
SENATE BILL No. 70

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-14.

Synopsis: Public access issues. Provides that the court may impose a civil penalty against: (1) an officer or employee of a public agency; (2) the public agency; or (3) both the agency and the officer or employee, for violating the public records law or the open door law. Provides that the civil penalty may be: (1) not more than \$100 for the first violation; and (2) not more than \$500 for any additional violations. Provides that if a local government agency has the capacity to send electronic mail, the agency shall provide notice to anyone (other than news media) that makes an annual request for notice by: (1) transmitting the notice by electronic mail; or (2) posting the notice on the agency's Internet web site (if the agency has an Internet web site). Provides that a public agency may withhold personal information from public disclosure regarding an individual less than 19 years of age who participates in an activity conducted or supervised by a state educational institution, including personal information regarding the individual's parent or guardian. Requires (rather than allows) a court to review public records in camera to determine whether redaction of the records violates the public records act. If a formal complaint is filed, requires the public access counselor to review public records in camera without redaction (excluding redacted information that is a work product of an attorney) to determine whether the redaction of the records violated the access to public records act. Creates an education fund for a program administered by the public access counselor 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.

Effective: July 1, 2011.

Landske

January 5, 2011, read first time and referred to Committee on Public Policy.

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First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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SENATE BILL No. 70



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 5-14-1.5-5, AS AMENDED BY P.L.177-2005,
2 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 5. (a) Public notice of the date, time, and place of
4 any meetings, executive sessions, or of any rescheduled or reconvened
5 meeting, shall be given at least forty-eight (48) hours (excluding
6 Saturdays, Sundays, and legal holidays) before the meeting. This
7 requirement does not apply to reconvened meetings (not including
8 executive sessions) where announcement of the date, time, and place
9 of the reconvened meeting is made at the original meeting and recorded
10 in the memoranda and minutes thereof, and there is no change in the
11 agenda.

12 (b) Public notice shall be given by the governing body of a public
13 agency ~~by:~~ **as follows:**

14 (1) **The governing body of a public agency shall give public**
15 **notice by** posting a copy of the notice at the principal office of the
16 public agency holding the meeting or, if no such office exists, at
17 the building where the meeting is to be held. ~~and~~



1 (2) **The governing body of a public agency shall give public**
2 **notice by** delivering notice to all news media which deliver by
3 ~~January~~ **an annual written request for such the notices not later**
4 **than December 31** for the next succeeding calendar year to the
5 governing body of the public agency. The governing body shall
6 give notice by one (1) of the following methods, **which shall be**
7 **determined by the governing body:**

- 8 (A) Depositing the notice in the United States mail with
- 9 postage prepaid.
- 10 (B) Transmitting the notice by electronic mail, **if the public**
- 11 **agency has the capacity to transmit electronic mail.**
- 12 (C) Transmitting the notice by facsimile (fax).

13 (3) **This subdivision applies only to the governing body of a**
14 **public agency of a political subdivision described in section**
15 **2(a)(2), 2(a)(4), or 2(a)(5) of this chapter. The governing body**
16 **of a public agency shall give public notice by delivering notice**
17 **to any person (other than news media) who delivers an annual**
18 **written request for the notices not later than December 31 for**
19 **the next succeeding calendar year to the governing body of**
20 **the public agency. The governing body shall give notice by one**
21 **(1) of the following methods, which shall be determined by the**
22 **governing body:**

- 23 (A) **Transmitting the notice by electronic mail, if the public**
- 24 **agency has the capacity to transmit electronic mail.**
- 25 (B) **Publishing the notice on the public agency's web site at**
- 26 **least forty-eight (48) hours in advance of the meeting, if the**
- 27 **public agency has an Internet web site.**

28 If a governing body comes into existence after ~~January 1~~, **December**
29 **31**, it shall comply with this ~~subdivision~~ **subsection** upon receipt of a
30 written request for notice. In addition, a state agency (as defined in
31 IC 4-13-1-1) shall provide electronic access to the notice through the
32 computer gateway administered by the office of technology established
33 by IC 4-13.1-2-1.

