



HB 1370 ANALYSIS

(as of May 20, 2009)

Sponsor: Currie-Watson-Franks-Froehlich-Dugan

The bill re-writes the Illinois Freedom of Information Act. Major provisions are that:

Definitions

- It establishes a presumption that all records held by a public body are open for inspection and copying. The burden of clear and convincing evidence proving exemption otherwise is that of the public body.
- The public body may only require a purpose for the request to determine whether the records request is for a commercial purpose or whether to grant a request for fee waiver.
- It states that all records related to the use of public funds are public records available for inspection by the public.
- It states that certified payroll records with personal information redacted are public records available for inspection by the public.
- It expands the definition of “Public Records” to include records “in the possession of” the public body for transaction of public business or “bearing on the public duties of public employees or officials”.
- It deletes the current enumerated definition of “Public Records”.
- Under the definition of “Public Record” it further defines Criminal History Record information.
- It creates a new definition of “Private information” for persons including unique identifiers.
- It creates a new definition for “Commercial purpose” to include any information from the public record to be used for sale or advertisement. It further states that requests made by news media, non-profit, scientific, or academic organizations shall not be “commercial purpose” under certain definitions.
- It deletes the current definition for “Head of the public body”.

Public Body Compliance and Reprimand

- It allows the reduction of an oral request to a standard form for request of records but maintains the requirement that the request for records must be made in writing. The bill disallows the public body the ability to require the written request be in a specific format. The public body may require the requestor to certify whether the request is being made for commercial purposes.

- It removes the requirement that the public body shall “promptly” provide the information with a requirement that it must be supplied “immediately”.
- It requires that the request must be complied within 5 days (instead of the current 7).
- It allows up to 10 days for compliance for the reasons already existing in law: records stored in another location; the request requires collection of a substantial number of records; request is couched in categorical terms and requires extensive search; records not found in routine search and additional efforts are needed to locate them; records require evaluation by personnel to determine whether they are exempt from disclosure; the request would unduly burden or interfere with the operations of the public body; need for consultation with another public body.
- It requires that when additional time is needed, the public body shall notify the requestor within 5 working days of receipt of the request, by the most expedient means available. (currently by letter)
- It provides that if a public body fails to notify within 5 working days for the need for a time extension or to comply, it shall constitute a waiver of the public body’s right to assert exemptions.
- The person making the request and the public body may agree in writing to extend the time for compliance. If this is the case, failure of the public body to comply within that time period shall not be treated as a denial.
- It removes the provision that addresses the burdensome nature of repeated requests for the same public records by the same person.
- It creates a new section for Requests for commercial purposes and allows the public body 21 days to comply with requests. Creates a violation for a requestor to knowingly obtain a record for commercial purposes without disclosing such.
- It eliminates the local appeal process for denial. Requires the public body to include a detailed factual basis for the application of any claimed exemption for denial. The notice of denial shall inform the requestor of his right to judicial review under Section 10 of this Act.
- It places on the public body the burden of proving a record is exempt from disclosure by clear and convincing evidence.
- It requires the court to award attorney’s fees and costs to the requesters if it finds that they were entitled to the record requested under the Act and in determining reasonable fees shall consider the degree to which the relief obtained relates to the relief sought. The court may award reasonable attorney’s fees and costs to the public body if the court finds that the suit filed was frivolous.
- It allows the court to impose a civil penalty of not less than \$1000 or more than \$2500 for each occurrence if the court finds that a public body willfully and intentionally failed to comply with a request for information.

