



Rep. Kelly Burke

Filed: 2/9/2011

09700HB3342ham001

LRB097 08287 HEP 52454 a

1 AMENDMENT TO HOUSE BILL 3342

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 3342 by replacing  
3 everything after the enacting clause with the following:

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) When a request is made to inspect or copy a public  
9 record that contains information that is exempt from disclosure  
10 under this Section, but also contains information that is not  
11 exempt from disclosure, the public body may elect to redact the  
12 information that is exempt. The public body shall make the  
13 remaining information available for inspection and copying.  
14 Subject to this requirement, the following shall be exempt from  
15 inspection and copying:

16 (a) Information specifically prohibited from

1 disclosure by federal or State law or rules and regulations  
2 implementing federal or State law.

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

6 (b-5) Files, documents, and other data or databases  
7 maintained by one or more law enforcement agencies and  
8 specifically designed to provide information to one or more  
9 law enforcement agencies regarding the physical or mental  
10 status of one or more individual subjects.

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

23 (d) Records in the possession of any public body  
24 created in the course of administrative enforcement  
25 proceedings, and any law enforcement or correctional  
26 agency for law enforcement purposes, but only to the extent

1           that disclosure would:

2                   (i) interfere with pending or actually and  
3                   reasonably contemplated law enforcement proceedings  
4                   conducted by any law enforcement or correctional  
5                   agency that is the recipient of the request;

6                   (ii) interfere with active administrative  
7                   enforcement proceedings conducted by the public body  
8                   that is the recipient of the request;

9                   (iii) create a substantial likelihood that a  
10                   person will be deprived of a fair trial or an impartial  
11                   hearing;

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

24                   (v) disclose unique or specialized investigative  
25                   techniques other than those generally used and known or  
26                   disclose internal documents of correctional agencies

1 related to detection, observation or investigation of  
2 incidents of crime or misconduct, and disclosure would  
3 result in demonstrable harm to the agency or public  
4 body that is the recipient of the request;

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

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

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

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

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

1       insofar as the claim directly applies to the records  
2       requested.

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

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

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

1 preparation of a bid solicitation shall be exempt until an  
2 award or final selection is made.

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

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

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

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

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

1           (iv) course materials or research materials used  
2           by faculty members.

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

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

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

1           (n) Records relating to a public body's adjudication of  
2 employee grievances or disciplinary cases; however, this  
3 exemption shall not extend to the final outcome of cases in  
4 which discipline is imposed.

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

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

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

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



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

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

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

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

26 (v) Vulnerability assessments, security measures, and

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

14 (w) (Blank).

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

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

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

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

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

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

18           (dd) Personally identifiable information exempted from  
19 disclosure by subsection (g) of Section 19.1 of the Toll  
20 Highway Act.

21           (2) A public record that is not in the possession of a  
22 public body but is in the possession of a party with whom the  
23 agency has contracted to perform a governmental function on  
24 behalf of the public body, and that directly relates to the  
25 governmental function and is not otherwise exempt under this  
26 Act, shall be considered a public record of the public body,

1 for purposes of this Act.

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

6 (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;  
7 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; 96-261, eff. 1-1-10;  
8 96-328, eff. 8-11-09; 96-542, eff. 1-1-10; 96-558, eff. 1-1-10;  
9 96-736, eff. 7-1-10; 96-863, eff. 3-1-10; 96-1378, eff.  
10 7-29-10; revised 9-2-10.)

11 Section 10. The Toll Highway Act is amended by adding  
12 Section 19.1 as follows:

13 (605 ILCS 10/19.1 new)

14 Sec. 19.1. Confidentiality of personally identifiable  
15 information obtained through electronic toll collection  
16 system.

17 (a) Except as otherwise provided in this Section, the  
18 Authority may not sell or otherwise provide to any person or  
19 entity personally identifiable information of any electronic  
20 toll collection system user that the Authority obtains through  
21 the operation of its electronic toll collection system.

22 (b) The Authority may, within practical business and cost  
23 constraints, store personally identifiable information of an  
24 electronic toll collection system user only if the information

1 is required to perform account functions such as billing,  
2 account settlement, or toll violation enforcement activities.

