

HOUSE BILL No. 1256

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-14-3-4.

Synopsis: Access to public employee personnel files. Allows the public to have access to information in the personnel file of a public employee concerning decisions in which final action has been taken and that resulted in the employee being suspended without pay, demoted, transferred, reassigned, or discharged.

Effective: July 1, 1999.

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January 11, 1999, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1256

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-14-3-4 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) The following public records
3 are excepted from section 3 of this chapter and may not be disclosed by
4 a public agency, unless access to the records is specifically required by
5 a state or federal statute or is ordered by a court under the rules of
6 discovery:
- 7 (1) Those declared confidential by state statute.
 - 8 (2) Those declared confidential by rule adopted by a public
9 agency under specific authority to classify public records as
10 confidential granted to the public agency by statute.
 - 11 (3) Those required to be kept confidential by federal law.
 - 12 (4) Records containing trade secrets.
 - 13 (5) Confidential financial information obtained, upon request,
14 from a person. However, this does not include information that is
15 filed with or received by a public agency pursuant to state statute.
 - 16 (6) Information concerning research, including actual research
17 documents, conducted under the auspices of an institution of



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- 1 higher education, including information:
 2 (A) concerning any negotiations made with respect to the
 3 research; and
 4 (B) received from another party involved in the research.
 5 (7) Grade transcripts and license examination scores obtained as
 6 part of a licensure process.
 7 (8) Those declared confidential by or under rules adopted by the
 8 supreme court of Indiana.
 9 (9) Patient medical records and charts created by a provider,
 10 unless the patient gives written consent under IC 16-39.
 11 (b) Except as otherwise provided by subsection (a), the following
 12 public records shall be excepted from section 3 of this chapter at the
 13 discretion of a public agency:
 14 (1) Investigatory records of law enforcement agencies. However,
 15 certain law enforcement records must be made available for
 16 inspection and copying as provided in section 5 of this chapter.
 17 (2) The work product of an attorney representing, pursuant to
 18 state employment or an appointment by a public agency:
 19 (A) a public agency;
 20 (B) the state; or
 21 (C) an individual.
 22 (3) Test questions, scoring keys, and other examination data used
 23 in administering a licensing examination, examination for
 24 employment, or academic examination before the examination is
 25 given or if it is to be given again.
 26 (4) Scores of tests if the person is identified by name and has not
 27 consented to the release of his scores.
 28 (5) The following:
 29 (A) Records relating to negotiations between the department
 30 of commerce, the Indiana development finance authority, the
 31 film commission, the Indiana business modernization and
 32 technology corporation, or economic development
 33 commissions with industrial, research, or commercial
 34 prospects, if the records are created while negotiations are in
 35 progress.
 36 (B) Notwithstanding clause (A), the terms of the final offer of
 37 public financial resources communicated by the department of
 38 commerce, the Indiana development finance authority, the film
 39 commission, the Indiana business modernization and
 40 technology corporation, or economic development
 41 commissions to an industrial, a research, or a commercial
 42 prospect shall be available for inspection and copying under

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- 1 section 3 of this chapter after negotiations with that prospect
 2 have terminated.
- 3 (C) When disclosing a final offer under clause (B), the
 4 department of commerce shall certify that the information
 5 being disclosed accurately and completely represents the terms
 6 of the final offer.
- 7 (6) Records that are intra-agency or interagency advisory or
 8 deliberative material, including material developed by a private
 9 contractor under a contract with a public agency, that are
 10 expressions of opinion or are of a speculative nature, and that are
 11 communicated for the purpose of decision making.
- 12 (7) Diaries, journals, or other personal notes serving as the
 13 functional equivalent of a diary or journal.
- 14 (8) Personnel files of public employees and files of applicants for
 15 public employment, except for:
- 16 (A) the name, compensation, job title, business address,
 17 business telephone number, job description, education and
 18 training background, previous work experience, or dates of
 19 first and last employment of present or former officers or
 20 employees of the agency;
- 21 (B) information relating to the status of any formal charges
 22 against the employee; and
- 23 (C) information concerning ~~disciplinary actions~~ **decisions** in
 24 which final action has been taken and that resulted in the
 25 employee being ~~disciplined~~ **suspended without pay,**
 26 **demoted, transferred, reassigned,** or discharged.
- 27 However, all personnel file information shall be made available
 28 to the affected employee or his representative. This subdivision
 29 does not apply to disclosure of personnel information generally on
 30 all employees or for groups of employees without the request
 31 being particularized by employee name.
- 32 (9) Minutes or records of hospital medical staff meetings.
- 33 (10) Administrative or technical information that would
 34 jeopardize a record keeping or security system.
- 35 (11) Computer programs, computer codes, computer filing
 36 systems, and other software that are owned by the public agency
 37 or entrusted to it and portions of electronic maps entrusted to a
 38 public agency by a utility.
- 39 (12) Records specifically prepared for discussion or developed
 40 during discussion in an executive session under IC 5-14-1.5-6.1.
 41 However, this subdivision does not apply to that information
 42 required to be available for inspection and copying under

