



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB5521

Introduced 1/27/2006, by Rep. Aaron Schock

SYNOPSIS AS INTRODUCED:

5 ILCS 140/7

from Ch. 116, par. 207

410 ILCS 505/3.5 new

Amends the Freedom of Information Act. Exempts from inspection and copying photographs and video or audio recordings made pursuant to an autopsy, except as provided in the Autopsy Act. Amends the Autopsy Act. Provides that any person may inspect and examine original photographs or video or audio recordings of an autopsy performed pursuant to the Act. Provides that the public may not obtain copies of photographs or video or audio recordings of an autopsy and provides exceptions to the prohibition. Provides that a person who is denied access or restricted in his or her use of copies of photographs or video or audio recordings under the Section may commence a proceeding in circuit court. Requires a person initiating a proceeding to provide notice to certain parties. Provides that the Section does not apply to the use of autopsy photographs or video or audio recordings in a criminal, civil, or administrative proceeding. Provides penalties. Effective immediately.

LRB094 16481 LJB 51741 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning health.

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 as follows:

6 (5 ILCS 140/7) (from Ch. 116, par. 207)

7 Sec. 7. Exemptions.

8 (1) The following shall be exempt from inspection and
9 copying:

10 (a) Information specifically prohibited from
11 disclosure by federal or State law or rules and regulations
12 adopted under federal or State law.

13 (b) Information that, if disclosed, would constitute a
14 clearly unwarranted invasion of personal privacy, unless
15 the disclosure is consented to in writing by the individual
16 subjects of the information. The disclosure of information
17 that bears on the public duties of public employees and
18 officials shall not be considered an invasion of personal
19 privacy. Information exempted under this subsection (b)
20 shall include but is not limited to:

21 (i) files and personal information maintained with
22 respect to clients, patients, residents, students or
23 other individuals receiving social, medical,
24 educational, vocational, financial, supervisory or
25 custodial care or services directly or indirectly from
26 federal agencies or public bodies;

27 (ii) personnel files and personal information
28 maintained with respect to employees, appointees or
29 elected officials of any public body or applicants for
30 those positions;

31 (iii) files and personal information maintained
32 with respect to any applicant, registrant or licensee

1 by any public body cooperating with or engaged in
2 professional or occupational registration, licensure
3 or discipline;

4 (iv) information required of any taxpayer in
5 connection with the assessment or collection of any tax
6 unless disclosure is otherwise required by State
7 statute;

8 (v) information revealing the identity of persons
9 who file complaints with or provide information to
10 administrative, investigative, law enforcement or
11 penal agencies; provided, however, that identification
12 of witnesses to traffic accidents, traffic accident
13 reports, and rescue reports may be provided by agencies
14 of local government, except in a case for which a
15 criminal investigation is ongoing, without
16 constituting a clearly unwarranted per se invasion of
17 personal privacy under this subsection; and

18 (vi) the names, addresses, or other personal
19 information of participants and registrants in park
20 district, forest preserve district, and conservation
21 district programs.

22 (c) Records compiled by any public body for
23 administrative enforcement proceedings and any law
24 enforcement or correctional agency for law enforcement
25 purposes or for internal matters of a public body, but only
26 to the extent that disclosure would:

27 (i) interfere with pending or actually and
28 reasonably contemplated law enforcement proceedings
29 conducted by any law enforcement or correctional
30 agency;

31 (ii) interfere with pending administrative
32 enforcement proceedings conducted by any public body;

33 (iii) deprive a person of a fair trial or an
34 impartial hearing;

35 (iv) unavoidably disclose the identity of a
36 confidential source or confidential information

1 furnished only by the confidential source;

2 (v) disclose unique or specialized investigative
3 techniques other than those generally used and known or
4 disclose internal documents of correctional agencies
5 related to detection, observation or investigation of
6 incidents of crime or misconduct;

7 (vi) constitute an invasion of personal privacy
8 under subsection (b) of this Section;

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

11 (viii) obstruct an ongoing criminal investigation.

