

SB3171



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3171

Introduced 2/6/2024, by Sen. Donald P. DeWitte

SYNOPSIS AS INTRODUCED:

5 ILCS 140/7

Amends the Freedom of Information Act. Provides that proposals or bids submitted by engineering consultants in response to requests for proposal or other competitive bidding requests by the Department of Transportation or the Illinois Toll Highway Authority are exempt from disclosure under the Act.

LRB103 37872 AWJ 68003 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)

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
10 disclosure under this Section, but also contains information
11 that is not exempt from disclosure, the public body may elect
12 to redact the information that is exempt. The public body
13 shall make the remaining information available for inspection
14 and copying. Subject to this requirement, the following shall
15 be exempt from inspection and copying:

16 (a) Information specifically prohibited from
17 disclosure by federal or State law or rules and
18 regulations 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,
21 or 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
2 more law enforcement agencies regarding the physical or
3 mental status of one or more individual subjects.

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

17 (d) Records in the possession of any public body
18 created in the course of administrative enforcement
19 proceedings, and any law enforcement or correctional
20 agency for law enforcement purposes, but only to the
21 extent that disclosure would:

22 (i) interfere with pending or actually and
23 reasonably contemplated law enforcement proceedings
24 conducted by any law enforcement or correctional
25 agency that is the recipient of the request;

26 (ii) interfere with active administrative

1 enforcement proceedings conducted by the public body
2 that is the recipient of the request;

3 (iii) create a substantial likelihood that a
4 person will be deprived of a fair trial or an impartial
5 hearing;

6 (iv) unavoidably disclose the identity of a
7 confidential source, confidential information
8 furnished only by the confidential source, or persons
9 who file complaints with or provide information to
10 administrative, investigative, law enforcement, or
11 penal agencies; except that the identities of
12 witnesses to traffic crashes, traffic crash reports,
13 and rescue reports shall be provided by agencies of
14 local government, except when disclosure would
15 interfere with an active criminal investigation
16 conducted by the agency that is the recipient of the
17 request;

18 (v) disclose unique or specialized investigative
19 techniques other than those generally used and known
20 or disclose internal documents of correctional
21 agencies related to detection, observation, or
22 investigation of incidents of crime or misconduct, and
23 disclosure would result in demonstrable harm to the
24 agency or public body that is the recipient of the
25 request;

26 (vi) endanger the life or physical safety of law

1 enforcement personnel or any other person; or
2 (vii) obstruct an ongoing criminal investigation
3 by the agency that is the recipient of the request.

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

12 (d-6) Records contained in the Officer Professional
13 Conduct Database under Section 9.2 of the Illinois Police
14 Training Act, except to the extent authorized under that
15 Section. This includes the documents supplied to the
16 Illinois Law Enforcement Training Standards Board from the
17 Illinois State Police and Illinois State Police Merit
18 Board.

19 (d-7) Information gathered or records created from the
20 use of automatic license plate readers in connection with
21 Section 2-130 of the Illinois Vehicle Code.

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

24 (e-5) Records requested by persons committed to the
25 Department of Corrections, Department of Human Services
26 Division of Mental Health, or a county jail if those

1 materials are available in the library of the correctional
2 institution or facility or jail where the inmate is
3 confined.

4 (e-6) Records requested by persons committed to the
5 Department of Corrections, Department of Human Services
6 Division of Mental Health, or a county jail if those
7 materials include records from staff members' personnel
8 files, staff rosters, or other staffing assignment
9 information.

10 (e-7) Records requested by persons committed to the
11 Department of Corrections or Department of Human Services
12 Division of Mental Health if those materials are available
13 through an administrative request to the Department of
14 Corrections or Department of Human Services Division of
15 Mental Health.

16 (e-8) Records requested by a person committed to the
17 Department of Corrections, Department of Human Services
18 Division of Mental Health, or a county jail, the
19 disclosure of which would result in the risk of harm to any
20 person or the risk of an escape from a jail or correctional
21 institution or facility.

22 (e-9) Records requested by a person in a county jail
23 or committed to the Department of Corrections or
24 Department of Human Services Division of Mental Health,
25 containing personal information pertaining to the person's
26 victim or the victim's family, including, but not limited

1 to, a victim's home address, home telephone number, work
2 or school address, work telephone number, social security
3 number, or any other identifying information, except as
4 may be relevant to a requester's current or potential case
5 or claim.

6 (e-10) Law enforcement records of other persons
7 requested by a person committed to the Department of
8 Corrections, Department of Human Services Division of
9 Mental Health, or a county jail, including, but not
10 limited to, arrest and booking records, mug shots, and
11 crime scene photographs, except as these records may be
12 relevant to the requester's current or potential case or
13 claim.

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

23 (g) Trade secrets and commercial or financial
24 information obtained from a person or business where the
25 trade secrets or commercial or financial information are
26 furnished under a claim that they are proprietary,

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

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

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

24 (h) Proposals and bids for any contract, grant, or
25 agreement, including information which if it were
26 disclosed would frustrate procurement or give an advantage

1 to any person proposing to enter into a contractor
2 agreement with the body, until an award or final selection
3 is made. Information prepared by or for the body in
4 preparation of a bid solicitation shall be exempt until an
5 award or final selection is made.

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

17 (j) The following information pertaining to
18 educational matters:

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

22 (ii) information received by a primary or
23 secondary school, college, or university under its
24 procedures for the evaluation of faculty members by
25 their academic peers;

26 (iii) information concerning a school or

1 university's adjudication of student disciplinary
2 cases, but only to the extent that disclosure would
3 unavoidably reveal the identity of the student; and

4 (iv) course materials or research materials used
5 by faculty members.