34 (c) Notice of regular meetings need be given only once each year,
35 except that an additional notice shall be given where the date, time, or
36 place of a regular meeting or meetings is changed. This subsection does
37 not apply to executive sessions.

38 (d) If a meeting is called to deal with an emergency involving actual
39 or threatened injury to person or property, or actual or threatened
40 disruption of the governmental activity under the jurisdiction of the
41 public agency by any event, then the time requirements of notice under
42 this section shall not apply, but:

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1 (1) news media which have requested notice of meetings **under**
 2 **subsection (b)** must be given the same notice as is given to the
 3 members of the governing body; and
 4 (2) the public must be notified by posting a copy of the notice
 5 according to this section.
 6 (e) This section shall not apply where notice by publication is
 7 required by statute, ordinance, rule, or regulation.
 8 (f) This section shall not apply to:
 9 (1) the department of local government finance, the Indiana board
 10 of tax review, or any other governing body which meets in
 11 continuous session, except that this section applies to meetings of
 12 these governing bodies which are required by or held pursuant to
 13 statute, ordinance, rule, or regulation; or
 14 (2) the executive of a county or the legislative body of a town if
 15 the meetings are held solely to receive information or
 16 recommendations in order to carry out administrative functions,
 17 to carry out administrative functions, or confer with staff
 18 members on matters relating to the internal management of the
 19 unit. "Administrative functions" do not include the awarding of
 20 contracts, the entering into contracts, or any other action creating
 21 an obligation or otherwise binding a county or town.
 22 (g) This section does not apply to the general assembly.
 23 (h) Notice has not been given in accordance with this section if a
 24 governing body of a public agency convenes a meeting at a time so
 25 unreasonably departing from the time stated in its public notice that the
 26 public is misled or substantially deprived of the opportunity to attend,
 27 observe, and record the meeting.
 28 SECTION 2. IC 5-14-1.5-7, AS AMENDED BY P.L.179-2007,
 29 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2011]: Sec. 7. (a) An action may be filed by any person in any
 31 court of competent jurisdiction to:
 32 (1) obtain a declaratory judgment;
 33 (2) enjoin continuing, threatened, or future violations of this
 34 chapter; or
 35 (3) declare void any policy, decision, or final action:
 36 (A) taken at an executive session in violation of section 3(a) of
 37 this chapter;
 38 (B) taken at any meeting of which notice is not given in
 39 accordance with section 5 of this chapter;
 40 (C) that is based in whole or in part upon official action taken
 41 at any:
 42 (i) executive session in violation of section 3(a) of this

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- 1 chapter;
- 2 (ii) meeting of which notice is not given in accordance with
- 3 section 5 of this chapter; or
- 4 (iii) series of gatherings in violation of section 3.1 of this
- 5 chapter; or
- 6 (D) taken at a meeting held in a location in violation of section
- 7 8 of this chapter.

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

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

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

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

- 21 (A) the date of the act or failure to act complained of; or
- 22 (B) the date that the plaintiff knew or should have known that
- 23 the act or failure to act complained of had occurred;

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

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

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

- 36 (1) The extent to which the violation:
 - 37 (A) affected the substance of the policy, decision, or final
 - 38 action;
 - 39 (B) denied or impaired access to any meetings that the public
 - 40 had a right to observe and record; and
 - 41 (C) prevented or impaired public knowledge or understanding
 - 42 of the public's business.

