

Adopted	Rejected
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COMMITTEE REPORT

YES:	10
NO:	0

MR. SPEAKER:

*Your Committee on Appointments and Claims, to which was referred House Bill 1935, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, line 3, delete "IC 5-14-3-3(f)" and insert "**IC 5-14-3-3(f)**".
- 2 Page 3, line 13, delete "IC 20-1-1.4-2," and insert "**IC 20-1-1.4-2**".
- 3 Page 3, line 14, after "or" insert "**an**".
- 4 Page 3, between lines 19 and 20, begin a new paragraph and insert:
- 5 "SECTION 3. IC 4-1-9 IS ADDED TO THE INDIANA CODE AS
- 6 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 7 1, 2003]:
- 8 **Chapter 9. Background Check of Employees of Bodies**
- 9 **Corporate and Politic**
- 10 **Sec. 1. This chapter applies only to a body corporate and politic.**
- 11 **Sec. 2. A body corporate and politic shall establish a policy for**
- 12 **conducting background checks of persons for purposes of**
- 13 **employment with the body corporate and politic.**
- 14 **Sec. 3. A policy adopted under this chapter may not be less**
- 15 **stringent than a background check policy implemented by the state**
- 16 **personnel department for employment with a state agency that is**

- 1 **subject to the jurisdiction of the state personnel department."**
- 2 Page 4, line 9, delete "other" and insert "**another**".
- 3 Page 4, line 10, delete ", legislative,".
- 4 Page 4, line 11, after "government," insert "**the principal secretary**
- 5 **of the senate, the principal clerk of the house of representatives, the**
- 6 **executive director of the legislative services agency,"**.
- 7 Page 4, delete lines 20 through 32.
- 8 Page 4, line 35, after "14.5." insert "(a)".
- 9 Page 4, line 39, delete "state" and insert "**state, or as an employee**
- 10 **of a contractor of the state,"**.
- 11 Page 5, line 4, delete "threatened to" and insert "**threatened with**
- 12 **harm**".
- 13 Page 5, line 5, delete "be harmed".
- 14 Page 5, line 20, after "fingerprints" insert "**in an appropriate**
- 15 **format or**".
- 16 Page 5, line 27, after "department" insert "**or the agency to which**
- 17 **the applicant is applying for employment or a license**".
- 18 Page 5, between lines 28 and 29, begin a new paragraph and insert:
- 19 "**(b) An applicant who is an employee of the state may not be**
- 20 **charged under subsection (a).**
- 21 **(c) Subsection (a)(1) does not apply to an employee of a**
- 22 **contractor of the state if the contract involves the construction or**
- 23 **repair of a capital project or other public works project of the**
- 24 **state.**
- 25 SECTION 6. IC 5-14-3-2, AS AMENDED BY P.L.90-2002,
- 26 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 27 JULY 1, 2003]: Sec. 2. As used in this chapter:
- 28 "Copy" includes transcribing by handwriting, photocopying,
- 29 xerography, duplicating machine, duplicating electronically stored data
- 30 onto a disk, tape, drum, or any other medium of electronic data storage,
- 31 and reproducing by any other means.
- 32 "Direct cost" means one hundred five percent (105%) of the sum of
- 33 the cost of:
- 34 (1) the initial development of a program, if any;
- 35 (2) the labor required to retrieve electronically stored data; and
- 36 (3) any medium used for electronic output;
- 37 for providing a duplicate of electronically stored data onto a disk, tape,
- 38 drum, or other medium of electronic data retrieval under section 8(g)

1 of this chapter, or for reprogramming a computer system under section
2 6(c) of this chapter.

3 "Electronic map" means copyrighted data provided by a public
4 agency from an electronic geographic information system.

5 "Enhanced access" means the inspection of a public record by a
6 person other than a governmental entity and that:

7 (1) is by means of an electronic device other than an electronic
8 device provided by a public agency in the office of the public
9 agency; or

10 (2) requires the compilation or creation of a list or report that does
11 not result in the permanent electronic storage of the information.

12 "Facsimile machine" means a machine that electronically transmits
13 exact images through connection with a telephone network.

