



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB4088

Introduced 2/27/2009, by Rep. Barbara Flynn Currie - Lou Lang - Julie Hamos

SYNOPSIS AS INTRODUCED:

New Act

Creates the Illinois Accurate Government Records Act. Sets forth the findings of the General Assembly. Contains provisions concerning an individual's access to his or her personal records. Contains provisions concerning an individual's correction of his or her personal records. Contains provisions concerning the limitations on an agency's disclosure of personal records. Contains provisions concerning the limitations on an agency's maintenance of systems of personal records. Contains provisions concerning the limitations on an agency's maintenance of personal records. Contains provisions concerning civil remedies. Contains provisions concerning agency responsibilities. Contains provisions concerning the Attorney General's responsibilities. Contains provisions concerning government contractors. Contains provisions concerning the rights of legal guardians.

LRB096 09577 MJR 22568 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning privacy.

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 declares that the
7 right to privacy is a personal and fundamental right protected
8 by the Constitution of the United States and the Constitution
9 of the State of Illinois and that all individuals have a right
10 of privacy in information pertaining to them. The General
11 Assembly further makes the following findings:

12 (1) The right to privacy is being threatened by the
13 indiscriminate collection, maintenance, and dissemination
14 of personal information and the lack of effective laws and
15 legal remedies.

16 (2) The increasing use of computers and other
17 sophisticated information technology has greatly magnified
18 the potential risk to individual privacy that can occur
19 from the maintenance of personal information.

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

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

2 "Agency" means any State agency or local agency.

3 "Individual" means a natural person.

4 "Local agency" means any municipal corporation, school
5 district, special purpose district, or township of the State or
6 any elected officer or board, bureau, commission, department,
7 division, institution, or instrumentality of a county.

8 "Maintain" means to maintain, collect, use, or
9 disseminate.

10 "Personal record" means any item, collection, or grouping
11 of information about an individual that is maintained by an
12 agency. A personal record includes, but is not limited to, the
13 individual's education, financial, medical, or employment
14 history, or items that contain or make reference to the
15 individual's name, identifying number, symbol, or other
16 identifying particular assigned to the individual, such as a
17 finger or voice print or a photograph.

18 "Routine use" means, with respect to the disclosure of a
19 record, the use of the record for a purpose that is compatible
20 with the purpose for which it was collected.

21 "State agency" means the office of any elected State
22 officer and any agency, board, commission, department,
23 division, or educational institution of the State.

24 "System of records" means a group of any records under the
25 control of any agency from which information is retrieved by
26 the name of the individual or by some identifying number,

1 symbol, or other identifying particular assigned to that
2 individual.

3 Section 15. Access to personal records.

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

14 (b) Each agency that maintains any accessible personal
15 record shall make that record available to the individual to
16 whom it pertains in a reasonably intelligible form. Where
17 necessary the agency shall provide a translation into common
18 terms of any machine readable code or any code or abbreviation
19 employed for internal agency use.

20 (c) An agency is not required under this Section to grant
21 an individual access to personal records or information in
22 records:

23 (1) Maintained by an agency that performs as its or as
24 a principal function any activity pertaining to the
25 prevention, control, or reduction of crime, and which

1 consist of:

2 (A) information or reports prepared or compiled
3 for the purpose of criminal intelligence or of a
4 criminal investigation, including reports of
5 informers, witnesses, and investigators; or

6 (B) reports prepared or compiled at any stage of
7 the process of enforcement of the criminal laws from
8 arrest or indictment through confinement, correctional
9 supervision, and release from supervision.

10 (2) The disclosure of which would reveal the identity
11 of a source who furnished information to the agency under
12 an express or implied promise of confidentiality.

13 (3) Consisting of testing or examination material or
14 scoring keys used solely to determine individual
15 qualifications for appointment or promotion in public
16 employment, or used as or to administer a licensing
17 examination or an academic examination, the disclosure of
18 which would compromise the objectivity, fairness, or
19 effectiveness of the testing or examination process.

20 (4) Including investigative reports and materials,
21 related to an upcoming, ongoing, or pending civil or
22 criminal action or administrative proceeding against the
23 individual.

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

1 (d) Nothing in this Section shall be construed to permit or
2 require an agency to withhold or deny access to a personal
3 record or any information in a personal record:

4 (1) when the agency is ordered to produce, disclose, or
5 allow access to the record or information in the record, or
6 when discovery of such record or information is allowed by
7 prevailing rules of discovery or by subpoena, in any
8 judicial or administrative proceeding; or

9 (2) where any statute, administrative rules, rule of
10 court, judicial decision, or other law authorizes or allows
11 an individual to gain access to a personal record or to any
12 information in a personal record or requires that the
13 individual be given such access.