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1 (2) Whether voiding of the policy, decision, or final action is a
 2 necessary prerequisite to a substantial reconsideration of the
 3 subject matter.
 4 (3) Whether the public interest will be served by voiding the
 5 policy, decision, or final action by determining which of the
 6 following factors outweighs the other:
 7 (A) The remedial benefits gained by effectuating the public
 8 policy of the state declared in section 1 of this chapter.
 9 (B) The prejudice likely to accrue to the public if the policy,
 10 decision, or final action is voided, including the extent to
 11 which persons have relied upon the validity of the challenged
 12 action and the effect declaring the challenged action void
 13 would have on them.
 14 (4) Whether the defendant acted in compliance with an informal
 15 inquiry response or advisory opinion issued by the public access
 16 counselor concerning the violation.
 17 (e) If a court declares a policy, decision, or final action of a
 18 governing body of a public agency void, the court may enjoin the
 19 governing body from subsequently acting upon the subject matter of
 20 the voided act until it has been given substantial reconsideration at a
 21 meeting or meetings that comply with this chapter.
 22 (f) In any action filed under this section, a court shall award
 23 reasonable attorney's fees, court costs, and other reasonable expenses
 24 of litigation to the prevailing party if:
 25 (1) the plaintiff prevails; or
 26 (2) the defendant prevails and the court finds that the action is
 27 frivolous and vexatious.
 28 The plaintiff is not eligible for the awarding of attorney's fees, court
 29 costs, and other reasonable expenses if the plaintiff filed the action
 30 without first seeking and receiving an informal inquiry response or
 31 advisory opinion from the public access counselor, unless the plaintiff
 32 can show the filing of the action was necessary to prevent a violation
 33 of this chapter.
 34 **(g) A court may assess a civil penalty under section 7.5 of this**
 35 **chapter.**
 36 ~~(g)~~ **(h)** A court shall expedite the hearing of an action filed under
 37 this section.
 38 SECTION 3. IC 5-14-1.5-7.5 IS ADDED TO THE INDIANA
 39 CODE AS A NEW SECTION TO READ AS FOLLOWS
 40 [EFFECTIVE JULY 1, 2011]: **Sec. 7.5. (a) As used in this section,**
 41 **"individual" means:**
 42 **(1) an officer of a public agency; or**

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1 **(2) a management level employee of a public agency.**
2 **(b) If an individual intentionally fails to perform a duty imposed**
3 **on the individual under this chapter by:**
4 **(1) failing to give proper notice of a regular meeting, special**
5 **meeting, or executive session;**
6 **(2) taking final action outside a regular meeting or special**
7 **meeting;**
8 **(3) participating in a secret ballot during a meeting;**
9 **(4) discussing in an executive session subjects not eligible for**
10 **an executive session;**
11 **(5) failing to prepare a memorandum of a meeting required**
12 **by section 4 of this chapter; or**
13 **(6) participating in at least one (1) gathering of a series of**
14 **gatherings under section 3.1 of this chapter;**
15 **the individual, the public agency of which the individual is an**
16 **officer or employee, or the individual and agency are subject to a**
17 **civil penalty under subsection (c).**
18 **(c) The court may impose the following civil penalties against an**
19 **individual or a public agency:**
20 **(1) Not more than one hundred dollars (\$100) for the first**
21 **violation.**
22 **(2) Not more than five hundred dollars (\$500) for each**
23 **additional violation.**
24 **The court may impose a penalty upon an individual and an agency**
25 **in the same action. The penalty imposed under this section is in**
26 **addition to any other civil or criminal penalty imposed.**
27 **(d) A court shall distribute monthly to the auditor of state any**
28 **penalties collected under this section for deposit in the education**
29 **fund established by IC 5-14-4-14.**
30 **(e) An officer or employee of a public agency is personally liable**
31 **for a civil penalty imposed under this section. A civil penalty**
32 **imposed against a public agency shall be paid from the public**
33 **agency's budget.**
34 SECTION 4. IC 5-14-3-4, AS AMENDED BY P.L.94-2010,
35 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2011]: Sec. 4. (a) The following public records are excepted
37 from section 3 of this chapter and may not be disclosed by a public
38 agency, unless access to the records is specifically required by a state
39 or federal statute or is ordered by a court under the rules of discovery:
40 (1) Those declared confidential by state statute.
41 (2) Those declared confidential by rule adopted by a public
42 agency under specific authority to classify public records as

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1 confidential granted to the public agency by statute.

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

3 (4) Records containing trade secrets.

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

7 (6) Information concerning research, including actual research
8 documents, conducted under the auspices of a state educational
9 institution, including information:

10 (A) concerning any negotiations made with respect to the
11 research; and

12 (B) received from another party involved in the research.

13 (7) Grade transcripts and license examination scores obtained as
14 part of a licensure process.

15 (8) Those declared confidential by or under rules adopted by the
16 supreme court of Indiana.