12 (d) Criminal history record information maintained by
13 State or local criminal justice agencies, except the
14 following which shall be open for public inspection and
15 copying:

16 (i) chronologically maintained arrest information,
17 such as traditional arrest logs or blotters;

18 (ii) the name of a person in the custody of a law
19 enforcement agency and the charges for which that
20 person is being held;

21 (iii) court records that are public;

22 (iv) records that are otherwise available under
23 State or local law; or

24 (v) records in which the requesting party is the
25 individual identified, except as provided under part
26 (vii) of paragraph (c) of subsection (1) of this
27 Section.

28 "Criminal history record information" means data
29 identifiable to an individual and consisting of
30 descriptions or notations of arrests, detentions,
31 indictments, informations, pre-trial proceedings, trials,
32 or other formal events in the criminal justice system or
33 descriptions or notations of criminal charges (including
34 criminal violations of local municipal ordinances) and the
35 nature of any disposition arising therefrom, including
36 sentencing, court or correctional supervision,

1 rehabilitation and release. The term does not apply to
2 statistical records and reports in which individuals are
3 not identified and from which their identities are not
4 ascertainable, or to information that is for criminal
5 investigative or intelligence purposes.

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

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

17 (g) Trade secrets and commercial or financial
18 information obtained from a person or business where the
19 trade secrets or information are proprietary, privileged
20 or confidential, or where disclosure of the trade secrets
21 or information may cause competitive harm, including:

22 (i) All information determined to be confidential
23 under Section 4002 of the Technology Advancement and
24 Development Act.

25 (ii) All trade secrets and commercial or financial
26 information obtained by a public body, including a
27 public pension fund, from a private equity fund or a
28 privately held company within the investment portfolio
29 of a private equity fund as a result of either
30 investing or evaluating a potential investment of
31 public funds in a private equity fund. The exemption
32 contained in this item does not apply to the aggregate
33 financial performance information of a private equity
34 fund, nor to the identity of the fund's managers or
35 general partners. The exemption contained in this item
36 does not apply to the identity of a privately held

1 company within the investment portfolio of a private
2 equity fund, unless the disclosure of the identity of a
3 privately held company may cause competitive harm.

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

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

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

25 (j) Test questions, scoring keys and other examination
26 data used to administer an academic examination or
27 determined the qualifications of an applicant for a license
28 or employment.

29 (k) Architects' plans, engineers' technical
30 submissions, and other construction related technical
31 documents for projects not constructed or developed in
32 whole or in part with public funds and the same for
33 projects constructed or developed with public funds, but
34 only to the extent that disclosure would compromise
35 security, including but not limited to water treatment
36 facilities, airport facilities, sport stadiums, convention

1 centers, and all government owned, operated, or occupied
2 buildings.

3 (l) Library circulation and order records identifying
4 library users with specific materials.

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

9 (n) Communications between a public body and an
10 attorney or auditor representing the public body that would
11 not be subject to discovery in litigation, and materials
12 prepared or compiled by or for a public body in
13 anticipation of a criminal, civil or administrative
14 proceeding upon the request of an attorney advising the
15 public body, and materials prepared or compiled with
16 respect to internal audits of public bodies.

17 (o) Information received by a primary or secondary
18 school, college or university under its procedures for the
19 evaluation of faculty members by their academic peers.

20 (p) Administrative or technical information associated
21 with automated data processing operations, including but
22 not limited to software, operating protocols, computer
23 program abstracts, file layouts, source listings, object
24 modules, load modules, user guides, documentation
25 pertaining to all logical and physical design of
26 computerized systems, employee manuals, and any other
27 information that, if disclosed, would jeopardize the
28 security of the system or its data or the security of
29 materials exempt under this Section.

30 (q) Documents or materials relating to collective
31 negotiating matters between public bodies and their
32 employees or representatives, except that any final
33 contract or agreement shall be subject to inspection and
34 copying.

35 (r) Drafts, notes, recommendations and memoranda
36 pertaining to the financing and marketing transactions of

1 the public body. The records of ownership, registration,
2 transfer, and exchange of municipal debt obligations, and
3 of persons to whom payment with respect to these
4 obligations is made.

