



Reprinted
January 26, 1999

SENATE BILL No. 1

DIGEST OF SB 1 (Updated January 25, 1999 2:10 pm - DI 44)

Citations Affected: IC 5-14.

Synopsis: Legislative records; public access counselor and complaint procedure. Provides that correspondence, memoranda, and records of telephone calls of legislators and legislative staff may be excepted from disclosure under the public records law. Creates the office of the public access counselor. Provides for the appointment of a public access counselor by the governor. Establishes a formal complaint procedure for the office of the public access counselor. Requires a court to expedite the hearing of an action filed under the open door law (IC 5-14-1.5) or the public records law (IC 5-14-3). Requires, rather than permits, a court to award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to a prevailing plaintiff if the
(Continued next page)

Effective: July 1, 1999.

Merritt, Antich, Blade

January 6, 1999, read first time and referred to Committee on Governmental and Regulatory Affairs.
January 21, 1999, amended, reported favorably — Do Pass.
January 25, 1999, read second time, amended, ordered engrossed.

SB 1—LS 6909/DI 87+



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court finds the defendant's violation was knowing and intentional. Requires, rather than permits, a court to award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to a prevailing defendant if the court finds that the action is frivolous or vexatious. Provides immunity to an employee or official of a public agency who discloses confidential information in reliance on an advisory opinion issued by the public access counselor. Requires the public access counselor to submit a report to the general assembly not later than June 30 of each year concerning the activities of the counselor for the previous year.

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January 26, 1999

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.

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SENATE BILL No. 1

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 5-14-1.5-7 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) An action may be
3 filed by any person in any court of competent jurisdiction to:
4 (1) obtain a declaratory judgment;
5 (2) enjoin continuing, threatened, or future violations of this
6 chapter; or
7 (3) declare void any policy, decision, or final action:
8 (A) taken at an executive session in violation of section 3(a) of
9 this chapter;
10 (B) taken at any meeting of which notice is not given in
11 accordance with section 5 of this chapter;
12 (C) that is based in whole or in part upon official action taken
13 at any executive session in violation of section 3(a) of this
14 chapter or at any meeting of which notice is not given in
15 accordance with section 5 of this chapter; or

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1 (D) taken at a meeting held in a location in violation of section
2 8 of this chapter.

3 The plaintiff need not allege or prove special damage different from
4 that suffered by the public at large.

5 (b) **Regardless of whether a formal complaint or an informal**
6 **inquiry is pending before the public access counselor**, any action to
7 declare any policy, decision, or final action of a governing body void,
8 or to enter an injunction which would invalidate any policy, decision,
9 or final action of a governing body, based on violation of this chapter
10 occurring before the action is commenced, shall be commenced:

11 (1) prior to the delivery of any warrants, notes, bonds, or
12 obligations if the relief sought would have the effect, if granted,
13 of invalidating the notes, bonds, or obligations; or

14 (2) with respect to any other subject matter, within thirty (30)
15 days of either:

16 (A) the date of the act or failure to act complained of; or

17 (B) the date that the plaintiff knew or should have known that
18 the act or failure to act complained of had occurred;

19 whichever is later. If the challenged policy, decision, or final action is
20 recorded in the memoranda or minutes of a governing body, a plaintiff
21 is considered to have known that the act or failure to act complained of
22 had occurred not later than the date that the memoranda or minutes are
23 first available for public inspection.

24 (c) If a court finds that a governing body of a public agency has
25 violated this chapter, it may not find that the violation was cured by the
26 governing body by only having taken final action at a meeting that
27 complies with this chapter.

28 (d) In determining whether to declare any policy, decision, or final
29 action void, a court shall consider the following factors among other
30 relevant factors:

31 (1) The extent to which the violation:

32 (A) affected the substance of the policy, decision, or final
33 action;

34 (B) denied or impaired access to any meetings that the public
35 had a right to observe and record; and

36 (C) prevented or impaired public knowledge or understanding
37 of the public's business.

38 (2) Whether voiding of the policy, decision, or final action is a
39 necessary prerequisite to a substantial reconsideration of the
40 subject matter.