17 (9) Patient medical records and charts created by a provider,
18 unless the patient gives written consent under IC 16-39 or as
19 provided under IC 16-41-8.

20 (10) Application information declared confidential by the board
21 of the Indiana economic development corporation under
22 IC 5-28-16.

23 (11) A photograph, a video recording, or an audio recording of an
24 autopsy, except as provided in IC 36-2-14-10.

25 (12) A Social Security number contained in the records of a
26 public agency.

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

30 (1) Investigatory records of law enforcement agencies. However,
31 certain law enforcement records must be made available for
32 inspection and copying as provided in section 5 of this chapter.

33 (2) The work product of an attorney representing, pursuant to
34 state employment or an appointment by a public agency:

35 (A) a public agency;

36 (B) the state; or

37 (C) an individual.

38 (3) Test questions, scoring keys, and other examination data used
39 in administering a licensing examination, examination for
40 employment, or academic examination before the examination is
41 given or if it is to be given again.

42 (4) Scores of tests if the person is identified by name and has not

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consented to the release of the person's scores.

(5) The following:

(A) Records relating to negotiations between the Indiana economic development corporation, the ports of Indiana, the Indiana state department of agriculture, the Indiana finance authority, an economic development commission, a local economic development organization (as defined in IC 5-28-11-2(3)), or a governing body of a political subdivision 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 Indiana economic development corporation, the ports of Indiana, the Indiana finance authority, an economic development commission, or a governing body of a political subdivision 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 Indiana economic development corporation 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;

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

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available

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to the affected employee or the employee's 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 record keeping 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 the donor's 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 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 medical advisory board regarding the ability of a driver

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1 to operate a motor vehicle safely. However, upon written request
 2 to the commissioner of the bureau of motor vehicles, the driver
 3 must be given copies of the driver's medical records and
 4 evaluations.

5 (18) School safety and security measures, plans, and systems,
 6 including emergency preparedness plans developed under 511
 7 IAC 6.1-2-2.5.

8 (19) A record or a part of a record, the public disclosure of which
 9 would have a reasonable likelihood of threatening public safety
 10 by exposing a vulnerability to terrorist attack. A record described
 11 under this subdivision includes:

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

15 (B) vulnerability assessments;

16 (C) risk planning documents;

17 (D) needs assessments;

18 (E) threat assessments;

19 (F) intelligence assessments;

20 (G) domestic preparedness strategies;

21 (H) the location of community drinking water wells and
 22 surface water intakes;

23 (I) the emergency contact information of emergency
 24 responders and volunteers;

25 (J) infrastructure records that disclose the configuration of
 26 critical systems such as communication, electrical, ventilation,
 27 water, and wastewater systems; and

28 (K) detailed drawings or specifications of structural elements,
 29 floor plans, and operating, utility, or security systems, whether
 30 in paper or electronic form, of any building or facility located
 31 on an airport (as defined in IC 8-21-1-1) that is owned,
 32 occupied, leased, or maintained by a public agency. A record
 33 described in this clause may not be released for public
 34 inspection by any public agency without the prior approval of
 35 the public agency that owns, occupies, leases, or maintains the
 36 airport. The public agency that owns, occupies, leases, or
 37 maintains the airport:

38 (i) is responsible for determining whether the public
 39 disclosure of a record or a part of a record has a reasonable
 40 likelihood of threatening public safety by exposing a
 41 vulnerability to terrorist attack; and

42 (ii) must identify a record described under item (i) and

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clearly mark the record as "confidential and not subject to public disclosure under IC 5-14-3-4(b)(19)(J) without approval of (insert name of submitting public agency)".

This subdivision does not apply to a record or portion of a record pertaining to a location or structure owned or protected by a public agency in the event that an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2 has occurred at that location or structure, unless release of the record or portion of the record would have a reasonable likelihood of threatening public safety by exposing a vulnerability of other locations or structures to terrorist attack.

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

- (A) Telephone number.
- (B) Address.
- (C) Social Security number.

