

HB6053



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB6053

Introduced 2/10/2010, by Rep. Barbara Flynn Currie

SYNOPSIS AS INTRODUCED:

New Act

Creates the Illinois Accurate Government Records Act. Sets forth the findings of the General Assembly. Contains provisions concerning the access to an individual's personal records, changes to an individual's personal records, the limitations on a public body's disclosure of an individual's personal records, the limitations on a public body's maintenance of systems of personal records, the limitations on a public body's maintenance of an individual's personal records, and the rights of legal guardians. Specifies the responsibilities of a public body under the Act.

LRB096 20797 MJR 36555 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning government records.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Illinois Accurate Government Records Act.

6 Section 5. Findings. The General Assembly makes the
7 following findings:

8 (1) The right to privacy is being threatened by the
9 indiscriminate collection, maintenance, and dissemination
10 of personal information and the lack of effective laws and
11 legal remedies.

12 (2) The increasing use of computers and other
13 sophisticated information technology has greatly magnified
14 the potential risk to individual privacy that can occur
15 from the maintenance of personal information.

16 (3) In order to protect the privacy of individuals, it
17 is necessary that the maintenance and dissemination of
18 personal information be subject to strict limits.

19 Section 10. Definitions. For purposes of this Act:

20 "Copy" means the reproduction of any personal record by
21 means of any photographic, electronic, mechanical, or other
22 process, device, or means now known or hereafter developed and

1 available to the public body.

2 "Individual" means a natural person.

3 "Maintain" means to maintain, collect, use, or
4 disseminate.

5 "Personal record" includes, but is not limited to, the
6 following information about an individual that is maintained by
7 a public body: the individual's education, financial, medical,
8 or employment history, or items that contain or make reference
9 to the individual's name, identifying number, symbol, or other
10 identifying particular assigned to the individual, such as a
11 finger or voice print or a photograph. "Personal record" does
12 not include any record under the Personnel Record Review Act or
13 the School Student Record Act.

14 "Public body" means all legislative, executive,
15 administrative, or advisory bodies of the State, State
16 universities and colleges, counties, townships, cities,
17 villages, incorporated towns, school districts, and all other
18 municipal corporations, boards, bureaus, committees, or
19 commissions of this State, any subsidiary bodies of any of the
20 foregoing, including, but not limited to, committees and
21 subcommittees thereof, and a School Finance Authority created
22 under Article 1E of the School Code. "Public body" does not
23 include a child death review team or the Illinois Child Death
24 Review Teams Executive Council established under the Child
25 Death Review Team Act or the legislative offices of members of
26 the General Assembly.

1 "Routine use" means, with respect to the disclosure of a
2 record, the use of the record for a purpose that is compatible
3 with the purpose for which it was collected.

4 "System of records" means a group of any records under the
5 control of any public body from which information is retrieved
6 by the name of the individual or by some identifying number,
7 symbol, or other identifying particular assigned to that
8 individual.

9 Section 15. Access to an individual's personal records.

10 (a) Upon the request of an individual to gain access to the
11 individual's personal record, a public body shall permit the
12 individual to review the record and have a copy made within 10
13 working days after the date of receipt of the request by the
14 public body, unless the personal record requested is exempted
15 under subsection (c) to this Section. The 10-day period may be
16 extended for an additional 20 working days if the public body
17 provides to the individual, within the initial 10 working days,
18 a written explanation of unusual circumstances causing the
19 delay.

20 (b) Each public body that maintains any accessible personal
21 record shall make that record available to the individual to
22 whom it pertains in a reasonably intelligible form. Where
23 necessary the public body shall provide a translation into
24 common terms of any machine readable code or any code or
25 abbreviation employed for internal public body use.