41 (3) Whether the public interest will be served by voiding the
42 policy, decision, or final action by determining which of the

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1 following factors outweighs the other:

2 (A) The remedial benefits gained by effectuating the public
3 policy of the state declared in section 1 of this chapter.

4 (B) The prejudice likely to accrue to the public if the policy,
5 decision, or final action is voided, including the extent to
6 which persons have relied upon the validity of the challenged
7 action and the effect declaring the challenged action void
8 would have on them.

9 (e) If a court declares a policy, decision, or final action of a
10 governing body of a public agency void, the court may enjoin the
11 governing body from subsequently acting upon the subject matter of
12 the voided act until it has been given substantial reconsideration at a
13 meeting or meetings that comply with this chapter.

14 (f) In any action filed under this section, a court **may shall** award
15 reasonable attorney's fees, court costs, and other reasonable expenses
16 of litigation to the prevailing party if:

17 (1) the plaintiff prevails and the court finds that the defendant's
18 violation is knowing and intentional; or

19 (2) the defendant prevails and the court finds that the action is
20 frivolous and vexatious.

21 **(g) A court shall expedite the hearing of an action filed under
22 this section.**

23 SECTION 2. IC 5-14-3-4 IS AMENDED TO READ AS FOLLOWS
24 [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) The following public records
25 are excepted from section 3 of this chapter and may not be disclosed by
26 a public agency, unless access to the records is specifically required by
27 a state or federal statute or is ordered by a court under the rules of
28 discovery:

29 (1) Those declared confidential by state statute.

30 (2) Those declared confidential by rule adopted by a public
31 agency under specific authority to classify public records as
32 confidential granted to the public agency by statute.

33 (3) Those required to be kept confidential by federal law.

34 (4) Records containing trade secrets.

35 (5) Confidential financial information obtained, upon request,
36 from a person. However, this does not include information that is
37 filed with or received by a public agency pursuant to state statute.

38 (6) Information concerning research, including actual research
39 documents, conducted under the auspices of an institution of
40 higher education, including information:

41 (A) concerning any negotiations made with respect to the
42 research; and

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

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

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- 1 staffs of the general assembly.
- 2 (15) The identity of a donor of a gift made to a public agency if:
- 3 (A) the donor requires nondisclosure of his identity as a
- 4 condition of making the gift; or
- 5 (B) after the gift is made, the donor or a member of the donor's
- 6 family requests nondisclosure.
- 7 (16) Library or archival records:
- 8 (A) which can be used to identify any library patron; or
- 9 (B) deposited with or acquired by a library upon a condition
- 10 that the records be disclosed only:
- 11 (i) to qualified researchers;
- 12 (ii) after the passing of a period of years that is specified in
- 13 the documents under which the deposit or acquisition is
- 14 made; or
- 15 (iii) after the death of persons specified at the time of the
- 16 acquisition or deposit.
- 17 However, nothing in this subdivision shall limit or affect
- 18 contracts entered into by the Indiana state library pursuant to
- 19 IC 4-1-6-8.
- 20 (17) The identity of any person who contacts the bureau of motor
- 21 vehicles concerning the ability of a driver to operate a motor
- 22 vehicle safely and the medical records and evaluations made by
- 23 the bureau of motor vehicles staff or members of the driver
- 24 licensing advisory committee. However, upon written request to
- 25 the commissioner of the bureau of motor vehicles, the driver must
- 26 be given copies of the driver's medical records and evaluations
- 27 that concern the driver.
- 28 **(18) Correspondence, memoranda, and records of telephone**
- 29 **calls, in whatever form, related to the performance of duties**
- 30 **by the legislative services agency and by individual members**
- 31 **and partisan staffs of the general assembly.**
- 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.

27 SECTION 3. IC 5-14-3-9 IS AMENDED TO READ AS FOLLOWS
 28 [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) A denial of disclosure by a
 29 public agency occurs when the person making the request is physically
 30 present in the office of the agency, makes the request by telephone, or
 31 requests enhanced access to a document and:

32 (1) the person designated by the public agency as being
 33 responsible for public records release decisions refuses to permit
 34 inspection and copying of a public record when a request has
 35 been made; or

36 (2) twenty-four (24) hours elapse after any employee of the public
 37 agency refuses to permit inspection and copying of a public
 38 record when a request has been made;

39 whichever occurs first.