(21) The following personal information about a complainant contained in records of a law enforcement agency:

- (A) Telephone number.
- (B) The complainant's address. However, if the complainant's address is the location of the suspected crime, infraction, accident, or complaint reported, the address shall be made available for public inspection and copying.

(22) Notwithstanding subdivision (8)(A), the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first employment of a law enforcement officer who is operating in an undercover capacity.

(23) Records requested by an offender that:

- (A) contain personal information relating to:
 - (i) a correctional officer (as defined in IC 5-10-10-1.5);
 - (ii) the victim of a crime; or
 - (iii) a family member of a correctional officer or the victim of a crime; or
- (B) concern or could affect the security of a jail or correctional facility.

(24) Information concerning an individual less than nineteen (19) years of age who participates in a conference, meeting, program, or activity conducted or supervised by a state educational institution. The information includes the following regarding the individual or the individual's parent or guardian:

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- (A) Name.
- (B) Address.
- (C) Telephone number.

(c) 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.

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

(e) Only the content of a public record may form the basis for the adoption by any public agency of a rule or procedure creating an exception from disclosure under this section.

(f) Except as provided by law, a public agency may not adopt a rule or procedure that creates an exception from disclosure under this section based upon whether a public record is stored or accessed using paper, electronic media, magnetic media, optical media, or other information storage technology.

(g) Except as provided by law, a public agency may not adopt a rule or procedure nor impose any costs or liabilities that impede or restrict the reproduction or dissemination of any public record.

- (h) Notwithstanding subsection (d) 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.

SECTION 5. IC 5-14-3-9, AS AMENDED BY P.L.22-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. (a) A denial of disclosure by a public agency occurs when the person making the request is physically present in the office of the agency, makes the request by telephone, or requests enhanced access to a document and:

- (1) the person designated by the public agency as being responsible for public records release decisions refuses to permit inspection and copying of a public record when a request has been made; or
 - (2) twenty-four (24) hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made;
- whichever occurs first.

(b) If a person requests by mail or by facsimile a copy or copies of a public record, a denial of disclosure does not occur until seven (7)

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1 days have elapsed from the date the public agency receives the request.
 2 (c) If a request is made orally, either in person or by telephone, a
 3 public agency may deny the request orally. However, if a request
 4 initially is made in writing, by facsimile, or through enhanced access,
 5 or if an oral request that has been denied is renewed in writing or by
 6 facsimile, a public agency may deny the request if:
 7 (1) the denial is in writing or by facsimile; and
 8 (2) the denial includes:
 9 (A) a statement of the specific exemption or exemptions
 10 authorizing the withholding of all or part of the public record;
 11 and
 12 (B) the name and the title or position of the person responsible
 13 for the denial.
 14 (d) This subsection applies to a board, a commission, a department,
 15 a division, a bureau, a committee, an agency, an office, an
 16 instrumentality, or an authority, by whatever name designated,
 17 exercising any part of the executive, administrative, judicial, or
 18 legislative power of the state. If an agency receives a request to inspect
 19 or copy a record that the agency considers to be excepted from
 20 disclosure under section 4(b)(19) of this chapter, the agency may
 21 consult with the counterterrorism and security council established by
 22 IC 10-19-8-1. If an agency denies the disclosure of a record or a part of
 23 a record under section 4(b)(19) of this chapter, the agency or the
 24 counterterrorism and security council shall provide a general
 25 description of the record being withheld and of how disclosure of the
 26 record would have a reasonable likelihood of threatening the public
 27 safety.
 28 (e) A person who has been denied the right to inspect or copy a
 29 public record by a public agency may file an action in the circuit or
 30 superior court of the county in which the denial occurred to compel the
 31 public agency to permit the person to inspect and copy the public
 32 record. Whenever an action is filed under this subsection, the public
 33 agency must notify each person who supplied any part of the public
 34 record at issue:
 35 (1) that a request for release of the public record has been denied;
 36 and
 37 (2) whether the denial was in compliance with an informal inquiry
 38 response or advisory opinion of the public access counselor.
 39 Such persons are entitled to intervene in any litigation that results from
 40 the denial. The person who has been denied the right to inspect or copy
 41 need not allege or prove any special damage different from that
 42 suffered by the public at large.

