



Sen. Daniel Biss

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1 AMENDMENT TO SENATE BILL 1514

2 AMENDMENT NO. _____. Amend Senate Bill 1514, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Freedom of Information Act is amended by
6 changing Section 11 as follows:

7 (5 ILCS 140/11) (from Ch. 116, par. 211)

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

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

15 (c) Where the denial is from a municipality or other public
16 body, except as provided in subsection (b) of this Section,

1 suit may be filed in the circuit court for the county where the
2 public body is located.

3 (d) The circuit court shall have the jurisdiction to enjoin
4 the public body from withholding public records and to order
5 the production of any public records improperly withheld from
6 the person seeking access. If the public body can show that
7 exceptional circumstances exist, and that the body is
8 exercising due diligence in responding to the request, the
9 court may retain jurisdiction and allow the agency additional
10 time to complete its review of the records.

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

15 (i) A description of the nature or contents of each
16 document withheld, or each deletion from a released
17 document, provided, however, that the public body shall not
18 be required to disclose the information which it asserts is
19 exempt; and

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

22 (f) In any action considered by the court, the court shall
23 consider the matter de novo, and shall conduct such in camera
24 examination of the requested records as it finds appropriate to
25 determine if such records or any part thereof may be withheld
26 under any provision of this Act. The burden shall be on the

1 public body to establish that its refusal to permit public
2 inspection or copying is in accordance with the provisions of
3 this Act. Any public body that asserts that a record is exempt
4 from disclosure has the burden of proving that it is exempt by
5 clear and convincing evidence.

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

10 (h) Except as to causes the court considers to be of
11 greater importance, proceedings arising under this Section
12 shall take precedence on the docket over all other causes and
13 be assigned for hearing and trial at the earliest practicable
14 date and expedited in every way.

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

24 For the purposes of this subsection, a requester prevails
25 if he or she obtains relief through (i) a voluntary or
26 unilateral change in position by the public body after suit has

1 been filed, unless the public body can demonstrate that its
2 voluntary or unilateral change was not caused by the filing of
3 litigation under this Section, (ii) an enforceable written
4 agreement or consent decree, or (iii) a judicial order.

5 (j) If the court determines that a public body willfully
6 and intentionally failed to comply with this Act, or otherwise
7 acted in bad faith, the court shall also impose upon the public
8 body a civil penalty of not less than \$2,500 nor more than
9 \$5,000 for each occurrence. In assessing the civil penalty, the
10 court shall consider in aggravation or mitigation the budget of
11 the public body and whether the public body has previously been
12 assessed penalties for violations of this Act. The changes
13 contained in this subsection apply to an action filed on or
14 after the effective date of this amendatory Act of the 96th
15 General Assembly.

16 (Source: P.A. 96-542, eff. 1-1-10; 97-813, eff. 7-13-12.)

17 Section 99. Effective date. This Act takes effect upon
18 becoming law."