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- 1 subdivision (8).
 2 (13) The work product of the legislative services agency under
 3 personnel rules approved by the legislative council.
 4 (14) The work product of individual members and the partisan
 5 staffs of the general assembly.
 6 (15) The identity of a donor of a gift made to a public agency if:
 7 (A) the donor requires nondisclosure of his identity as a
 8 condition of making the gift; or
 9 (B) after the gift is made, the donor or a member of the donor's
 10 family requests nondisclosure.
 11 (16) Library or archival records:
 12 (A) which can be used to identify any library patron; or
 13 (B) deposited with or acquired by a library upon a condition
 14 that the records be disclosed only:
 15 (i) to qualified researchers;
 16 (ii) after the passing of a period of years that is specified in
 17 the documents under which the deposit or acquisition is
 18 made; or
 19 (iii) after the death of persons specified at the time of the
 20 acquisition or deposit.
 21 However, nothing in this subdivision shall limit or affect
 22 contracts entered into by the Indiana state library pursuant to
 23 IC 4-1-6-8.
 24 (17) The identity of any person who contacts the bureau of motor
 25 vehicles concerning the ability of a driver to operate a motor
 26 vehicle safely and the medical records and evaluations made by
 27 the bureau of motor vehicles staff or members of the driver
 28 licensing advisory committee. However, upon written request to
 29 the commissioner of the bureau of motor vehicles, the driver must
 30 be given copies of the driver's medical records and evaluations
 31 that concern the driver.
 32 (c) Notwithstanding section 3 of this chapter, a public agency is not
 33 required to create or provide copies of lists of names and addresses,
 34 unless the public agency is required to publish such lists and
 35 disseminate them to the public pursuant to statute. However, if a public
 36 agency has created a list of names and addresses, it must permit a
 37 person to inspect and make memoranda abstracts from the lists unless
 38 access to the lists is prohibited by law. The following lists of names and
 39 addresses may not be disclosed by public agencies to commercial
 40 entities for commercial purposes and may not be used by commercial
 41 entities for commercial purposes:
 42 (1) A list of employees of a public agency.

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- 1 (2) A list of persons attending conferences or meetings at a state
- 2 institution of higher education or of persons involved in programs
- 3 or activities conducted or supervised by the state institution of
- 4 higher education.
- 5 (3) A list of students who are enrolled in a public school
- 6 corporation if the governing body of the public school corporation
- 7 adopts a policy:
- 8 (A) prohibiting the disclosure of the list to commercial entities
- 9 for commercial purposes; or
- 10 (B) specifying the classes or categories of commercial entities
- 11 to which the list may not be disclosed or by which the list may
- 12 not be used for commercial purposes.
- 13 A policy adopted under subdivision (3) must be uniform and may not
- 14 discriminate among similarly situated commercial entities.
- 15 (d) Nothing contained in subsection (b) shall limit or affect the right
- 16 of a person to inspect and copy a public record required or directed to
- 17 be made by any statute or by any rule of a public agency.
- 18 (e) Notwithstanding any other law, a public record that is classified
- 19 as confidential, other than a record concerning an adoption, shall be
- 20 made available for inspection and copying seventy-five (75) years after
- 21 the creation of that record.
- 22 (f) Notwithstanding subsection (e) and section 7 of this chapter:
- 23 (1) public records subject to IC 5-15 may be destroyed only in
- 24 accordance with record retention schedules under IC 5-15; or
- 25 (2) public records not subject to IC 5-15 may be destroyed in the
- 26 ordinary course of business.

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