14 Section 20. Correction of personal records.

15 (a) Each agency shall permit an individual to request in
16 writing an amendment of a personal record, and shall within 30
17 days after the date of receipt of such request:

18 (1) make each correction in accordance with the
19 individual's request of any portion of a personal record
20 that the individual believes is not accurate, relevant,
21 timely, or complete and inform the individual of the
22 corrections made in accordance with his or her request; or

23 (2) inform the individual of its refusal to amend the
24 personal record in accordance with such individual's
25 request, the reason for the refusal, the procedures

1 established by the agency for the individual to request a
2 review by the head of the agency or an official
3 specifically designated by the head of the agency of the
4 refusal to amend, and the name, title, and business address
5 of the reviewing official.

6 (b) Each agency shall permit any individual who disagrees
7 with the refusal of the agency to amend a personal record to
8 request a review of such refusal by the head of the agency or
9 an official specifically designated by the head of the agency,
10 and, not later than 30 days after the date on which the
11 individual requests such review, complete the review and make a
12 final determination unless, for good cause shown, the head of
13 the agency extends the review period by 30 days.

14 (c) If, after review, the reviewing official refuses to
15 amend the personal record in accordance with the request, the
16 agency shall permit the individual to file with the agency a
17 statement of reasonable length setting forth the reasons for
18 the individual's disagreement.

19 (d) The agency, with respect to any disclosure containing
20 information about which the individual has filed a statement of
21 disagreement, shall clearly note any portion of the personal
22 record that is disputed and make available copies of such
23 individual's statement, and copies of a concise statement of
24 the reasons of the agency for not making the amendment, to any
25 person or agency to whom the disputed record has been or is
26 disclosed.

1 Section 25. Limitations on an agency's disclosure of
2 personal records.

3 (a) No agency shall disclose any personal record by any
4 means of communication to any person, or to another agency,
5 except pursuant to a written request by, or with the prior
6 written consent of, the individual to whom the record pertains,
7 unless disclosure of the record would be:

8 (1) to those officers and employees of the agency that
9 maintains the record who have a need for the record in the
10 performance of their duties;

11 (2) pursuant to and to the extent required by the
12 Freedom of Information Act;

13 (3) for a routine use;

14 (4) to a recipient who has provided the agency with
15 advance adequate written assurance that the record will be
16 used solely as a statistical research or reporting record,
17 and the record is to be transferred in a form that is not
18 individually identifiable;

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

22 (6) to another agency or to an instrumentality of any
23 governmental jurisdiction within or under the control of
24 the United States for a civil or criminal law enforcement
25 activity if the activity is authorized by law, and if the

1 head of the agency or instrumentality has made a written
2 request to the agency which maintains the record specifying
3 the particular portion desired and the law enforcement
4 activity for which the record is sought;

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

9 (8) to either chamber of the General Assembly, or, to
10 the extent of matter within its jurisdiction, any committee
11 or subcommittee of the General Assembly;

12 (9) to the Comptroller, or any of his or her authorized
13 representatives, in the course of the performance of his or
14 her duties;

15 (10) pursuant to the order of a court of competent
16 jurisdiction; or

17 (11) to a consumer reporting agency in accordance with
18 federal or State statute.

19 (b) An individual's name and address may not be sold or
20 rented by an agency unless that action is specifically
21 authorized by law. This subsection (b) shall not be construed
22 to require the withholding of names and addresses otherwise
23 permitted to be made public.

24 Section 30. Limitations on an agency's maintenance of
25 systems of personal records. Each agency that maintains a

1 system of records shall do all of the following:

2 (1) Maintain in its personal records only the
3 information about an individual as is relevant and
4 necessary to accomplish a purpose of the agency required or
5 authorized by the Illinois Constitution or statute or
6 mandated by the federal government.

7 (2) Collect information to the greatest extent
8 practicable directly from the subject individual when the
9 information may result in adverse determinations about an
10 individual's rights, benefits, and privileges under State
11 programs.

12 (3) Inform each individual whom it asks to supply
13 personal information, on the form that it uses to collect
14 the information or on a separate form that can be retained
15 by the individual:

16 (A) the authority, whether granted by statute, or
17 by executive order of the Governor, that authorizes the
18 solicitation of the information and whether disclosure
19 of the information is mandatory or voluntary;

20 (B) the principal purpose or purposes for which the
21 information is intended to be used;

22 (C) the routine uses that may be made of the
23 information; and

24 (D) the effects on the individual, if any, of not
25 providing all or any part of the requested information.

26 (4) Publish upon establishment or revision a notice of

1 the existence and character of the system of records, which
2 notice shall include the following:

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

4 (B) the categories of individuals on whom records
5 are maintained in the system;

6 (C) the categories of records maintained in the
7 system;

8 (D) each routine use of the records contained in
9 the system, including the categories of users and the
10 purpose of such use;

11 (E) the policies and practices of the agency
12 regarding storage, retrievability, access controls,
13 retention, and disposal of the records;

14 (F) the title and business address of the agency
15 official who is responsible for the system of records;

16 (G) the agency procedures whereby an individual
17 can be notified at his or her request if the system of
18 records contains a record pertaining to him or her;

19 (H) the agency procedures whereby an individual
20 can be notified at his or her request how he or she can
21 gain access to any record pertaining to him or her
22 contained in the system of records, and how he or she
23 may contest its content; and

24 (I) the categories of sources of records in the
25 system.