1 (c) A public body is not required under this Section to
2 grant an individual access to personal records or information
3 in records:

4 (1) Maintained by a public body that performs as its or
5 as a principal function any activity pertaining to the
6 prevention, control, or reduction of crime, including, but
7 not limited to, State and local police departments, and
8 which consist of:

9 (A) information or reports prepared or compiled
10 for the purpose of criminal intelligence or of a
11 criminal investigation, including reports of
12 informers, witnesses, and investigators; or

13 (B) reports prepared or compiled at any stage of
14 the process of enforcement of the criminal laws from
15 arrest or indictment through confinement, correctional
16 supervision, and release from supervision.

17 (2) The disclosure of which would reveal the identity
18 of a source who furnished information to the public body
19 under an express or implied promise of confidentiality.

20 (3) Consisting of testing or examination material or
21 scoring keys used solely to determine individual
22 qualifications for appointment or promotion in public
23 employment, or used as or to administer a licensing
24 examination or an academic examination, the disclosure of
25 which would compromise the objectivity, fairness, or
26 effectiveness of the testing or examination process.

1 (4) Including investigative reports and materials,
2 related to an upcoming, ongoing, or pending civil or
3 criminal action or administrative proceeding against the
4 individual.

5 (5) Required to be withheld from the individual to whom
6 it pertains by statute or judicial decision or authorized
7 to be so withheld by constitutional or statutory privilege.

8 (d) Nothing in this Section shall be construed to permit or
9 require a public body to withhold or deny access to a personal
10 record or any information in a personal record where any
11 statute, administrative rule, rule of court, judicial
12 decision, or other law authorizes or allows an individual to
13 gain access to a personal record or to any information in a
14 personal record or requires that the individual be given such
15 access.

16 (e) For the State of Illinois, or a municipality having a
17 population of 500,000 or more, or a county having a population
18 of 3,000,000 or more, each department of the State,
19 municipality, or county is a separate public body for purposes
20 of this Section, and an individual's request to one department
21 for access to his or her personal records shall not oblige that
22 department to seek out any personal records of another
23 department.

24 Section 20. Changes to an individual's personal records.

25 (a) Each public body shall permit an individual, after

1 inspection, to request in writing a change to his or her
2 personal record, and shall within 30 days after the date of
3 receipt of such request:

4 (1) make each change in accordance with the
5 individual's request of any portion of a personal record
6 that the individual believes is not accurate, relevant,
7 timely, or complete and inform the individual of the
8 changes made in accordance with his or her request; or

9 (2) inform the individual of its decision not to change
10 the personal record in accordance with such individual's
11 request, the reason for the decision, the procedures
12 established by the public body for the individual to
13 request a review by the head of the public body or an
14 official specifically designated by the head of the public
15 body of the decision not to make the change, and the name,
16 title, and business address of the reviewing official.

17 (b) Each public body shall permit any individual who
18 disagrees with the decision of the public body not to make the
19 change to a personal record to request a review of such
20 decision by the head of the public body or an official
21 specifically designated by the head of the public body, and,
22 not later than 30 days after the date on which the individual
23 requests such review, complete the review and make a final
24 determination unless, for good cause shown, the head of the
25 public body extends the review period by 30 days.

26 (c) If, after review, the reviewing official decides not to

1 change the personal record in accordance with the request, the
2 public body shall permit the individual to file with the public
3 body a statement of no more than 1,500 words setting forth the
4 reasons for the individual's disagreement.

5 (d) If the public body discloses to any person the portion
6 of the record for which the individual has filed a statement of
7 disagreement under subsection (c) of this Section, then the
8 public body shall clearly note in the record that a statement
9 has been filed and, upon request, make a copy of the statement
10 available. The public body may provide a concise statement of
11 the reasons of the public body for not changing the record.

