



Sen. Susan Garrett

Filed: 2/17/2011

09700SB0039sam001

LRB097 05061 JDS 50877 a

1 AMENDMENT TO SENATE BILL 39

2 AMENDMENT NO. _____. Amend Senate Bill 39 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 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

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.

4 (b) "Person" means any individual, corporation,
5 partnership, firm, organization or association, acting
6 individually or as a group.

7 (c) "Public records" means all records, reports, forms,
8 writings, letters, memoranda, books, papers, maps,
9 photographs, microfilms, cards, tapes, recordings, electronic
10 data processing records, electronic communications, recorded
11 information and all other documentary materials pertaining to
12 the transaction of public business, regardless of physical form
13 or characteristics, having been prepared by or for, or having
14 been or being used by, received by, in the possession of, or
15 under the control of any public body. Communications and
16 materials exchanged between a lobbyist and a public body that
17 concern either lobbying to be performed on behalf of the public
18 body by the lobbyist or the expenditure of public moneys for
19 goods or services to be provided on behalf of the public body
20 by the lobbyist are public records and are not exempt from
21 inspection and copying unless exempt under Section 7.

22 (c-5) "Private information" means unique identifiers,
23 including a person's social security number, driver's license
24 number, employee identification number, biometric identifiers,
25 personal financial information, passwords or other access
26 codes, medical records, home or personal telephone numbers, and

1 personal email addresses. Private information also includes
2 home address and personal license plates, except as otherwise
3 provided by law or when compiled without possibility of
4 attribution to any person.

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

17 (d) "Copying" means the reproduction of any public record
18 by means of any photographic, electronic, mechanical or other
19 process, device or means now known or hereafter developed and
20 available to the public body.

21 (e) "Head of the public body" means the president, mayor,
22 chairman, presiding officer, director, superintendent,
23 manager, supervisor or individual otherwise holding primary
24 executive and administrative authority for the public body, or
25 such person's duly authorized designee.

26 (f) "News media" means a newspaper or other periodical

1 issued at regular intervals whether in print or electronic
2 format, a news service whether in print or electronic format, a
3 radio station, a television station, a television network, a
4 community antenna television service, or a person or
5 corporation engaged in making news reels or other motion
6 picture news for public showing.

7 (Source: P.A. 96-261, eff. 1-1-10; 96-542, eff. 1-1-10;
8 96-1000, eff. 7-2-10.)

9 (5 ILCS 140/7) (from Ch. 116, par. 207)

10 Sec. 7. Exemptions.

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

19 (a) Information specifically prohibited from
20 disclosure by federal or State law or rules and regulations
21 implementing federal or State law.

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

25 (b-5) Files, documents, and other data or databases

1 maintained by one or more law enforcement agencies and
2 specifically designed to provide information to one or more
3 law enforcement agencies regarding the physical or mental
4 status of one or more individual subjects.

5 (c) Personal information contained within public
6 records, the disclosure of which would constitute a clearly
7 unwarranted invasion of personal privacy, unless the
8 disclosure is consented to in writing by the individual
9 subjects of the information. "Unwarranted invasion of
10 personal privacy" means the disclosure of information that
11 is highly personal or objectionable to a reasonable person
12 and in which the subject's right to privacy outweighs any
13 legitimate public interest in obtaining the information.
14 The disclosure of information that bears on the public
15 duties of public employees and officials shall not be
16 considered an invasion of personal 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 extent
21 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 accidents, traffic accident
13 reports, and rescue reports shall be provided by
14 agencies of local government, except when disclosure
15 would 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 or
20 disclose internal documents of correctional agencies
21 related to detection, observation or investigation of
22 incidents of crime or misconduct, and disclosure would
23 result in demonstrable harm to the agency or public
24 body that is the recipient of the request;

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

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

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

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

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

23 The information included under this exemption includes
24 all trade secrets and commercial or financial information
25 obtained by a public body, including a public pension fund,
26 from a private equity fund or a privately held company

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

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

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

23 (i) Valuable formulae, computer geographic systems,
24 designs, drawings and research data obtained or produced by
25 any public body when disclosure could reasonably be
26 expected to produce private gain or public loss. The

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

8 (j) The following information pertaining to
9 educational matters:

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

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

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

21 (iv) course materials or research materials used
22 by faculty members.

23 (k) Architects' plans, engineers' technical
24 submissions, and other construction related technical
25 documents for projects not constructed or developed in
26 whole or in part with public funds and the same for

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

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

13 (m) Communications between a public body and an
14 attorney or auditor representing the public body that would
15 not be subject to discovery in litigation, and materials
16 prepared or compiled by or for a public body in
17 anticipation of a criminal, civil or administrative
18 proceeding upon the request of an attorney advising the
19 public body, and materials prepared or compiled with
20 respect to internal audits of public bodies. However,
21 communications and materials exchanged between a lobbyist
22 and a public body that concern either lobbying to be
23 performed on behalf of the public body by the lobbyist or
24 the expenditure of public moneys for goods or services to
25 be provided on behalf of the public body by the lobbyist
26 are public records and are not exempt from inspection and

1 copying unless otherwise exempt under this Section.

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

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

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

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

23 (r) The records, documents, and information relating
24 to real estate purchase negotiations until those
25 negotiations have been completed or otherwise terminated.
26 With regard to a parcel involved in a pending or actually

1 and reasonably contemplated eminent domain proceeding
2 under the Eminent Domain Act, records, documents and
3 information relating to that parcel shall be exempt except
4 as may be allowed under discovery rules adopted by the
5 Illinois Supreme Court. The records, documents and
6 information relating to a real estate sale shall be exempt
7 until a sale is consummated.

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

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

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

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

15 (w) (Blank).

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

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

1 Commission.

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

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

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

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

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

26 (3) This Section does not authorize withholding of

1 information or limit the availability of records to the public,
2 except as stated in this Section or otherwise provided in this
3 Act.

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