3 (c) By no later than December 31, 2011, the Authority shall  
4 establish a privacy policy regarding the collection and use of  
5 personally identifiable information. Upon its adoption, the  
6 policy shall be posted on the Authority's website and a copy  
7 shall be included with each transponder transmitted to a user.  
8 The policy shall include but need not be limited to the  
9 following:

10 (1) A description of the types of personally  
11 identifiable information collected by the Authority.

12 (2) The categories of third-party persons or entities  
13 with whom the Authority may share personally identifiable  
14 information and for what purposes that information is  
15 shared.

16 (3) The process by which the Authority notifies  
17 electronic toll collection system users of material  
18 changes to its privacy policy.

19 (4) The process by which an electronic toll collection  
20 system user may review and request changes to any of his or  
21 her personally identifiable information.

22 (5) The effective date of the privacy policy.

23 (d) This Section does not prohibit the Authority from:

24 (1) providing aggregated traveler information derived  
25 from collective data relating to a group or category of  
26 electronic toll collection system users from which

1 personally identifiable information has been removed;

2 (2) sharing data with another transportation agency or  
3 third-party vendor to comply with interoperability  
4 specifications and standards regarding electronic toll  
5 collection devices and technologies, provided that the  
6 other transportation agency or third-party vendor may not  
7 use personally identifiable information obtained under  
8 this Section for a purpose other than described in this  
9 Section;

10 (3) performing financial, legal and accounting  
11 functions such as billing, account settlement, toll  
12 violation enforcement, or other activities required to  
13 operate and manage its toll collection system;

14 (4) communicating about products and services offered  
15 by itself, a business partner, or another public agency;

16 (5) using personally identifiable information in  
17 research projects, provided that appropriate  
18 confidentiality restrictions are employed to protect  
19 against the unauthorized release of such information;

20 (6) releasing personally identifiable information in  
21 response to a warrant, subpoena or lawful order from a  
22 court of competent jurisdiction;

23 (7) releasing personally identifiable information to  
24 law enforcement agencies in the case of an emergency when  
25 obtaining a warrant or subpoena would be impractical; and

26 (8) releasing personally identifiable information to

1 the Authority's Inspector General or, at the Inspector  
2 General's direction, to law enforcement agencies under  
3 paragraphs (5) and (6) of subsection (f) of Section 8.5 of  
4 this Act.

5 (e) For purposes of this Section:

6 "Electronic toll collection system" is a system where a  
7 transponder, camera-based vehicle identification system, or  
8 other electronic medium is used to deduct payment of a toll  
9 from a subscriber's account or to establish an obligation to  
10 pay a toll.

11 "Electronic toll collection system user" means any natural  
12 person who subscribes to an electronic toll collection system  
13 or any natural person who uses a tolled transportation facility  
14 that employs the Authority's electronic toll collection  
15 system.

16 "Personally identifiable information" means any  
17 information that identifies or describes an electronic toll  
18 collection system user, including but not limited to travel  
19 pattern data, address, telephone number, e-mail address,  
20 license plate number, photograph, bank account information, or  
21 credit card number.

22 (f) In any agreement allowing another public entity to use  
23 the Authority's toll collection system in a transportation  
24 facility, the Authority shall require the other public entity  
25 to comply with the requirements of this Section.

26 (g) Personally identifiable information generated through

1 the Authority's toll collection process that reveals the date,  
2 time, location or direction of travel by an electronic toll  
3 collection system user shall be exempt from release under the  
4 Illinois Freedom of Information Act. The exemption in this  
5 subsection shall not apply to information that concerns (i) the  
6 public duties of public employees; (ii) whether an electronic  
7 toll collection system user has paid tolls; (iii) whether the  
8 Authority is enforcing toll violation penalties against  
9 electronic toll collection users who do not pay tolls; (iv)  
10 accidents or other incidents that occur highways under the  
11 jurisdiction of the Authority; or (v) other operations of the  
12 Authority."