40 (b) If a person requests by mail or by facsimile a copy or copies of
 41 a public record, a denial of disclosure does not occur until seven (7)
 42 days have elapsed from the date the public agency receives the request.

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1 (c) If a request is made orally, either in person or by telephone, a
 2 public agency may deny the request orally. However, if a request
 3 initially is made in writing, by facsimile, or through enhanced access,
 4 or if an oral request that has been denied is renewed in writing or by
 5 facsimile, a public agency may deny the request if:

6 (1) the denial is in writing or by facsimile; and

7 (2) the denial includes:

8 (A) a statement of the specific exemption or exemptions
 9 authorizing the withholding of all or part of the public record;
 10 and

11 (B) the name and the title or position of the person responsible
 12 for the denial.

13 (d) A person who has been denied the right to inspect or copy a
 14 public record by a public agency may file an action in the circuit or
 15 superior court of the county in which the denial occurred to compel the
 16 public agency to permit the person to inspect and copy the public
 17 record. Whenever an action is filed under this subsection, the public
 18 agency must notify each person who supplied any part of the public
 19 record at issue that a request for release of the public record has been
 20 denied. Such persons are entitled to intervene in any litigation that
 21 results from the denial. The person who has been denied the right to
 22 inspect or copy need not allege or prove any special damage different
 23 from that suffered by the public at large.

24 (e) The court shall determine the matter de novo, with the burden of
 25 proof on the public agency to sustain its denial. If the issue in de novo
 26 review under this section is whether a public agency properly denied
 27 access to a public record because the record is exempted under section
 28 4(a) of this chapter, the public agency meets its burden of proof under
 29 this subsection by establishing the content of the record with adequate
 30 specificity and not by relying on a conclusory statement or affidavit.

31 (f) If the issue in a de novo review under this section is whether a
 32 public agency properly denied access to a public record because the
 33 record is exempted under section 4(b) of this chapter:

34 (1) the public agency meets its burden of proof under this
 35 subsection by:

36 (A) proving that the record falls within any one (1) of the
 37 categories of exempted records under section 4(b) of this
 38 chapter; and

39 (B) establishing the content of the record with adequate
 40 specificity and not by relying on a conclusory statement or
 41 affidavit; and

42 (2) a person requesting access to a public record meets the

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1 person's burden of proof under this subsection by proving that the
2 denial of access is arbitrary or capricious.

3 (g) The court may review the public record in camera to determine
4 whether any part of it may be withheld under this chapter.

5 (h) In any action filed under this section, a court ~~may~~ **shall** award
6 reasonable attorney fees, court costs, and other reasonable expenses of
7 litigation to the prevailing party if:

8 (1) the plaintiff substantially prevails and the court finds the
9 defendant's violation was knowing or intentional; or

10 (2) the defendant substantially prevails and the court finds the
11 action was frivolous or vexatious.

12 **(i) A court shall expedite the hearing of an action filed under
13 this section.**

14 SECTION 4. IC 5-14-3-10 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) A public
16 employee, a public official, or an employee or officer of a contractor or
17 subcontractor of a public agency, except as provided by IC 4-15-10,
18 who knowingly or intentionally discloses information classified as
19 confidential by state statute commits a Class A misdemeanor.

20 (b) A public employee may be disciplined in accordance with the
21 personnel policies of the agency by which the employee is employed
22 if the employee intentionally, knowingly, or recklessly discloses or fails
23 to protect information classified as confidential by state statute.

24 (c) A public employee, a public official, or an employee or officer
25 of a contractor or subcontractor of a public agency who unintentionally
26 and unknowingly discloses confidential or erroneous information in
27 response to a request under IC 5-14-3-3(d) **or who discloses
28 confidential information in reliance on an advisory opinion by the
29 public access counselor** is immune from liability for such a disclosure.

30 (d) This section does not apply to any provision incorporated into
31 state law from a federal statute.