5 (s) The records, documents and information relating to
6 real estate purchase negotiations until those negotiations
7 have been completed or otherwise terminated. With regard to
8 a parcel involved in a pending or actually and reasonably
9 contemplated eminent domain proceeding under Article VII
10 of the Code of Civil Procedure, records, documents and
11 information relating to that parcel shall be exempt except
12 as may be allowed under discovery rules adopted by the
13 Illinois Supreme Court. The records, documents and
14 information relating to a real estate sale shall be exempt
15 until a sale is consummated.

16 (t) Any and all proprietary information and records
17 related to the operation of an intergovernmental risk
18 management association or self-insurance pool or jointly
19 self-administered health and accident cooperative or pool.

20 (u) Information concerning a university's adjudication
21 of student or employee grievance or disciplinary cases, to
22 the extent that disclosure would reveal the identity of the
23 student or employee and information concerning any public
24 body's adjudication of student or employee grievances or
25 disciplinary cases, except for the final outcome of the
26 cases.

27 (v) Course materials or research materials used by
28 faculty members.

29 (w) Information related solely to the internal
30 personnel rules and practices of a public body.

31 (x) Information contained in or related to
32 examination, operating, or condition reports prepared by,
33 on behalf of, or for the use of a public body responsible
34 for the regulation or supervision of financial
35 institutions or insurance companies, unless disclosure is
36 otherwise required by State law.

1 (y) Information the disclosure of which is restricted
2 under Section 5-108 of the Public Utilities Act.

3 (z) Manuals or instruction to staff that relate to
4 establishment or collection of liability for any State tax
5 or that relate to investigations by a public body to
6 determine violation of any criminal law.

7 (aa) Applications, related documents, and medical
8 records received by the Experimental Organ Transplantation
9 Procedures Board and any and all documents or other records
10 prepared by the Experimental Organ Transplantation
11 Procedures Board or its staff relating to applications it
12 has received.

13 (bb) Insurance or self insurance (including any
14 intergovernmental risk management association or self
15 insurance pool) claims, loss or risk management
16 information, records, data, advice or communications.

17 (cc) Information and records held by the Department of
18 Public Health and its authorized representatives relating
19 to known or suspected cases of sexually transmissible
20 disease or any information the disclosure of which is
21 restricted under the Illinois Sexually Transmissible
22 Disease Control Act.

23 (dd) Information the disclosure of which is exempted
24 under Section 30 of the Radon Industry Licensing Act.

25 (ee) Firm performance evaluations under Section 55 of
26 the Architectural, Engineering, and Land Surveying
27 Qualifications Based Selection Act.

28 (ff) Security portions of system safety program plans,
29 investigation reports, surveys, schedules, lists, data, or
30 information compiled, collected, or prepared by or for the
31 Regional Transportation Authority under Section 2.11 of
32 the Regional Transportation Authority Act or the St. Clair
33 County Transit District under the Bi-State Transit Safety
34 Act.

35 (gg) Information the disclosure of which is restricted
36 and exempted under Section 50 of the Illinois Prepaid

1 Tuition Act.

2 (hh) Information the disclosure of which is exempted
3 under the State Officials and Employees Ethics Act.

4 (ii) Beginning July 1, 1999, information that would
5 disclose or might lead to the disclosure of secret or
6 confidential information, codes, algorithms, programs, or
7 private keys intended to be used to create electronic or
8 digital signatures under the Electronic Commerce Security
9 Act.

10 (jj) Information contained in a local emergency energy
11 plan submitted to a municipality in accordance with a local
12 emergency energy plan ordinance that is adopted under
13 Section 11-21.5-5 of the Illinois Municipal Code.

14 (kk) Information and data concerning the distribution
15 of surcharge moneys collected and remitted by wireless
16 carriers under the Wireless Emergency Telephone Safety
17 Act.

18 (ll) Vulnerability assessments, security measures, and
19 response policies or plans that are designed to identify,
20 prevent, or respond to potential attacks upon a community's
21 population or systems, facilities, or installations, the
22 destruction or contamination of which would constitute a
23 clear and present danger to the health or safety of the
24 community, but only to the extent that disclosure could
25 reasonably be expected to jeopardize the effectiveness of
26 the measures or the safety of the personnel who implement
27 them or the public. Information exempt under this item may
28 include such things as details pertaining to the
29 mobilization or deployment of personnel or equipment, to
30 the operation of communication systems or protocols, or to
31 tactical operations.