12 Section 25. Limitations on a public body's disclosure of an
13 individual's personal records. No public body shall disclose
14 any personal record by any means of communication to any
15 person, or to another public body, except pursuant to a written
16 request by, or with the prior written consent of, the
17 individual to whom the record pertains, unless disclosure of
18 the record would be:

19 (1) to those officers and employees of the public body
20 that maintains the record who have a need for the record in
21 the performance of their duties;

22 (2) pursuant to and to the extent required by the
23 Freedom of Information Act;

24 (3) for a routine use;

25 (4) to a recipient who has provided the public body

1 with advance adequate written assurance that the record
2 will be used solely as a statistical research or reporting
3 record, and the record is to be transferred in a form that
4 is not individually identifiable;

5 (5) to the State archives as a record that has
6 sufficient historical or other value to warrant its
7 continued preservation;

8 (6) to another public body or to an instrumentality of
9 any governmental jurisdiction within or under the control
10 of the United States for a civil or criminal law
11 enforcement activity if the activity is authorized by law,
12 and if the head of the public body or instrumentality has
13 made a written request to the public body which maintains
14 the record specifying the particular portion desired and
15 the law enforcement activity for which the record is
16 sought;

17 (7) to a person pursuant to a showing of compelling
18 circumstances affecting the health or safety of an
19 individual if upon such disclosure notification is
20 transmitted to the last known address of the individual;

21 (8) to either chamber of the General Assembly, or, to
22 the extent of matter within its jurisdiction, any committee
23 or subcommittee of the General Assembly;

24 (9) to either the Comptroller or the Auditor General,
25 or any of his or her authorized representatives, in the
26 course of the performance of his or her duties;

1 (10) pursuant to the order of a court of competent
2 jurisdiction; or

3 (11) to a consumer reporting agency as permitted or
4 allowed by federal or State statute.

5 Section 30. Limitations on a public body's maintenance of
6 systems of personal records. Each public body that maintains a
7 system of records shall do all of the following:

8 (1) Maintain in its personal records only the
9 information about an individual that is relevant and
10 necessary to accomplish a purpose of the public body that
11 is required or authorized by the Illinois Constitution or
12 statute or mandated by the federal government.

13 (2) Collect information to the greatest extent
14 practicable directly from the subject individual when the
15 information may result in adverse determinations about an
16 individual's rights, benefits, and privileges under State
17 programs.

18 (3) Post upon establishment or revision a notice of the
19 existence and character of the system of records, which
20 notice shall include the following:

21 (A) the name and location of the system;

22 (B) the categories of individuals on whom records
23 are maintained in the system;

24 (C) each routine use of the records contained in
25 the system, including the categories of users and the

1 purpose of such use;

2 (D) the title and business address of the agency
3 official who is responsible for compliance with this
4 Act; and

5 (E) the categories of sources of records in the
6 system.

7 (4) Maintain all records that are used by the public
8 body in making any determination about any individual with
9 accuracy, relevance, timeliness, and completeness as is
10 reasonably necessary to ensure fairness to the individual
11 in the determination.

12 (5) Prior to disseminating any record about an
13 individual to any person other than a public body, unless
14 the dissemination is made pursuant to the Freedom of
15 Information Act, make reasonable efforts to ensure that the
16 records are accurate, complete, timely, and relevant for
17 public body purposes.

18 (6) Establish rules of conduct for persons involved in
19 the design, development, operation, disclosure, or
20 maintenance of records containing personal information and
21 instruct each person with respect to such rules and the
22 requirements of this Act, including any other rules and
23 procedures adopted pursuant to this Act, and the remedies
24 and penalties for noncompliance.

25 (7) Establish appropriate and reasonable
26 administrative, technical, and physical safeguards to

1 ensure compliance with the provisions of this Act, to
2 ensure the security and confidentiality of records, and to
3 protect against anticipated threats or hazards to their
4 security or integrity that could result in any injury.

5 Section 35. Limitations on a public body's maintenance of
6 an individual's personal records. A public body shall maintain
7 no personal record, whether or not the personal record is part
8 of a system of records, describing how any individual exercises
9 rights guaranteed by the First Amendment to the United States
10 Constitution or Sections 3, 4, or 5 of Article I of the
11 Illinois Constitution, unless expressly authorized by statute
12 or by the individual about whom the record is maintained or
13 unless pertinent to and within the scope of an authorized law
14 enforcement activity.