32 SECTION 5. IC 5-14-4 IS ADDED TO THE INDIANA CODE AS
33 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
34 1, 1999] :

35 **Chapter 4. Public Access Counselor**

36 **Sec. 1. As used in this chapter, "counselor" refers to the public
37 access counselor appointed under section 6 of this chapter.**

38 **Sec. 2. As used in this chapter, "office" refers to the office of the
39 public access counselor established under section 5 of this chapter.**

40 **Sec. 3. As used in this chapter, "public access laws" refers to:**

41 (1) IC 5-14-1.5;

42 (2) IC 5-14-3; or

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(3) any other state statute or rule governing access to public meetings or public records.

Sec. 4. As used in this chapter, "public agency" has the meaning set forth in:

(1) IC 5-14-1.5-2 for purposes of matters concerning public meetings; and

(2) IC 5-14-3-2 for purposes of matters concerning public records.

Sec. 5. The office of the public access counselor is established. The office shall be administered by the public access counselor appointed under section 6 of this chapter.

Sec. 6. The governor shall appoint a public access counselor for a term of four (4) years at a salary to be fixed by the governor.

Sec. 7. The governor may remove the counselor for cause.

Sec. 8. If a vacancy occurs in the office, the governor shall appoint an individual to serve for the remainder of the counselor's unexpired term.

Sec. 9. (a) The counselor must be a practicing attorney.

(b) The counselor shall apply the counselor's full efforts to the duties of the office and may not be actively engaged in any other occupation, practice, profession, or business.

Sec. 10. The counselor has the following powers and duties:

(1) To establish and administer a program to train public officials and educate the public on the rights of the public and the responsibilities of public agencies under the public access laws. The counselor may contract with a person or a public or private entity to fulfill the counselor's responsibility under this subdivision.

(2) To conduct research.

(3) To prepare interpretive and educational materials and programs in cooperation with the office of the attorney general.

(4) To distribute to newly elected or appointed public officials the public access laws and educational materials concerning the public access laws.

(5) To respond to informal inquiries made by the public and public agencies by telephone, in writing, in person, by facsimile, or by electronic mail concerning the public access laws.

(6) To issue advisory opinions to interpret the public access laws upon the request of a person or a public agency. However, the counselor may not issue an advisory opinion

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concerning a specific matter with respect to which a lawsuit has been filed under IC 5-14-1.5 or IC 5-14-3.

(7) To make recommendations to the general assembly concerning ways to improve public access.

Sec. 11. The counselor may employ additional personnel necessary to carry out the functions of the office subject to the approval of the budget agency.

Sec. 12. The counselor shall submit a report not later than June 30 of each year to the general assembly concerning the activities of the counselor for the previous year. The report must include the following information:

- (1) The total number of inquiries and complaints received.
- (2) The number of inquiries and complaints received each from the public, the media, and government agencies.
- (3) The number of inquiries and complaints that were resolved.
- (4) The number of complaints received about each of the following:
 - (A) State agencies.
 - (B) County agencies.
 - (C) City agencies.
 - (D) Town agencies.
 - (E) Township agencies.
 - (F) School corporations.
 - (G) Other local agencies.
- (5) The number of complaints received concerning each of the following:
 - (A) Public records.
 - (B) Public meetings.
- (6) The total number of written advisory opinions issued and pending.

Sec. 13. An informal inquiry or other request for assistance under this chapter does not delay the running of a statute of limitation that applies to a lawsuit under IC 5-14-1.5 or IC 5-14-3 concerning the subject matter of the inquiry or other request.

SECTION 6. IC 5-14-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999] :

Chapter 5. Formal Complaint Procedure

Sec. 1. As used in this chapter, "counselor" refers to the public access counselor appointed under IC 5-14-4-6.

Sec. 2. As used in this chapter, "person" means an individual, a

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1 business, a corporation, an association, or an organization. The
2 term does not include a public agency.

3 Sec. 3. As used in this chapter, "public agency" has the meaning
4 set forth in:

5 (1) IC 5-14-1.5-2 for purposes of matters concerning public
6 meetings; and

7 (2) IC 5-14-3-2 for purposes of matters concerning public
8 records.

9 Sec. 4. A person or a public agency is not required to file a
10 complaint under this chapter before filing an action under
11 IC 5-14-1.5 or IC 5-14-3.