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1 (f) The court shall determine the matter de novo, with the burden of
2 proof on the public agency to sustain its denial. If the issue in de novo
3 review under this section is whether a public agency properly denied
4 access to a public record because the record is exempted under section
5 4(a) of this chapter, the public agency meets its burden of proof under
6 this subsection by establishing the content of the record with adequate
7 specificity and not by relying on a conclusory statement or affidavit.

8 (g) If the issue in a de novo review under this section is whether a
9 public agency properly denied access to a public record because the
10 record is exempted under section 4(b) of this chapter:

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

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

16 (B) establishing the content of the record with adequate
17 specificity and not by relying on a conclusory statement or
18 affidavit; and

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

22 (h) The court may review the public record in camera to determine
23 whether any part of it may be withheld under this chapter. **However,**
24 **if the complaint alleges that a public agency denied disclosure of a**
25 **public record by redacting information in the public record, the**
26 **court shall conduct an in camera inspection of the public record**
27 **without the information redacted.**

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

31 (1) the plaintiff substantially prevails; or

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

34 The plaintiff is not eligible for the awarding of attorney's fees, court
35 costs, and other reasonable expenses if the plaintiff filed the action
36 without first seeking and receiving an informal inquiry response or
37 advisory opinion from the public access counselor, unless the plaintiff
38 can show the filing of the action was necessary because the denial of
39 access to a public record under this chapter would prevent the plaintiff
40 from presenting that public record to a public agency preparing to act
41 on a matter of relevance to the public record whose disclosure was
42 denied.

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1 **(j) A court may assess a civil penalty under section 9.5 of this**
2 **chapter.**

3 ~~(j)~~ **(k) A court shall expedite the hearing of an action filed under this**
4 **section.**

5 SECTION 6. IC 5-14-3-9.5 IS ADDED TO THE INDIANA CODE
6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2011]: **Sec. 9.5. (a) As used in this section, "individual" means:**

- 8 **(1) an officer of a public agency; or**
- 9 **(2) a management level employee of a public agency.**

10 **(b) If an individual intentionally:**
11 **(1) denies or interferes with a person's request for inspection**
12 **or copying of a public record if:**

- 13 **(A) the person's request meets the requirements of this**
14 **chapter; and**
- 15 **(B) the record is subject to disclosure by law;**
- 16 **(2) charges a copying fee that exceeds the amount permitted**
17 **by this chapter; or**
- 18 **(3) discloses without authorization or fails to protect**
19 **information classified as confidential by state statute;**

20 **the individual, the public agency of which the individual is an**
21 **officer or employee, or the individual and agency are subject to a**
22 **civil penalty under subsection (c).**

23 **(c) The court may impose the following civil penalties against an**
24 **individual or a public agency:**

- 25 **(1) Not more than one hundred dollars (\$100) for the first**
26 **violation.**
- 27 **(2) Not more than five hundred dollars (\$500) for each**
28 **additional violation.**

29 **The court may impose a penalty upon an individual and an agency**
30 **in the same action. The penalty imposed under this section is in**
31 **addition to any other civil or criminal penalty imposed.**

32 **(d) A court shall distribute monthly to the auditor of state any**
33 **penalties collected under this section for deposit in the education**
34 **fund established by IC 5-14-4-14.**

35 **(e) An officer or employee of a public agency is personally liable**
36 **for a civil penalty imposed under this section. A civil penalty**
37 **imposed against a public agency shall be paid from the public**
38 **agency's budget.**

39 SECTION 7. IC 5-14-4-14 IS ADDED TO THE INDIANA CODE
40 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
41 1, 2011]: **Sec. 14. (a) An education fund is established to fund a**
42 **program under section 10(1) of this chapter.**

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(b) The fund consists of the following:

- (1) Civil penalties collected under IC 5-14-1.5-7.5 and IC 5-14-3-9.5.**
- (2) Money appropriated by the general assembly.**
- (3) Grants, gifts, contributions, and money received from any other source.**

(c) The treasurer of state shall administer the fund. The following may be paid from money in the fund:

- (1) Expenses of administering the fund.**
- (2) Nonrecurring administrative expenses incurred to carry out the purposes of this section.**

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

SECTION 8. IC 5-14-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. Except as provided in section 10 of this chapter, the counselor shall issue an advisory opinion on the complaint not later than thirty (30) days after:

- (1) the complaint is filed; or**
- (2) an in camera inspection is completed under section 10.5 of this chapter.**

SECTION 9. IC 5-14-5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) If the counselor determines that a complaint has priority, the counselor shall issue an advisory opinion on the complaint not later than seven (7) days after:

- (1) the complaint is filed; or**
- (2) an in camera inspection is completed under section 10.5 of this chapter.**

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

SECTION 10. IC 5-14-5-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 10.5. (a) Except as provided in subsection (e), if a formal complaint is filed alleging that a public agency denied disclosure of a public record by redacting information in the public record, the counselor shall conduct an in camera inspection of the public record without the information redacted.**

(b) Both parties to the dispute shall be notified of the in camera

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1 inspection. However, neither the parties nor their representatives
2 may be present during the inspection.

3 (c) The counselor shall provide a written notice to the public
4 agency that includes the following:

5 (1) A statement of the date, time, place, and nature of the
6 inspection.

7 (2) The documents to be inspected.

8 (3) The manner in which the documents must be presented to
9 the counselor for inspection.

10 (4) Any other information the counselor considers relevant.

11 (d) Except as provided in subsection (e), the public agency shall:

12 (1) deliver the documents specified under subsection (c)(2) to
13 the counselor for inspection in a sealed envelope; and

14 (2) deliver to the counselor and the complainant:

15 (A) a certification signed by the custodian of the
16 documents stipulating that the copies of the documents
17 delivered to the counselor are true and complete copies of
18 the documents in question with no alterations or
19 redactions; and

20 (B) an in camera inspection index that:

21 (i) gives the title or name of each document, or any part
22 of the document, claimed to be exempt from disclosure;

23 (ii) provides a description of each document that is
24 general enough to explain the exemptions without
25 compromising the alleged reason for the exemption from
26 disclosure;

27 (iii) lists the reasons that each document, or any part of
28 the document, is alleged to be exempt from disclosure;
29 and

30 (iv) fully explains why the alleged reason for exemption
31 from disclosure applies to each document.

32 (e) If the redacted information in a public record is the work
33 product of an attorney (as defined in IC 5-14-3-2(q)), the counselor
34 may not inspect the public record with the redaction removed. If
35 the notice provided by the counselor under subsection (c) requests
36 disclosure of redacted information that is the work product of an
37 attorney, the public agency shall do the following:

38 (1) Deliver the documents specified under subsection (c)(2) to
39 the counselor, with the information redacted.

40 (2) Deliver an index to the counselor and the complainant
41 that:

42 (A) gives the title or name of each document, or any part

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1 of the document, claimed to be exempt from disclosure on
 2 the basis that the document or any part of the document is
 3 the work product of an attorney;
 4 (B) provides a description of each document that is general
 5 enough to explain the exemption without compromising the
 6 alleged reason for the exemption from disclosure;
 7 (C) lists the reasons that each document, or any part of the
 8 document, is alleged to be exempt from disclosure; and
 9 (D) fully explains why the alleged reason for exemption
 10 from disclosure applies to each document.

11 (f) The counselor or anyone else authorized to inspect the
 12 documents may not make copies of the documents or take notes
 13 making reference to specific information contained in the
 14 documents. Upon completion of an in camera inspection, the
 15 counselor shall seal the documents and return them to the
 16 custodian of the documents.

17 (g) An advisory opinion issued on the complaint may not discuss
 18 the specific contents of the documents and may refer only to the
 19 assigned reference number or the general descriptions of the
 20 documents listed in the in camera inspection index.

21 (h) This subsection applies to a public record that contains
 22 redacted information that is the work product of an attorney (as
 23 defined in IC 5-14-3-2(q)). This section does not prohibit a court
 24 from conducting an in camera inspection of the public record
 25 under IC 5-14-3-9(h) and viewing the information with the
 26 redaction removed.

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