



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

SB3112

Introduced 2/19/2016, by Sen. William R. Haine

#### SYNOPSIS AS INTRODUCED:

5 ILCS 140/3.7 new  
5 ILCS 140/7

from Ch. 116, par. 207

Amends the Freedom of Information Act. Provides that no provision of the Act shall be construed to afford any rights to any person: (i) incarcerated in a State, local, or federal correctional facility; or (ii) in the custody of the Department of Human Services as unfit to stand trial or under the Sexually Violent Persons Commitment Act. Provides that the new provisions shall not be construed to prevent a person from exercising his or her constitutionally-protected rights. Exempts from disclosure under the Act records requested by persons committed to a county jail if those materials are available in the library of the jail. Exempts from inspection and copying information or materials received, generated, or maintained by a State's Attorney or county sheriff as part of the criminal discovery process that the disclosure of which would violate the Supreme Court Rule concerning the disclosure of discovery materials in felony cases. Provides that the exemption applies regardless of whether the case has concluded. Effective immediately.

LRB099 19091 RJF 43480 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 Section 7 and by adding Section 3.7 as follows:

6 (5 ILCS 140/3.7 new)

7 Sec. 3.7. Persons in custody. No provision of this Act  
8 shall be construed to afford any rights to any person: (i)  
9 incarcerated in a State, local, or federal correctional  
10 facility, whether or not the facility is located in the State  
11 of Illinois; or (ii) in the custody of the Department of Human  
12 Services as unfit to stand trial, after a finding or verdict of  
13 not guilty by reason of insanity, or under the Sexually Violent  
14 Persons Commitment Act. This Section shall not be construed to  
15 prevent a person from exercising his or her  
16 constitutionally-protected rights.

17 (5 ILCS 140/7) (from Ch. 116, par. 207)

18 Sec. 7. Exemptions.

19 (1) When a request is made to inspect or copy a public  
20 record that contains information that is exempt from disclosure  
21 under this Section, but also contains information that is not  
22 exempt from disclosure, the public body may elect to redact the

1 information that is exempt. The public body shall make the  
2 remaining information available for inspection and copying.  
3 Subject to this requirement, the following shall be exempt from  
4 inspection and copying:

5 (a) Information specifically prohibited from  
6 disclosure by federal or State law or rules and regulations  
7 implementing federal or State law.

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

11 (b-5) Files, documents, and other data or databases  
12 maintained by one or more law enforcement agencies and  
13 specifically designed to provide information to one or more  
14 law enforcement agencies regarding the physical or mental  
15 status of one or more individual subjects.

16 (c) Personal information contained within public  
17 records, the disclosure of which would constitute a clearly  
18 unwarranted invasion of personal privacy, unless the  
19 disclosure is consented to in writing by the individual  
20 subjects of the information. "Unwarranted invasion of  
21 personal privacy" means the disclosure of information that  
22 is highly personal or objectionable to a reasonable person  
23 and in which the subject's right to privacy outweighs any  
24 legitimate public interest in obtaining the information.  
25 The disclosure of information that bears on the public  
26 duties of public employees and officials shall not be

1 considered an invasion of personal privacy.

2 (d) Records in the possession of any public body  
3 created in the course of administrative enforcement  
4 proceedings, and any law enforcement or correctional  
5 agency for law enforcement purposes, but only to the extent  
6 that disclosure would:

7 (i) interfere with pending or actually and  
8 reasonably contemplated law enforcement proceedings  
9 conducted by any law enforcement or correctional  
10 agency that is the recipient of the request;

11 (ii) interfere with active administrative  
12 enforcement proceedings conducted by the public body  
13 that is the recipient of the request;

14 (iii) create a substantial likelihood that a  
15 person will be deprived of a fair trial or an impartial  
16 hearing;

17 (iv) unavoidably disclose the identity of a  
18 confidential source, confidential information  
19 furnished only by the confidential source, or persons  
20 who file complaints with or provide information to  
21 administrative, investigative, law enforcement, or  
22 penal agencies; except that the identities of  
23 witnesses to traffic accidents, traffic accident  
24 reports, and rescue reports shall be provided by  
25 agencies of local government, except when disclosure  
26 would interfere with an active criminal investigation

1 conducted by the agency that is the recipient of the  
2 request;

3 (v) disclose unique or specialized investigative  
4 techniques other than those generally used and known or  
5 disclose internal documents of correctional agencies  
6 related to detection, observation or investigation of  
7 incidents of crime or misconduct, and disclosure would  
8 result in demonstrable harm to the agency or public  
9 body that is the recipient of the request;

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

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

14 (d-5) A law enforcement record created for law  
15 enforcement purposes and contained in a shared electronic  
16 record management system if the law enforcement agency that  
17 is the recipient of the request did not create the record,  
18 did not participate in or have a role in any of the events  
19 which are the subject of the record, and only has access to  
20 the record through the shared electronic record management  
21 system.