12 Sec. 5. A public agency shall cooperate with the counselor in any
13 investigation or proceeding under this chapter.

14 Sec. 6. A person or a public agency denied:

15 (1) the right to inspect or copy records under IC 5-14-3;

16 (2) the right to attend any public meeting of a public agency
17 in violation of IC 5-14-1.5; or

18 (3) any other right conferred by IC 5-14-3 or IC 5-14-1.5 or
19 any other state statute or rule governing access to public
20 meetings or public records;

21 may file a formal complaint with the counselor as set forth in this
22 chapter or may make an informal inquiry under IC 5-14-4-10(5).

23 Sec. 7. (a) A person or a public agency that chooses to file a
24 formal complaint with the counselor must file the complaint not
25 later than thirty (30) days after:

26 (1) the denial; or

27 (2) the person filing the complaint receives notice in fact that
28 a meeting was held by a public agency if the meeting was
29 conducted secretly or without notice.

30 (b) A complaint is considered filed on the date it is:

31 (1) received by the counselor; or

32 (2) postmarked, if received more than thirty (30) days after
33 the date of the denial that is the subject of the complaint.

34 Sec. 8. When the counselor receives a complaint under section
35 7 of this chapter, the counselor shall immediately forward a copy
36 of the complaint to the public agency that is the subject of the
37 complaint.

38 Sec. 9. Except as provided in section 10 of this chapter, the
39 counselor shall issue an advisory opinion on the complaint not later
40 than thirty (30) days after the complaint is filed.

41 Sec. 10. (a) If the counselor determines that a complaint has
42 priority, the counselor shall issue an advisory opinion on the

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1 **complaint not later than seven (7) days after the complaint is filed.**

2 **(b) The counselor shall adopt rules under IC 4-22-2 establishing**
3 **criteria for complaints that have priority.**

4 **Sec. 11. The public access counselor shall determine the form of**
5 **a formal complaint filed under this chapter.**

6 **Sec. 12. The filing of a formal complaint under this chapter does**
7 **not delay the running of a statute of limitation that applies to a**
8 **lawsuit under IC 5-14-1.5 or IC 5-14-3 concerning the subject**
9 **matter of the complaint.**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Governmental and Regulatory Affairs, to which was referred Senate Bill No. 1, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 5, after "(b)" insert "**Regardless of whether a formal complaint or an informal inquiry is pending before the public access counselor,**".

Page 2, line 5, delete "Any" and insert "any".

Page 3, line 16, after "prevails" delete ";".

Page 3, line 16, reset in roman "and the court finds that the defendant's".

Page 3, line 17, reset in roman, "violation is knowing and intentional;".

Page 5, line 3, after "prevails" delete ";".

Page 5, line 3, reset in roman "and the court finds the".

Page 5, line 4, reset in roman "defendant's violation was knowing or intentional;".

Page 5, between lines 8 and 9, begin a new paragraph and insert:

"SECTION 3. IC 5-14-3-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) A public employee, a public official, or an employee or officer of a contractor or subcontractor of a public agency, except as provided by IC 4-15-10, who knowingly or intentionally discloses information classified as confidential by state statute commits a Class A misdemeanor.

(b) A public employee may be disciplined in accordance with the personnel policies of the agency by which the employee is employed if the employee intentionally, knowingly, or recklessly discloses or fails to protect information classified as confidential by state statute.

(c) A public employee, a public official, or an employee or officer of a contractor or subcontractor of a public agency who unintentionally and unknowingly discloses confidential or erroneous information in response to a request under IC 5-14-3-3(d) **or who discloses confidential information in reliance on an advisory opinion by the public access counselor** is immune from liability for such a disclosure.

(d) This section does not apply to any provision incorporated into state law from a federal statute."

Page 5, line 31, delete "(a)".

Page 5, delete line 33.

Page 6, line 19, after "agency." insert "**However, the counselor**

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may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under IC 5-14-1.5 or IC 5-14-3."

Page 6, between lines 40 and 41, insert a new line double block indented and insert:

"(F) School corporations."

Page 6, line 41, delete "(F)" and insert "(G)".