32 (mm) Maps and other records regarding the location or
33 security of a utility's generation, transmission,
34 distribution, storage, gathering, treatment, or switching
35 facilities.

36 (nn) Law enforcement officer identification

1 information or driver identification information compiled
2 by a law enforcement agency or the Department of
3 Transportation under Section 11-212 of the Illinois
4 Vehicle Code.

5 (oo) Records and information provided to a residential
6 health care facility resident sexual assault and death
7 review team or the Residential Health Care Facility
8 Resident Sexual Assault and Death Review Teams Executive
9 Council under the Residential Health Care Facility
10 Resident Sexual Assault and Death Review Team Act.

11 (pp) Information provided to the predatory lending
12 database created pursuant to Article 3 of the Residential
13 Real Property Disclosure Act, except to the extent
14 authorized under that Article.

15 (qq) ~~(pp)~~ Defense budgets and petitions for
16 certification of compensation and expenses for court
17 appointed trial counsel as provided under Sections 10 and
18 15 of the Capital Crimes Litigation Act. This subsection
19 (qq) ~~(pp)~~ shall apply until the conclusion of the trial and
20 appeal of the case, even if the prosecution chooses not to
21 pursue the death penalty prior to trial or sentencing.

22 (rr) Photographs and video or audio recordings made
23 pursuant to an autopsy, except as provided in Section 3.5
24 of the Autopsy Act.

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

29 (Source: P.A. 93-43, eff. 7-1-03; 93-209, eff. 7-18-03; 93-237,
30 eff. 7-22-03; 93-325, eff. 7-23-03, 93-422, eff. 8-5-03;
31 93-577, eff. 8-21-03; 93-617, eff. 12-9-03; 94-280, eff.
32 1-1-06; 94-508, eff. 1-1-06; 94-664, eff. 1-1-06; revised
33 8-29-05.)

34 Section 10. The Autopsy Act is amended by adding Section
35 3.5 as follows:

1 (410 ILCS 505/3.5 new)

2 Sec. 3.5. Photographs and video or audio recordings made
3 pursuant to an autopsy.

4 (a) Except as otherwise provided by law, any person may
5 inspect and examine original photographs or video or audio
6 recordings of an autopsy performed pursuant to this Act at
7 reasonable times and under reasonable supervision of the
8 custodian of the photographs or recordings. Except as otherwise
9 provided by this Section, no custodian of the original recorded
10 images shall furnish copies of photographs or video or audio
11 recordings of an autopsy to the public. For purposes of this
12 Section, the county Coroner or Medical Examiner shall be the
13 custodian of all autopsy photographs or video or audio
14 recordings unless the photographs or recordings were taken by
15 or at the direction of an investigating medical examiner and
16 the investigating medical examiner retains the original
17 photographs or recordings. If the investigating medical
18 examiner has retained the original photographs or recordings,
19 then the investigating medical examiner is the custodian of the
20 photographs or video or audio recordings and must allow the
21 public to inspect and examine them in accordance with this
22 subsection (a).

23 (b) The following public officials may obtain copies of
24 autopsy photographs or video or audio recordings for official
25 use only:

26 (1) The county Coroner or Medical Examiner or a
27 pathologist designated by the county Coroner or Medical
28 Examiner.

29 (2) The investigating medical examiner.

30 (3) The State's attorney.

31 (4) The circuit court judge.

32 (5) Law enforcement officials conducting an
33 investigation relating to the death of the person who is
34 the subject of the autopsy.

35 (6) The public defender.

1 These public officials shall not disclose the photographs
2 or video or audio recordings to the public except as provided
3 by law. A public official authorized by this subsection (b) to
4 obtain copies may provide a copy of the photograph or video
5 recording to another person for the sole purpose of aiding in
6 the identification of the deceased through publication of the
7 photograph or video recording.

8 (c) The following persons may obtain copies of autopsy
9 photographs or video or audio recordings, but may not disclose
10 the photographs or video or audio recordings to the public
11 unless otherwise authorized by law:

12 (1) The personal representative of the estate of the
13 deceased.

