aggravation or mitigation the
2 budget of the public body and whether the public body has
3 previously been assessed penalties for violations of this Act.
4 The court may impose an additional penalty of up to \$1,000 for
5 each day the violation continues if:

6 (1) the public body fails to comply with the court's
7 order after 30 days;

8 (2) the court's order is not on appeal or stayed; and

9 (3) the court does not grant the public body
10 additional time to comply with the court's order to
11 disclose public records.

12 The changes contained in this subsection made by Public
13 Act 96-542 apply to an action filed on or after January 1, 2010
14 (the effective date of Public Act 96-542).

15 (j-5) In addition to any other relief provided in this
16 Section, the court in any judicial circuit may, on its own
17 motion or on the motion of any party, enter a prefiling order
18 prohibiting a vexatious litigant from commencing any new
19 action in the courts of that circuit without first obtaining
20 leave of the court. Failure to comply with such an order may be
21 punished as contempt of court. Leave of court shall be granted
22 by the court only upon a showing that the proposed action is
23 meritorious and is not being filed for the purpose of delay,
24 harassment, or any improper purpose. The court shall condition
25 the filing of the proposed action upon the furnishing of
26 security as provided in this Section.

1 (j-10) The clerk of the court shall not file any new action
2 under this Act by a vexatious litigant against whom a
3 prefiling order has been entered unless the vexatious litigant
4 has obtained an order from the court allowing the filing. If
5 the clerk of the court mistakenly allows a vexatious litigant
6 to file any new action in contravention of a prefiling order,
7 any party to that action may file with the clerk and serve on
8 the vexatious litigant and all other parties a notice stating
9 that the vexatious litigant is subject to a prefiling order.
10 The filing of a notice shall automatically stay the litigation
11 against all parties to the action. The court shall
12 automatically dismiss the action with prejudice within 10 days
13 after the filing of the notice unless the vexatious litigant
14 files a motion for leave to file the new action. If the court
15 issues an order granting leave, the pleadings or other
16 responses to the complaint need not be filed until 10 days
17 after the date of service by the vexatious litigant of a copy
18 of the order granting leave.

19 (j-15) An automatic stay imposed under this Section
20 remains in effect until the court:

21 (1) exercises its discretion to vacate the stay;

22 (2) rules on the motion for an order declaring the
23 plaintiff to be a vexatious litigant under subsection (i)
24 or the motion for leave under subsections (j-5) and
25 (j-10), whichever motion is applicable; or

26 (3) dismisses the action under subsection (j-10).

1 (j-20) If a court declares a person to be a vexatious
2 litigant, the clerk of the court shall provide to the Public
3 Access Counselor the names of the vexatious litigants and the
4 date of the court's determination. The Public Access Counselor
5 shall maintain a registry of all vexatious litigants.

6 (k) The changes to this Section made by this amendatory
7 Act of the 99th General Assembly apply to actions filed on or
8 after the effective date of this amendatory Act of the 99th
9 General Assembly.

10 (Source: P.A. 99-586, eff. 1-1-17; 99-642, eff. 7-28-16.)".