Page 7, delete line 6, begin a new paragraph, and insert:

"Sec. 13. An informal inquiry or other request for assistance under this chapter does not delay the running of a statute of limitation that applies to a lawsuit under IC 5-14-1.5 or IC 5-14-3 concerning the subject matter of the inquiry or other request."

Page 7, line 35, after "chapter" insert **"or may make an informal inquiry under IC 5-14-4-10(5)"**.

Page 7, line 36, delete "shall" and insert **"that chooses to"**.

Page 7, line 37, after "counselor" insert **"must file the complaint"**.

Page 8, delete line 18, begin a new paragraph, and insert:

"Sec. 12. The filing of a formal complaint under this chapter does not delay the running of a statute of limitation that applies to a lawsuit under IC 5-14-1.5 or IC 5-14-3 concerning the subject matter of the complaint."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 1 as introduced.)

MERRITT, Chairperson

Committee Vote: Yeas 8, Nays 0.

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SENATE MOTION

Mr. President: I move that Senators Antich and Blade be added as coauthors of Senate Bill 1.

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SENATE MOTION

Mr. President: I move that Senate Bill 1 be AMENDED to read as follows:

Page 3, between lines 22 and 23, begin a new paragraph and insert:

"SECTION 2. IC 5-14-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

- (1) Those declared confidential by state statute.
- (2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.
- (3) Those required to be kept confidential by federal law.
- (4) Records containing trade secrets.
- (5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.
- (6) Information concerning research, including actual research documents, conducted under the auspices of an institution of higher education, including information:
 - (A) concerning any negotiations made with respect to the research; and
 - (B) received from another party involved in the research.
- (7) Grade transcripts and license examination scores obtained as part of a licensure process.
- (8) Those declared confidential by or under rules adopted by the supreme court of Indiana.
- (9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

- (1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.
- (2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:
 - (A) a public agency;
 - (B) the state; or



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- (C) an individual.
- (3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.
- (4) Scores of tests if the person is identified by name and has not consented to the release of his scores.
- (5) The following:
- (A) Records relating to negotiations between the department of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, or economic development commissions with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.
 - (B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the department of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, or economic development commissions to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.
 - (C) When disclosing a final offer under clause (B), the department of commerce shall certify that the information being disclosed accurately and completely represents the terms of the final offer.
- (6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.
- (7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.
- (8) Personnel files of public employees and files of applicants for public employment, except for:
- (A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

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(B) information relating to the status of any formal charges against the employee; and

(C) information concerning disciplinary actions in which final action has been taken and that resulted in the employee being disciplined or discharged.

However, all personnel file information shall be made available to the affected employee or his representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a recordkeeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

(A) the donor requires nondisclosure of his identity as a condition of making the gift; or

(B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or

(iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect

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contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing advisory committee. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations that concern the driver.

(18) Correspondence, memoranda, and records of telephone calls, in whatever form, related to the performance of duties by the legislative services agency and by individual members and partisan staffs of the general assembly.

(c) Notwithstanding section 3 of this chapter, a public agency is not required to create or provide copies of lists of names and addresses, unless the public agency is required to publish such lists and disseminate them to the public pursuant to statute. However, if a public agency has created a list of names and addresses, it must permit a person to inspect and make memoranda abstracts from the lists unless access to the lists is prohibited by law. The following lists of names and addresses may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes:

- (1) A list of employees of a public agency.
- (2) A list of persons attending conferences or meetings at a state institution of higher education or of persons involved in programs or activities conducted or supervised by the state institution of higher education.
- (3) A list of students who are enrolled in a public school corporation if the governing body of the public school corporation adopts a policy:
 - (A) prohibiting the disclosure of the list to commercial entities for commercial purposes; or
 - (B) specifying the classes or categories of commercial entities to which the list may not be disclosed or by which the list may not be used for commercial purposes.

A policy adopted under subdivision (3) must be uniform and may not discriminate among similarly situated commercial entities.

(d) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.



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(e) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

(f) Notwithstanding subsection (e) and section 7 of this chapter:

- (1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or
- (2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business."

Renumber all SECTIONS consecutively.

(Reference is to SB 1 as printed January 22, 1999.)

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