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

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

22 (m) Communications between a public body and an
23 attorney or auditor representing the public body that
24 would not be subject to discovery in litigation, and
25 materials prepared or compiled by or for a public body in
26 anticipation of a criminal, civil, or administrative

1 proceeding upon the request of an attorney advising the
2 public body, and materials prepared or compiled with
3 respect to internal audits of public bodies.

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

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

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

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

25 (r) The records, documents, and information relating
26 to real estate purchase negotiations until those

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

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

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

25 (u) Information that would disclose or might lead to
26 the disclosure of secret or confidential information,

1 codes, algorithms, programs, or private keys intended to
2 be used to create electronic signatures under the Uniform
3 Electronic Transactions Act.

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

17 (w) (Blank).

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

23 (y) Information contained in or related to proposals,
24 bids, or negotiations related to electric power
25 procurement under Section 1-75 of the Illinois Power
26 Agency Act and Section 16-111.5 of the Public Utilities

1 Act that is determined to be confidential and proprietary
2 by the Illinois Power Agency or by the Illinois Commerce
3 Commission.

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

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

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

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

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

24 (ee) The names, addresses, or other personal
25 information of persons who are minors and are also
26 participants and registrants in programs of park

1 districts, forest preserve districts, conservation
2 districts, recreation agencies, and special recreation
3 associations.

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

10 (gg) Confidential information described in Section
11 1-100 of the Illinois Independent Tax Tribunal Act of
12 2012.

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

17 (ii) Records requested by persons committed to or
18 detained by the Department of Human Services under the
19 Sexually Violent Persons Commitment Act or committed to
20 the Department of Corrections under the Sexually Dangerous
21 Persons Act if those materials: (i) are available in the
22 library of the facility where the individual is confined;
23 (ii) include records from staff members' personnel files,
24 staff rosters, or other staffing assignment information;
25 or (iii) are available through an administrative request
26 to the Department of Human Services or the Department of

1 Corrections.

2 (jj) Confidential information described in Section
3 5-535 of the Civil Administrative Code of Illinois.

4 (kk) The public body's credit card numbers, debit card
5 numbers, bank account numbers, Federal Employer
6 Identification Number, security code numbers, passwords,
7 and similar account information, the disclosure of which
8 could result in identity theft or impression or defrauding
9 of a governmental entity or a person.

10 (ll) Records concerning the work of the threat
11 assessment team of a school district, including, but not
12 limited to, any threat assessment procedure under the
13 School Safety Drill Act and any information contained in
14 the procedure.

15 (mm) Information prohibited from being disclosed under
16 subsections (a) and (b) of Section 15 of the Student
17 Confidential Reporting Act.

18 (nn) Proprietary information submitted to the
19 Environmental Protection Agency under the Drug Take-Back
20 Act.

21 (oo) Records described in subsection (f) of Section
22 3-5-1 of the Unified Code of Corrections.

23 (pp) Any and all information regarding burials,
24 interments, or entombments of human remains as required to
25 be reported to the Department of Natural Resources
26 pursuant either to the Archaeological and Paleontological

1 Resources Protection Act or the Human Remains Protection
2 Act.

3 (qq) ~~(pp)~~ Reports described in subsection (e) of
4 Section 16-15 of the Abortion Care Clinical Training
5 Program Act.

6 (rr) ~~(pp)~~ Information obtained by a certified local
7 health department under the Access to Public Health Data
8 Act.

9 (ss) ~~(pp)~~ For a request directed to a public body that
10 is also a HIPAA-covered entity, all information that is
11 protected health information, including demographic
12 information, that may be contained within or extracted
13 from any record held by the public body in compliance with
14 State and federal medical privacy laws and regulations,
15 including, but not limited to, the Health Insurance
16 Portability and Accountability Act and its regulations, 45
17 CFR Parts 160 and 164. As used in this paragraph,
18 "HIPAA-covered entity" has the meaning given to the term
19 "covered entity" in 45 CFR 160.103 and "protected health
20 information" has the meaning given to that term in 45 CFR
21 160.103.

22 (tt) Proposals or bids submitted by engineering
23 consultants in response to requests for proposal or other
24 competitive bidding requests by the Department of
25 Transportation or the Illinois Toll Highway Authority.

26 (1.5) Any information exempt from disclosure under the

1 Judicial Privacy Act shall be redacted from public records
2 prior to disclosure under this Act.

3 (2) A public record that is not in the possession of a
4 public body but is in the possession of a party with whom the
5 agency has contracted to perform a governmental function on
6 behalf of the public body, and that directly relates to the
7 governmental function and is not otherwise exempt under this
8 Act, shall be considered a public record of the public body,
9 for purposes of this Act.

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

14 (Source: P.A. 102-38, eff. 6-25-21; 102-558, eff. 8-20-21;
15 102-694, eff. 1-7-22; 102-752, eff. 5-6-22; 102-753, eff.
16 1-1-23; 102-776, eff. 1-1-23; 102-791, eff. 5-13-22; 102-982,
17 eff. 7-1-23; 102-1055, eff. 6-10-22; 103-154, eff. 6-30-23;
18 103-423, eff. 1-1-24; 103-446, eff. 8-4-23; 103-462, eff.
19 8-4-23; 103-540, eff. 1-1-24; 103-554, eff. 1-1-24; revised
20 9-7-23.)