- It provides under the Whistleblower Act that no employer may retaliate against an employee that refuses to participate in an activity that violates the FOIA.
- It provides for a criminal penalty of a Class C misdemeanor for any person who knowingly and willfully violates any of the provisions of the Act.
- It requires that each public body designate one or more employees or officials as a “Freedom of Information Officer(s)” and specifies the duties of the officer(s):
 - receives requests for public documents
 - directs requests to the appropriate persons for compilation
 - responsible for timely response and issuance of final responses
 - responsible for maintaining records of requests and responses
- In the section that requires notification to the public of FOIA, it requires that if the public body has a website the same information must be posted there as well. Also requires the body to provide a directory of FOIA officers.
- It states that requested information shall be furnished in the format in which it is maintained by the public body.
- It provides that, if practical, the public body will provide the requested information in an electronic format if it is requested.
- It allows for the charging of fees, but:
 - the public body may not charge for the search and review of the record requested or for personnel costs associated with reproducing the records
 - no fees shall be charged for the first 50 pages (black and white, letter or legal sized copies) of a request
 - copies shall not exceed \$.15 per page
 - the cost for certifying a record shall not exceed \$1
 - for copies other than letter or legal-sized, the public body may not charge more than its actual cost for reproduction
 - the imposition of a fee not consistent with this section constitutes a denial of access to public records for the purposes of judicial review

General Exemptions

- The Act would exempt:
 - Requests for records containing personal information; information the release of which could constitute an unwarranted invasion of privacy; or which contain trade secrets. If a public body fails to notify, in writing within timelines, under this exemption it shall constitute a denial of the request.
 - information specifically prohibited from disclosure by federal or State law, rules and regulations
 - personal information contained within personnel files, the disclosure of which constitute a clearly unwarranted invasion of personal privacy
 - Private information, unless disclosure is required by law, or court order

- records in the possession of any public body created in the course of law enforcement with exceptions in current law with modifications
 - criminal history record information with modified exceptions in current law
 - records that relate to or affect the security of correctional institutions and detention facilities
 - preliminary documents generated by members, employees, or officials of a public body where policies or actions are formulated, unless the record becomes public through reference from an officer or is a part of an open meeting
 - trade secrets and commercial or financial information
 - trade secret or confidential information shared in the evaluation or investing of public funds in a private equity fund
 - proposals and bids for any contract until bids are opened
 - valuable formulae, computer geographic systems, designs, drawings and research data when disclosure of this information could be reasonably expected to produce private gain or public loss
- For educational matters the bill exempts:
- test questions, scoring keys and other examination data
 - information received by schools for evaluation of faculty
 - information concerning a school's adjudication of student discipline to the extent that the information would reveal the identity of a student
 - course material or research material
- Other exemptions include:
- construction related technical documents
 - minutes of closed meetings under the OMA until the minutes become available under Section 2.06 of the Open Meetings Act
 - communications between a public body and an attorney or auditor
 - records relating to a public body's adjudication of employee grievances or disciplinary cases (Final outcomes in which discipline is imposed is not exempt)
 - technical information associated with automated data processing operations
 - records relating to collective negotiating matters between public bodies and their employees or representatives
 - test questions, scoring keys, and other exam data used to determine qualifications of applicants for license or employment
 - records related to real estate purchase
 - proprietary information related to intergovernmental risk management or self-insurance pool or self-administered health insurance pools
 - records pertaining to the regulation or supervision of financial institutions or insurance companies
 - information that may disclose private keys intended to be used to create electronic or digital signatures under the Electronic Commerce Security Act
 - information contained in a local emergency energy plan submitted to a municipality
 - records pertaining to community safety procedures
 - records regarding the location or security of facilities owned by a utility
 - information pertaining to negotiations related to electric power procurement
 - library records under the Library Records Confidentiality Act
 - records restricted under the IL Sexually Transmissible Disease Control Act

- information restricted under the IL Prepaid Tuition Act
 - exempted information under the State Officials and Employees Ethics Act and records exempt under a local or executive inspector general's office.
 - Information prohibited for disclosure under the Personnel Records Review Act.
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- Requires that when a request is made for information that contains exempted material, the exempted material may be redacted and the remaining information shall be provided.
 - Further, the exemptions section provides that a public record not in the possession of the public body because it has contracted another entity to perform a governmental function will not be exempt from the act.

This analysis was created by the Governmental Relations Department of the Illinois Association of School Boards.