

SB0039



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB0039

Introduced 1/27/2011, by Sen. Susan Garrett

SYNOPSIS AS INTRODUCED:

5 ILCS 140/2
5 ILCS 140/7

from Ch. 116, par. 202
from Ch. 116, par. 207

Amends the Freedom of Information Act. Provides that communications and materials exchanged between an attorney-lobbyist and a public body that concern either lobbying to be performed on behalf of the public body by the attorney-lobbyist or the expenditure of public moneys for goods or services to be provided on behalf of the public body by the attorney-lobbyist are public records, are not exempt from inspection and copying unless otherwise exempt under a specific provision of the Act, and are not privileged from disclosure at trial unless otherwise required by law.

LRB097 05061 JDS 45102 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 Sections 2 and 7 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
17 include a child death review team or the Illinois Child Death
18 Review Teams Executive Council established under the Child
19 Death Review Team Act.

20 (b) "Person" means any individual, corporation,
21 partnership, firm, organization or association, acting
22 individually or as a group.

23 (c) "Public records" means all records, reports, forms,

1 writings, letters, memoranda, books, papers, maps,
2 photographs, microfilms, cards, tapes, recordings, electronic
3 data processing records, electronic communications, recorded
4 information and all other documentary materials pertaining to
5 the transaction of public business, regardless of physical form
6 or characteristics, having been prepared by or for, or having
7 been or being used by, received by, in the possession of, or
8 under the control of any public body. Communications and
9 materials exchanged between an attorney-lobbyist and a public
10 body that concern either lobbying to be performed on behalf of
11 the public body by the attorney-lobbyist or the expenditure of
12 public moneys for goods or services to be provided on behalf of
13 the public body by the attorney-lobbyist are public records,
14 are not exempt from inspection and copying unless exempt under
15 Section 7, and are not privileged from disclosure at trial
16 unless otherwise required by law.

17 (c-5) "Private information" means unique identifiers,
18 including a person's social security number, driver's license
19 number, employee identification number, biometric identifiers,
20 personal financial information, passwords or other access
21 codes, medical records, home or personal telephone numbers, and
22 personal email addresses. Private information also includes
23 home address and personal license plates, except as otherwise
24 provided by law or when compiled without possibility of
25 attribution to any person.

26 (c-10) "Commercial purpose" means the use of any part of a

1 public record or records, or information derived from public
2 records, in any form for sale, resale, or solicitation or
3 advertisement for sales or services. For purposes of this
4 definition, requests made by news media and non-profit,
5 scientific, or academic organizations shall not be considered
6 to be made for a "commercial purpose" when the principal
7 purpose of the request is (i) to access and disseminate
8 information concerning news and current or passing events, (ii)
9 for articles of opinion or features of interest to the public,
10 or (iii) for the purpose of academic, scientific, or public
11 research or education.

12 (d) "Copying" means the reproduction of any public record
13 by means of any photographic, electronic, mechanical or other
14 process, device or means now known or hereafter developed and
15 available to the public body.

16 (e) "Head of the public body" means the president, mayor,
17 chairman, presiding officer, director, superintendent,
18 manager, supervisor or individual otherwise holding primary
19 executive and administrative authority for the public body, or
20 such person's duly authorized designee.

21 (f) "News media" means a newspaper or other periodical
22 issued at regular intervals whether in print or electronic
23 format, a news service whether in print or electronic format, a
24 radio station, a television station, a television network, a
25 community antenna television service, or a person or
26 corporation engaged in making news reels or other motion

1 picture news for public showing.

2 (Source: P.A. 96-261, eff. 1-1-10; 96-542, eff. 1-1-10;
3 96-1000, eff. 7-2-10.)

4 (5 ILCS 140/7) (from Ch. 116, par. 207)

5 Sec. 7. Exemptions.

6 (1) When a request is made to inspect or copy a public
7 record that contains information that is exempt from disclosure
8 under this Section, but also contains information that is not
9 exempt from disclosure, the public body may elect to redact the
10 information that is exempt. The public body shall make the
11 remaining information available for inspection and copying.
12 Subject to this requirement, the following shall be exempt from
13 inspection and copying:

14 (a) Information specifically prohibited from
15 disclosure by federal or State law or rules and regulations
16 implementing federal or State law.

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

20 (b-5) Files, documents, and other data or databases
21 maintained by one or more law enforcement agencies and
22 specifically designed to provide information to one or more
23 law enforcement agencies regarding the physical or mental
24 status of one or more individual subjects.

25 (c) Personal information contained within public

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

12 (d) Records in the possession of any public body
13 created in the course of administrative enforcement
14 proceedings, and any law enforcement or correctional
15 agency for law enforcement purposes, but only to the extent
16 that disclosure would:

17 (i) interfere with pending or actually and
18 reasonably contemplated law enforcement proceedings
19 conducted by any law enforcement or correctional
20 agency that is the recipient of the request;

21 (ii) interfere with active administrative
22 enforcement proceedings conducted by the public body
23 that is the recipient of the request;

24 (iii) create a substantial likelihood that a
25 person will be deprived of a fair trial or an impartial
26 hearing;

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

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

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

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

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

26 (f) Preliminary drafts, notes, recommendations,

1 memoranda and other records in which opinions are
2 expressed, or policies or actions are formulated, except
3 that a specific record or relevant portion of a record
4 shall not be exempt when the record is publicly cited and
5 identified by the head of the public body. The exemption
6 provided in this paragraph (f) extends to all those records
7 of officers and agencies of the General Assembly that
8 pertain to the preparation of legislative documents.