14 "Inspect" includes the right to do the following:

15 (1) Manually transcribe and make notes, abstracts, or memoranda.

16 (2) In the case of tape recordings or other aural public records, to
17 listen and manually transcribe or duplicate, or make notes,
18 abstracts, or other memoranda from them.

19 (3) In the case of public records available:

20 (A) by enhanced access under section 3.5 of this chapter; or

21 (B) to a governmental entity under section 3(c)(2) of this
22 chapter;

23 to examine and copy the public records by use of an electronic
24 device.

25 (4) In the case of electronically stored data, to manually transcribe
26 and make notes, abstracts, or memoranda or to duplicate the data
27 onto a disk, tape, drum, or any other medium of electronic
28 storage.

29 "Investigatory record" means information compiled in the course of
30 the investigation of a crime.

31 "Patient" has the meaning set out in IC 16-18-2-272(d).

32 "Person" means an individual, a corporation, a limited liability
33 company, a partnership, an unincorporated association, or a
34 governmental entity.

35 "Provider" has the meaning set out in IC 16-18-2-295(a) and
36 includes employees of the state department of health or local boards of
37 health who create patient records at the request of another provider or
38 who are social workers and create records concerning the family

1 background of children who may need assistance.

2 "Public agency" means the following:

3 (1) Any board, commission, department, division, bureau,
4 committee, agency, office, instrumentality, or authority, by
5 whatever name designated, exercising any part of the executive,
6 administrative, judicial, or legislative power of the state.

7 (2) Any:

8 (A) county, township, school corporation, city, or town, or any
9 board, commission, department, division, bureau, committee,
10 office, instrumentality, or authority of any county, township,
11 school corporation, city, or town;

12 (B) political subdivision (as defined by IC 36-1-2-13); or

13 (C) other entity, or any office thereof, by whatever name
14 designated, exercising in a limited geographical area the
15 executive, administrative, judicial, or legislative power of the
16 state or a delegated local governmental power.

17 (3) Any entity or office that is subject to:

18 (A) budget review by either the department of local
19 government finance or the governing body of a county, city,
20 town, township, or school corporation; or

21 (B) an audit by the state board of accounts.

22 (4) Any building corporation of a political subdivision that issues
23 bonds for the purpose of constructing public facilities.

24 (5) Any advisory commission, committee, or body created by
25 statute, ordinance, or executive order to advise the governing
26 body of a public agency, except medical staffs or the committees
27 of any such staff.

28 (6) Any law enforcement agency, which means an agency or a
29 department of any level of government that engages in the
30 investigation, apprehension, arrest, or prosecution of alleged
31 criminal offenders, such as the state police department, the police
32 or sheriff's department of a political subdivision, prosecuting
33 attorneys, members of the excise police division of the alcohol
34 and tobacco commission, conservation officers of the department
35 of natural resources, and the security division of the state lottery
36 commission.

37 (7) Any license branch staffed by employees of the bureau of
38 motor vehicles commission under IC 9-16.

1 (8) The state lottery commission, including any department,
2 division, or office of the commission.

3 (9) The Indiana gaming commission established under IC 4-33,
4 including any department, division, or office of the commission.

5 (10) The Indiana horse racing commission established by IC 4-31,
6 including any department, division, or office of the commission.

7 "Public record" means any writing, paper, report, study, map,
8 photograph, book, card, tape recording, or other material that is
9 created, received, retained, maintained, ~~used~~, or filed by or with a
10 public agency and which is generated on paper, paper substitutes,
11 photographic media, chemically based media, magnetic or machine
12 readable media, electronically stored data, or any other material,
13 regardless of form or characteristics.

14 "Standard-sized documents" includes all documents that can be
15 mechanically reproduced (without mechanical reduction) on paper
16 sized eight and one-half (8 1/2) inches by eleven (11) inches or eight
17 and one-half (8 1/2) inches by fourteen (14) inches.

18 "Trade secret" has the meaning set forth in IC 24-2-3-2.

