

HB3621



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3621

by Rep. Robert Rita

SYNOPSIS AS INTRODUCED:

5 ILCS 140/1.5 new
5 ILCS 140/7

from Ch. 116, par. 207

Amends the Freedom of Information Act. Denies home rule powers by providing that the regulation of the inspection and disclosure of public records of a public body is an exclusive power and function of the State. Exempts from inspection and copying under the Act incentives provided to and rent paid by persons, organizations, or businesses that agree to make use of a public facility for a convention, trade show, meeting, athletic contest, concert, musical, dramatic, or other artistic, cultural, or social event. Effective immediately.

LRB099 08782 HEP 28951 b

HOME RULE 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 1.5 as follows:

6 (5 ILCS 140/1.5 new)

7 Sec. 1.5. Home Rule Preemption. The regulation of the
8 inspection and disclosure of public records of a public body is
9 an exclusive power and function of the State. This Section is a
10 denial and limitation of home rule powers and functions
11 pursuant to the provisions of paragraph (h) of Section 6 of
12 Article VII of the Illinois Constitution.

13 (5 ILCS 140/7) (from Ch. 116, par. 207)

14 Sec. 7. Exemptions.

15 (1) When a request is made to inspect or copy a public
16 record that contains information that is exempt from disclosure
17 under this Section, but also contains information that is not
18 exempt from disclosure, the public body may elect to redact the
19 information that is exempt. The public body shall make the
20 remaining information available for inspection and copying.
21 Subject to this requirement, the following shall be exempt from
22 inspection and copying:

1 (a) Information specifically prohibited from
2 disclosure by federal or State law or rules and regulations
3 implementing federal or State law.

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

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

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

24 (d) Records in the possession of any public body
25 created in the course of administrative enforcement
26 proceedings, and any law enforcement or correctional

1 agency for law enforcement purposes, but only to the extent
2 that disclosure would:

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

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

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

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

25 (v) disclose unique or specialized investigative
26 techniques other than those generally used and known or

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

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

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

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

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

20 (e-5) Records requested by persons committed to the
21 Department of Corrections if those materials are available
22 in the library of the correctional facility where the
23 inmate is confined.

24 (e-6) Records requested by persons committed to the
25 Department of Corrections if those materials include
26 records from staff members' personnel files, staff

1 rosters, or other staffing assignment information.

2 (e-7) Records requested by persons committed to the
3 Department of Corrections if those materials are available
4 through an administrative request to the Department of
5 Corrections.

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

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

24 The information included under this exemption includes
25 all trade secrets and commercial or financial information
26 obtained by a public body, including a public pension fund,

1 from a private equity fund or a privately held company
2 within the investment portfolio of a private equity fund as
3 a result of either investing or evaluating a potential
4 investment of public funds in a private equity fund. The
5 exemption contained in this item does not apply to the
6 aggregate financial performance information of a private
7 equity fund, nor to the identity of the fund's managers or
8 general partners. The exemption contained in this item does
9 not apply to the identity of a privately held company
10 within the investment portfolio of a private equity fund,
11 unless the disclosure of the identity of a privately held
12 company may cause competitive harm.

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

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

24 (i) Valuable formulae, computer geographic systems,
25 designs, drawings and research data obtained or produced by
26 any public body when disclosure could reasonably be

1 expected to produce private gain or public loss. The
2 exemption for "computer geographic systems" provided in
3 this paragraph (i) does not extend to requests made by news
4 media as defined in Section 2 of this Act when the
5 requested information is not otherwise exempt and the only
6 purpose of the request is to access and disseminate
7 information regarding the health, safety, welfare, or
8 legal rights of the general public.

9 (j) The following information pertaining to
10 educational matters:

11 (i) test questions, scoring keys and other
12 examination data used to administer an academic
13 examination;

14 (ii) information received by a primary or
15 secondary school, college, or university under its
16 procedures for the evaluation of faculty members by
17 their academic peers;

18 (iii) information concerning a school or
19 university's adjudication of student disciplinary
20 cases, but only to the extent that disclosure would
21 unavoidably reveal the identity of the student; and

22 (iv) course materials or research materials used
23 by faculty members.