9 (g) Trade secrets and commercial or financial
10 information obtained from a person or business where the
11 trade secrets or commercial or financial information are
12 furnished under a claim that they are proprietary,
13 privileged or confidential, and that disclosure of the
14 trade secrets or commercial or financial information would
15 cause competitive harm to the person or business, and only
16 insofar as the claim directly applies to the records
17 requested.

18 The information included under this exemption includes
19 all trade secrets and commercial or financial information
20 obtained by a public body, including a public pension fund,
21 from a private equity fund or a privately held company
22 within the investment portfolio of a private equity fund as
23 a result of either investing or evaluating a potential
24 investment of public funds in a private equity fund. The
25 exemption contained in this item does not apply to the
26 aggregate financial performance information of a private

1 equity fund, nor to the identity of the fund's managers or
2 general partners. The exemption contained in this item does
3 not apply to the identity of a privately held company
4 within the investment portfolio of a private equity fund,
5 unless the disclosure of the identity of a privately held
6 company may cause competitive harm.

7 Nothing contained in this paragraph (g) shall be
8 construed to prevent a person or business from consenting
9 to disclosure.

10 (h) Proposals and bids for any contract, grant, or
11 agreement, including information which if it were
12 disclosed would frustrate procurement or give an advantage
13 to any person proposing to enter into a contractor
14 agreement with the body, until an award or final selection
15 is made. Information prepared by or for the body in
16 preparation of a bid solicitation shall be exempt until an
17 award or final selection is made.

18 (i) Valuable formulae, computer geographic systems,
19 designs, drawings and research data obtained or produced by
20 any public body when disclosure could reasonably be
21 expected to produce private gain or public loss. The
22 exemption for "computer geographic systems" provided in
23 this paragraph (i) does not extend to requests made by news
24 media as defined in Section 2 of this Act when the
25 requested information is not otherwise exempt and the only
26 purpose of the request is to access and disseminate

1 information regarding the health, safety, welfare, or
2 legal rights of the general public.

3 (j) The following information pertaining to
4 educational matters:

5 (i) test questions, scoring keys and other
6 examination data used to administer an academic
7 examination;

8 (ii) information received by a primary or
9 secondary school, college, or university under its
10 procedures for the evaluation of faculty members by
11 their academic peers;

12 (iii) information concerning a school or
13 university's adjudication of student disciplinary
14 cases, but only to the extent that disclosure would
15 unavoidably reveal the identity of the student; and

16 (iv) course materials or research materials used
17 by faculty members.

18 (k) Architects' plans, engineers' technical
19 submissions, and other construction related technical
20 documents for projects not constructed or developed in
21 whole or in part with public funds and the same for
22 projects constructed or developed with public funds,
23 including but not limited to power generating and
24 distribution stations and other transmission and
25 distribution facilities, water treatment facilities,
26 airport facilities, sport stadiums, convention centers,

1 and all government owned, operated, or occupied buildings,
2 but only to the extent that disclosure would compromise
3 security.

4 (l) Minutes of meetings of public bodies closed to the
5 public as provided in the Open Meetings Act until the
6 public body makes the minutes available to the public under
7 Section 2.06 of the Open Meetings Act.

8 (m) Communications between a public body and an
9 attorney or auditor representing the public body that would
10 not be subject to discovery in litigation, and materials
11 prepared or compiled by or for a public body in
12 anticipation of a criminal, civil or administrative
13 proceeding upon the request of an attorney advising the
14 public body, and materials prepared or compiled with
15 respect to internal audits of public bodies. However,
16 communications and materials exchanged between an
17 attorney-lobbyist and a public body that concern either
18 lobbying to be performed on behalf of the public body by
19 the attorney-lobbyist or the expenditure of public moneys
20 for goods or services to be provided on behalf of the
21 public body by the attorney-lobbyist are public records,
22 are not exempt from inspection and copying under this
23 subsection (m), and are not privileged from disclosure at
24 trial unless otherwise required by law.

25 (n) Records relating to a public body's adjudication of
26 employee grievances or disciplinary cases; however, this

1 exemption shall not extend to the final outcome of cases in
2 which discipline is imposed.

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

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

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

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

1 as may be allowed under discovery rules adopted by the
2 Illinois Supreme Court. The records, documents and
3 information relating to a real estate sale shall be exempt
4 until a sale is consummated.

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

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

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

24 (v) Vulnerability assessments, security measures, and
25 response policies or plans that are designed to identify,
26 prevent, or respond to potential attacks upon a community's

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

12 (w) (Blank).

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

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

25 (z) Information about students exempted from
26 disclosure under Sections 10-20.38 or 34-18.29 of the

1 School Code, and information about undergraduate students
2 enrolled at an institution of higher education exempted
3 from disclosure under Section 25 of the Illinois Credit
4 Card Marketing Act of 2009.

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

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

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

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

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

1 (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;
2 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; 96-261, eff. 1-1-10;
3 96-328, eff. 8-11-09; 96-542, eff. 1-1-10; 96-558, eff. 1-1-10;
4 96-736, eff. 7-1-10; 96-863, eff. 3-1-10; 96-1378, eff.
5 7-29-10; revised 9-2-10.)