19 "Work product of an attorney" means information compiled by an
20 attorney in reasonable anticipation of litigation and includes the
21 attorney's:

22 (1) notes and statements taken during interviews of prospective
23 witnesses; and

24 (2) legal research or records, correspondence, reports, or
25 memoranda to the extent that each contains the attorney's
26 opinions, theories, or conclusions.

27 This definition does not restrict the application of any exception under
28 section 4 of this chapter."

29 Page 6, line 22, after "map" insert ".".

30 Page 6, line 22, strike "(as defined by IC 5-14-3-2)".

31 Page 6, line 29, strike "(as".

32 Page 6, line 30, strike "defined in IC 5-14-3-2)".

33 Page 8, strike lines 18 through 22.

34 Page 8, line 23, strike "(12)" and insert "(11)".

35 Page 8, delete line 25.

36 Page 10, block indent lines 36 through 38.

37 Page 11, delete lines 8 through 34, begin a new line block indented
38 and insert:

1 **"(19) A record or a part of a record, the public disclosure of**
 2 **which would have a reasonable likelihood of threatening**
 3 **public safety by exposing a vulnerability to terrorist attack. A**
 4 **record described under this subdivision includes:**

5 **(A) a record assembled, prepared, or maintained to**
 6 **prevent, mitigate, or respond to an act of terrorism under**
 7 **IC 35-47-12-1 or an act of agricultural terrorism under**
 8 **IC 35-47-12-2;**

9 **(B) vulnerability assessments;**

10 **(C) risk planning documents;**

11 **(D) needs assessments;**

12 **(E) threat assessments;**

13 **(F) domestic preparedness strategies;**

14 **(G) the location of community drinking water wells and**
 15 **surface water intakes; and**

16 **(H) the emergency contact information of emergency**
 17 **responders and volunteers.**

18 **(20) The following personal information concerning a**
 19 **customer of a municipally owned utility (as defined in**
 20 **IC 8-1-2-1):**

21 **(A) Telephone number.**

22 **(B) Address."**

23 Page 12, between lines 30 and 31, begin a new paragraph and insert:

24 "SECTION 9. IC 5-14-3-9, AS AMENDED BY P.L.191-1999,
 25 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2003]: Sec. 9. (a) A denial of disclosure by a public agency
 27 occurs when the person making the request is physically present in the
 28 office of the agency, makes the request by telephone, or requests
 29 enhanced access to a document and:

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

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

37 whichever occurs first.

38 (b) If a person requests by mail or by facsimile a copy or copies of

1 a public record, a denial of disclosure does not occur until seven (7)
2 days have elapsed from the date the public agency receives the request.

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

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

9 (2) the denial includes:

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

13 (B) the name and the title or position of the person responsible
14 for the denial.

15 (d) **This subsection applies to a board, a commission, a**
16 **department, a division, a bureau, a committee, an agency, an office,**
17 **an instrumentality, or an authority, by whatever name designated,**
18 **exercising any part of the executive, administrative, judicial, or**
19 **legislative power of the state. If an agency receives a request to**
20 **inspect or copy a record that the agency considers to be excepted**
21 **from disclosure under section 4(b)(19) of this chapter, the agency**
22 **may consult with the counterterrorism and security council**
23 **established under IC 4-3-20. If an agency denies the disclosure of**
24 **a record or a part of a record under section 4(b)(19) of this**
25 **chapter, the agency or the counterterrorism and security council**
26 **shall provide a general description of the record being withheld**
27 **and of how disclosure of the record would have a reasonable**
28 **likelihood of threatening the public safety.**

29 (e) A person who has been denied the right to inspect or copy a
30 public record by a public agency may file an action in the circuit or
31 superior court of the county in which the denial occurred to compel the
32 public agency to permit the person to inspect and copy the public
33 record. Whenever an action is filed under this subsection, the public
34 agency must notify each person who supplied any part of the public
35 record at issue:

36 (1) that a request for release of the public record has been denied;
37 and

38 (2) whether the denial was in compliance with an informal inquiry

1 response or advisory opinion of the public access counselor.
 2 Such persons are entitled to intervene in any litigation that results from
 3 the denial. The person who has been denied the right to inspect or copy
 4 need not allege or prove any special damage different from that
 5 suffered by the public at large.