26 (5) Maintain all records that are used by the agency in

1 making any determination about any individual with
2 accuracy, relevance, timeliness, and completeness as is
3 reasonably necessary to ensure fairness to the individual
4 in the determination.

5 (6) Prior to disseminating any record about an
6 individual to any person other than an agency, unless the
7 dissemination is made pursuant to the Freedom of
8 Information Act, make reasonable efforts to ensure that the
9 records are accurate, complete, timely, and relevant for
10 agency purposes.

11 (7) Make reasonable efforts to serve notice on an
12 individual when any record on such individual is made
13 available to any person under compulsory legal process when
14 such process becomes a matter of public record.

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

22 (9) Establish appropriate and reasonable
23 administrative, technical, and physical safeguards to
24 ensure compliance with the provisions of this Act, to
25 ensure the security and confidentiality of records, and to
26 protect against anticipated threats or hazards to their

1 security or integrity that could result in any injury.

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

12 Section 40. Civil remedies.

13 (a) An individual may bring a civil action against an
14 agency in a circuit court of the State whenever an agency fails
15 to comply with any provision of this Act, and after appropriate
16 administrative remedies have been exhausted.

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

19 (1) order the agency to disclose, correct, or amend the
20 individual's personal record;

21 (2) issue an injunction to require any other agency
22 action, or to enjoin the agency from improper actions, as
23 the court may deem necessary and appropriate to render
24 substantial relief; and

1 (3) assess reasonable attorney's fees and other
2 litigation costs reasonably incurred against the agency in
3 any case in which the individual has partially prevailed.

4 (c) In any action brought by an individual under this
5 Section in which the court determines that the agency knowingly
6 or intentionally violated a provision of this Act, the agency
7 shall be liable to the individual in an amount equal to the sum
8 of:

9 (1) actual damages sustained by the individual as a
10 result of the failure of the agency to properly maintain
11 the personal record, but in no case shall an individual
12 entitled to recovery receive less than the sum of \$1,000;
13 and

14 (2) the costs of the action together with reasonable
15 attorney's fees as determined by the court.

16 (d) An action may be brought in the circuit court where the
17 complainant resides, the complainant's principal place of
18 business is situated, or the complainant's relevant personal
19 record is situated. No action shall be brought later than 2
20 years after notification of the agency denial or, where
21 applicable, the date of receipt of the final determination of
22 the office of information practices.

23 (e) In addition to an action by an individual under this
24 Act, actions for injunction under this Section may also be
25 prosecuted by the Attorney General, or any State's Attorney in
26 this State, in the name of the people of the State of Illinois.

1 (f) The rights and remedies set forth in this Act shall be
2 deemed to be nonexclusive and are in addition to all those
3 rights and remedies that are otherwise available under any
4 other provision of law.

5 Section 45. Agency responsibilities. Each agency shall:
6 (1) issue instructions and guidelines necessary to effectuate
7 this Act; and (2) take steps to ensure that all its employees
8 and officers responsible for the collection, maintenance, use,
9 and dissemination of personal records are informed of the
10 requirements of this Act.

11 Section 50. Attorney General responsibilities. The Office
12 of the Attorney General of Illinois:

13 (1) shall develop and, after notice and opportunity for
14 public comment, prescribe guidelines and rules for the use
15 of agencies in implementing the provisions of this Section;

16 (2) shall provide continuing assistance to and
17 oversight of the implementation of this Section by
18 agencies;

19 (3) shall biennially submit to the Speaker of the House
20 of Representatives and the President of the Senate a
21 report:

22 (A) describing the actions of the Attorney General
23 pursuant to this Section during the preceding 2 years;

24 (B) describing the exercise of individual rights

1 of access and amendment under this Section during those
2 years;

3 (C) identifying changes in or additions to systems
4 of records; and

5 (D) containing such other information concerning
6 administration of this Section as may be necessary or
7 useful to the General Assembly in reviewing the
8 effectiveness of this Section in carrying out the
9 purposes of this Act;

10 (4) may, upon request by any person, provide advisory
11 opinions or other information regarding that person's
12 rights and the functions and responsibilities of agencies
13 under this Act; and

14 (5) shall receive complaints from and actively solicit
15 the comments of the public regarding the implementation of
16 this Act.

17 Section 55. Government contractors. If an agency provides
18 by a contract for the operation by or on behalf of the agency
19 of a system of records to accomplish an agency function, then
20 the agency shall, consistent with its authority, cause the
21 requirements of this Section to be applied to that system.

22 Section 60. Rights of legal guardians. For the purposes of
23 this Section, the parent of any minor, or the legal guardian of
24 any individual who has been declared to be incompetent due to

1 physical or mental incapacity or age by a court of competent
2 jurisdiction, may act on behalf of the individual.