14 (2) A person authorized by an order issued in a
15 proceeding pursuant to subsection (d) of this Section.

16 (3) A physician licensed to practice medicine in all
17 its branches who uses a copy of the photographs or video or
18 audio recordings to confer with attorneys or others with a
19 bona fide professional need to use or understand forensic
20 science, provided that the physician promptly returns the
21 copy to the custodian.

22 (4) After redacting all information identifying the
23 decedent, including name, address, and social security
24 number, and after anonymizing any physical recognition, a
25 medical examiner, coroner, physician, or his or her
26 designee who uses the material for:

27 (A) medical or scientific teaching or training
28 purposes;

29 (B) teaching or training of law enforcement
30 personnel;

31 (C) teaching or training of attorneys or others
32 with a bona fide professional need to use or understand
33 forensic science;

34 (D) conferring with medical or scientific experts
35 in the field of forensic science; or

36 (E) publication in a scientific or medical journal

1 or textbook.

2 A medical examiner, coroner, or physician who has in good
3 faith complied with this subsection (c) shall not be subject to
4 any penalty under this Section. Any person who lawfully obtains
5 a copy of a photograph or video or audio recording pursuant to
6 this subsection (c) shall be required to sign a statement
7 acknowledging that he or she has received notice that any
8 unauthorized disclosure of the photograph or video or audio
9 recording is a Class B misdemeanor.

10 (d) A person who is denied access to copies of photographs
11 or video or audio recordings or who is restricted in the use
12 the person may make of the photographs or video or audio
13 recordings under this Section may commence a proceeding in
14 circuit court. Upon a showing of good cause, the circuit court
15 may issue an order authorizing the person to copy or disclose a
16 photograph or video or audio recording of an autopsy and may
17 prescribe any restrictions or stipulations that the circuit
18 court deems appropriate. In determining good cause, the circuit
19 court shall consider whether the disclosure is necessary for
20 (i) the public evaluation of governmental performance, (ii) the
21 seriousness of the intrusion into the family's right to privacy
22 and whether the disclosure is the least intrusive means
23 available, and (iii) the availability of similar information in
24 other public records, regardless of form. In all cases, the
25 viewing of, copying of, listening to, or other handling of a
26 photograph or video or audio recording of an autopsy shall be
27 under the direct supervision of the county Coroner or Medical
28 Examiner or the county Coroner's or Medical Examiner's
29 designee. A party aggrieved by an order of the circuit court
30 may appeal to the appropriate court.

31 (e) The petitioner shall provide reasonable notice of the
32 commencement of a proceeding in circuit court, as authorized by
33 subsection (d) of this Section, and reasonable notice of the
34 opportunity to be present and heard at any hearing on the
35 matter. The notice shall be provided to the personal
36 representative of the estate of the deceased, if any, and to

1 the surviving spouse of the deceased. If there is no surviving
2 spouse, then the notice shall be provided to the deceased's
3 parents, and if the deceased has no living parent, then to the
4 adult child of the deceased or to the guardian or custodian of
5 a minor child of the deceased.

6 (f) This Section does not apply to the use of autopsy
7 photographs or video or audio recordings in a criminal, civil,
8 or administrative proceeding, except that nothing in this
9 Section prohibits a court or presiding officer, upon good cause
10 shown, from restricting or otherwise controlling the
11 disclosure of an autopsy, crime scene, or similar photograph or
12 video or audio recording to persons other than the parties and
13 attorneys to the proceeding in the manner provided under this
14 Section.

15 (g) Any person who willfully and knowingly violates this
16 Section is guilty of a Class B misdemeanor, except that more
17 than one disclosure of the same item by the same person is not
18 a separate offense.

19 (h) Any person not authorized by this Section to obtain a
20 copy of an autopsy photograph or video or audio recording, who
21 knowingly and willfully removes, copies, or otherwise creates
22 an image of an autopsy photograph or video or audio recording
23 with intent to steal the same, is guilty of a Class A
24 misdemeanor.

25 Section 99. Effective date. This Act takes effect upon
26 becoming law.