15 Section 40. Civil remedies.

16 (a) An individual may bring a civil action against a public
17 body in a circuit court of the State whenever a public body
18 fails to comply with any provision of this Act, and after
19 appropriate administrative remedies have been exhausted.

20 (b) In any action brought by an individual under this
21 Section, the court may:

22 (1) order the public body to disclose, correct, or
23 amend the individual's personal record;

24 (2) issue an injunction to require any other action by

1 the public body, or to enjoin the public body from improper
2 actions, as the court may deem necessary and appropriate to
3 render substantial relief; and

4 (3) order the public body to pay the individual all or
5 a portion of the costs of maintaining the action, including
6 reasonable attorney's fees, in any case in which the
7 individual has prevailed under Section 15, 20, or 35 of
8 this Act.

9 (c) In any action brought by an individual under this
10 Section in which the court determines that the public body
11 knowingly or intentionally violated a provision of this Act,
12 the public body shall be liable to the individual in an amount
13 equal to the sum of:

14 (1) actual damages sustained by the individual as a
15 result of the failure of the public body to properly
16 maintain the personal record, but in no case shall an
17 individual entitled to recovery receive less than the sum
18 of \$1,000; and

19 (2) the costs of the action together with reasonable
20 attorney's fees as determined by the court for a violation
21 of Section 15, 20, or 35 of this Act.

22 (d) An action may be brought against a public body of the
23 State in the circuit court for the county where the public body
24 of the State has its principal office or where the complainant
25 resides.

26 (e) An action may be brought against a municipal or other

1 public body, except as provided in subsection (d) of this
2 Section, in the circuit court for the county where the
3 municipal or other public body is located.

4 (f) No action shall be brought later than 2 years after
5 notification of the public body's denial.

6 (g) The rights and remedies set forth in this Act shall be
7 deemed to be nonexclusive and are in addition to all those
8 rights and remedies that are otherwise available under any
9 other provision of law.

10 (h) Notwithstanding any other provision of this Act, no
11 fees, costs, or damages may be assessed against a public body
12 for a violation of Section 25 of this Act arising from the
13 public body's disclosure of records pursuant to the Freedom of
14 Information Act, unless the plaintiff can prove that the public
15 body did not have an objectively reasonable basis in law or in
16 fact to conclude that such disclosure was required by the
17 Freedom of Information Act.

18 (i) If an individual brings any action under this Section
19 that is not well grounded in fact, or is not warranted by
20 existing law or a good-faith argument for the extension,
21 modification, or reversal of existing law, then the court may
22 impose an appropriate sanction upon the individual, which may
23 include an order to pay the public body the amount of
24 reasonable expenses incurred because of the filing of the
25 action, including reasonable attorney's fees.

26 (j) For civil actions alleging violation of items (1) or

1 (4) of Section 30 or Section 35 of this Act, the administrative
2 exhaustion required by subsection (a) of this Section shall
3 include the individual notifying the public body of the precise
4 information in the personal record to which the individual
5 objects, and the public body having an opportunity to decide
6 whether to remove or amend the disputed information.

7 Section 45. Public body responsibilities. Each public body
8 shall:

9 (1) issue instructions and guidelines necessary to
10 effectuate this Act; and

11 (2) take steps to ensure that all its employees and
12 officers responsible for the collection, maintenance, use,
13 and dissemination of personal records are informed of the
14 requirements of this Act.

15 Section 50. Rights of legal guardians. For the purposes of
16 this Section, the parent of any minor, or the legal guardian of
17 any individual who has been declared to be incompetent due to
18 physical or mental incapacity or age by a court of competent
19 jurisdiction, may act on behalf of the individual.