24 (k) Architects' plans, engineers' technical
25 submissions, and other construction related technical
26 documents for projects not constructed or developed in

1 whole or in part with public funds and the same for
2 projects constructed or developed with public funds,
3 including but not limited to power generating and
4 distribution stations and other transmission and
5 distribution facilities, water treatment facilities,
6 airport facilities, sport stadiums, convention centers,
7 and all government owned, operated, or occupied buildings,
8 but only to the extent that disclosure would compromise
9 security.

10 (l) Minutes of meetings of public bodies closed to the
11 public as provided in the Open Meetings Act until the
12 public body makes the minutes available to the public under
13 Section 2.06 of the Open Meetings Act.

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

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

26 (o) Administrative or technical information associated

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

10 (p) Records relating to collective negotiating matters
11 between public bodies and their employees or
12 representatives, except that any final contract or
13 agreement shall be subject to inspection and copying.

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

17 (r) The records, documents, and information relating
18 to real estate purchase negotiations until those
19 negotiations have been completed or otherwise terminated.
20 With regard to a parcel involved in a pending or actually
21 and reasonably contemplated eminent domain proceeding
22 under the Eminent Domain Act, records, documents and
23 information relating to that parcel shall be exempt except
24 as may be allowed under discovery rules adopted by the
25 Illinois Supreme Court. The records, documents and
26 information relating to a real estate sale shall be exempt

1 until a sale is consummated.

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

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

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

21 (v) Vulnerability assessments, security measures, and
22 response policies or plans that are designed to identify,
23 prevent, or respond to potential attacks upon a community's
24 population or systems, facilities, or installations, the
25 destruction or contamination of which would constitute a
26 clear and present danger to the health or safety of the

1 community, but only to the extent that disclosure could
2 reasonably be expected to jeopardize the effectiveness of
3 the measures or the safety of the personnel who implement
4 them or the public. Information exempt under this item may
5 include such things as details pertaining to the
6 mobilization or deployment of personnel or equipment, to
7 the operation of communication systems or protocols, or to
8 tactical operations.

9 (w) (Blank).

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

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

22 (z) Information about students exempted from
23 disclosure under Sections 10-20.38 or 34-18.29 of the
24 School Code, and information about undergraduate students
25 enrolled at an institution of higher education exempted
26 from disclosure under Section 25 of the Illinois Credit

1 Card Marketing Act of 2009.

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

4 (bb) Records and information provided to a mortality
5 review team and records maintained by a mortality review
6 team appointed under the Department of Juvenile Justice
7 Mortality Review Team Act.

8 (cc) Information regarding interments, entombments, or
9 inurnments of human remains that are submitted to the
10 Cemetery Oversight Database under the Cemetery Care Act or
11 the Cemetery Oversight Act, whichever is applicable.

12 (dd) Correspondence and records (i) that may not be
13 disclosed under Section 11-9 of the Public Aid Code or (ii)
14 that pertain to appeals under Section 11-8 of the Public
15 Aid Code.

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

22 (ff) The names, addresses, or other personal
23 information of participants and registrants in programs of
24 park districts, forest preserve districts, conservation
25 districts, recreation agencies, and special recreation
26 associations where such programs are targeted primarily to

1 minors.

2 (gg) Confidential information described in Section
3 1-100 of the Illinois Independent Tax Tribunal Act of 2012.

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

8 (ii) Incentives provided to and rent paid by persons,
9 organizations, or businesses that agree to make use of a
10 public facility for a convention, trade show, meeting,
11 athletic contest, concert, musical, dramatic, or other
12 artistic, cultural, or social event. As used in this
13 paragraph, "facility" means: (A) buildings and grounds
14 used for conventions, meetings, and trade shows; and (B)
15 stadiums, arenas, theaters, structures, and grounds used
16 for the holding of athletic contests, concerts, and
17 musical, dramatic, artistic, cultural, or social events.

18 (1.5) Any information exempt from disclosure under the
19 Judicial Privacy Act shall be redacted from public records
20 prior to disclosure under this 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. 97-333, eff. 8-12-11; 97-385, eff. 8-15-11;
7 97-452, eff. 8-19-11; 97-783, eff. 7-13-12; 97-813, eff.
8 7-13-12; 97-847, eff. 9-22-12; 97-1065, eff. 8-24-12; 97-1129,
9 eff. 8-28-12; 98-463, eff. 8-16-13; 98-578, eff. 8-27-13;
10 98-695, eff. 7-3-14.)

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.