6 ~~(e)~~ (f) The court shall determine the matter de novo, with the burden
 7 of proof on the public agency to sustain its denial. If the issue in de
 8 novo review under this section is whether a public agency properly
 9 denied access to a public record because the record is exempted under
 10 section 4(a) of this chapter, the public agency meets its burden of proof
 11 under this subsection by establishing the content of the record with
 12 adequate specificity and not by relying on a conclusory statement or
 13 affidavit.

14 ~~(f)~~ (g) If the issue in a de novo review under this section is whether
 15 a public agency properly denied access to a public record because the
 16 record is exempted under section 4(b) of this chapter:

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

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

22 (B) establishing the content of the record with adequate
 23 specificity and not by relying on a conclusory statement or
 24 affidavit; and

25 (2) a person requesting access to a public record meets the
 26 person's burden of proof under this subsection by proving that the
 27 denial of access is arbitrary or capricious.

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

30 ~~(h)~~ (i) In any action filed under this section, a court shall award
 31 reasonable ~~attorney~~ **attorney's** fees, court costs, and other reasonable
 32 expenses of litigation to the prevailing party if:

33 (1) the plaintiff substantially prevails; or

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

36 The plaintiff is not eligible for the awarding of attorney's fees, court
 37 costs, and other reasonable expenses if the plaintiff filed the action
 38 without first seeking and receiving an informal inquiry response or

1 advisory opinion from the public access counselor, unless the plaintiff
 2 can show the filing of the action was necessary because the denial of
 3 access to a public record under this chapter would prevent the plaintiff
 4 from presenting that public record to a public agency preparing to act
 5 on a matter of relevance to the public record whose disclosure was
 6 denied.

7 (j) A court shall expedite the hearing of an action filed under this
 8 section.

9 SECTION 10. IC 9-14-3-5, AS AMENDED BY P.L.225-1999,
 10 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2003]: Sec. 5. (a) Except as provided in subsection (b), (c), or
 12 (d), the bureau shall prepare and deliver information on titles,
 13 registrations, and licenses and permits upon the request of any person.
 14 All requests must be submitted in writing to the bureau and, unless
 15 exempted under IC 9-29, must be accompanied by the payment of the
 16 fee prescribed in IC 9-29-2-2.

17 (b) The bureau ~~may~~ **shall** not disclose the:

- 18 (1) Social Security number;
- 19 (2) federal identification number;
- 20 (3) driver's license number; ~~or~~
- 21 (4) digital image of the driver's license applicant; **or**
- 22 (5) **medical or disability information;**

23 of any person except to a law enforcement officer or an agent or a
 24 designee of the department of state revenue **or for uses permitted**
 25 **under IC 9-14-3.5-10(1), IC 9-14-3.5-10(4), IC 9-14-3.5-10(6), and**
 26 **IC 9-14-3.5-10(9).**

27 (c) As provided under 42 U.S.C. 1973gg-3(b), the commission may
 28 not disclose any information concerning the failure of an applicant for
 29 a motor vehicle driver's license to sign a voter registration application,
 30 except as authorized under IC 3-7-14.

31 (d) The commission may not disclose any information concerning
 32 the failure of an applicant for a title, registration, license, or permit
 33 (other than a motor vehicle license described under subsection (c)) to
 34 sign a voter registration application, except as authorized under
 35 IC 3-7-14."

36 Page 14, line 33, delete "if:" and insert "**if the person requesting**
 37 **the information:**".

38 Page 14, line 34, delete "the person requesting the information".

1 Page 15, between lines 8 and 9, begin a new paragraph and insert:

2 **"(c) For purposes of this section, "survey" does not include data**
3 **or information that is generated, collected, or transferred under**
4 **IC 16-21-6-7 or IC 16-39-5-3."**

5 Page 15, line 13, delete "IC 16-41-8-1." and insert "**IC 16-41-8-1 or**
6 **data or information that is confidential under IC 16-21-6-7 or**
7 **IC 16-39-5-3."**

8 Renumber all SECTIONS consecutively.

(Reference is to HB 1935 as introduced.)

and when so amended that said bill do pass.

Representative Harris