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 or a county jail if those  
26 materials are available in the library of the correctional

1 facility or jail where the inmate is confined.

2 (e-6) Records requested by persons committed to the  
3 Department of Corrections if those materials include  
4 records from staff members' personnel files, staff  
5 rosters, or other staffing assignment information.

6 (e-7) Records requested by persons committed to the  
7 Department of Corrections if those materials are available  
8 through an administrative request to the Department of  
9 Corrections.

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

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

1 requested.

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

17 Nothing contained in this paragraph (g) shall be  
18 construed to prevent a person or business from consenting  
19 to disclosure.

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

1 award or final selection is made.

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

13 (j) The following information pertaining to  
14 educational matters:

15 (i) test questions, scoring keys and other  
16 examination data used to administer an academic  
17 examination;

18 (ii) information received by a primary or  
19 secondary school, college, or university under its  
20 procedures for the evaluation of faculty members by  
21 their academic peers;

22 (iii) information concerning a school or  
23 university's adjudication of student disciplinary  
24 cases, but only to the extent that disclosure would  
25 unavoidably reveal the identity of the student; and

26 (iv) course materials or research materials used



1           by faculty members.

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

14          (l) Minutes of meetings of public bodies closed to the  
15          public as provided in the Open Meetings Act until the  
16          public body makes the minutes available to the public under  
17          Section 2.06 of the Open Meetings Act.

18          (m) Communications between a public body and an  
19          attorney or auditor representing the public body that would  
20          not be subject to discovery in litigation, and materials  
21          prepared or compiled by or for a public body in  
22          anticipation of a criminal, civil or administrative  
23          proceeding upon the request of an attorney advising the  
24          public body, and materials prepared or compiled with  
25          respect to internal audits of public bodies.

26          (n) Records relating to a public body's adjudication of

1 employee grievances or disciplinary cases; however, this  
2 exemption shall not extend to the final outcome of cases in  
3 which discipline is imposed.

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

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

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

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

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

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

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

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

25 (v) Vulnerability assessments, security measures, and  
26 response policies or plans that are designed to identify,

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

13 (w) (Blank).

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

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

26 (z) Information about students exempted from

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

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

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

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

16 (dd) Correspondence and records (i) that may not be  
17 disclosed under Section 11-9 of the Public Aid Code or (ii)  
18 that pertain to appeals under Section 11-8 of the Public  
19 Aid Code.

20 (ee) The names, addresses, or other personal  
21 information of persons who are minors and are also  
22 participants and registrants in programs of park  
23 districts, forest preserve districts, conservation  
24 districts, recreation agencies, and special recreation  
25 associations.

26 (ff) The names, addresses, or other personal

1 information of participants and registrants in programs of  
2 park districts, forest preserve districts, conservation  
3 districts, recreation agencies, and special recreation  
4 associations where such programs are targeted primarily to  
5 minors.

6 (gg) Confidential information described in Section  
7 1-100 of the Illinois Independent Tax Tribunal Act of 2012.

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

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

23 (jj) ~~(ii)~~ Confidential information described in  
24 Section 5-535 of the Civil Administrative Code of Illinois.

25 (kk) Information or materials received, generated, or  
26 maintained by a State's Attorney or county sheriff as part

1       of the criminal discovery process that the disclosure of  
2       which would violate subsection (c) of Supreme Court Rule  
3       415. This exemption applies regardless of whether the case  
4       has concluded.

5       (1.5) Any information exempt from disclosure under the  
6       Judicial Privacy Act shall be redacted from public records  
7       prior to disclosure under this Act.

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

15      (3) This Section does not authorize withholding of  
16      information or limit the availability of records to the public,  
17      except as stated in this Section or otherwise provided in this  
18      Act.

19      (Source: P.A. 98-463, eff. 8-16-13; 98-578, eff. 8-27-13;  
20      98-695, eff. 7-3-14; 99-298, eff. 8-6-15; 99-346, eff. 1-1-16;  
21      revised 1-11-16.)

22      Section 99. Effective date. This Act takes effect upon  
23      becoming law.