
SENATE BILL No. 369

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-14-3.

Synopsis: Public records. Allows a public agency to withhold from public disclosure records received by the agency from the federal government that are confidential under the federal Freedom of Information Act (FOIA) or designated by an agency of the federal government as Sensitive But Unclassified Information. Allows a public agency to refuse to confirm or deny the existence of investigatory records of law enforcement agencies or Sensitive But Unclassified Information received from the federal government, if the fact of the existence of the information would: (1) impede or compromise an ongoing law enforcement investigation or endanger an individual; or (2) reveal information that would have a reasonable likelihood of threatening public safety. Allows a public agency to refuse to confirm or deny the existence of a record the disclosure of which would expose vulnerability to terrorist attack, if the fact of the record's existence or nonexistence would reveal information that would have a reasonable likelihood of threatening public safety. Allows a person to file an action in court to appeal an agency's refusal to confirm or deny the existence of a record. Provides that if a record is requested from a public agency other than the agency that created the record, the public agency that receives the request may: (1) refer the record to the creating agency for that agency's review and recommendation as to the confidentiality of the information; (2) transfer the records request to the local or state public agency that created the record for a direct response; or (3) if the originating agency is an agency of the federal government, direct the person to request the information directly from the federal government under the FOIA.

Effective: Upon passage.

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January 8, 2013, read first time and referred to Committee on Homeland Security, Transportation and Veterans Affairs.



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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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SENATE BILL No. 369



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

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

- 1 SECTION 1. IC 5-14-3-4, AS AMENDED BY P.L.134-2012,
- 2 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 UPON PASSAGE]: Sec. 4. (a) The following public records are
- 4 excepted from section 3 of this chapter and may not be disclosed by a
- 5 public agency, unless access to the records is specifically required by
- 6 a state or federal statute or is ordered by a court under the rules of
- 7 discovery:
- 8 (1) Those declared confidential by state statute.
- 9 (2) Those declared confidential by rule adopted by a public
- 10 agency under specific authority to classify public records as
- 11 confidential granted to the public agency by statute.
- 12 (3) Those required to be kept confidential by federal law.
- 13 (4) Records containing trade secrets.
- 14 (5) Confidential financial information obtained, upon request,
- 15 from a person. However, this does not include information that is
- 16 filed with or received by a public agency pursuant to state statute.
- 17 (6) Information concerning research, including actual research



1 documents, conducted under the auspices of a state educational
2 institution, including information:

3 (A) concerning any negotiations made with respect to the
4 research; and

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

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

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

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

13 (10) Application information declared confidential by the board
14 of the Indiana economic development corporation under
15 IC 5-28-16.

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

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

20 (13) The following information that is part of a foreclosure action
21 subject to IC 32-30-10.5:

22 (A) Contact information for a debtor, as described in
23 IC 32-30-10.5-8(d)(2)(B).

24 (B) Any document submitted to the court as part of the debtor's
25 loss mitigation package under IC 32-30-10.5-10(a)(3).

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

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

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

34 (A) a public agency;

35 (B) the state; or

36 (C) an individual.

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

41 (4) Scores of tests if the person is identified by name and has not
42 consented to the release of the person's scores.

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- (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 to the affected employee or the employee's representative. This

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- 1 subdivision does not apply to disclosure of personnel information
 2 generally on all employees or for groups of employees without the
 3 request being particularized by employee name.
 4 (9) Minutes or records of hospital medical staff meetings.
 5 (10) Administrative or technical information that would
 6 jeopardize a record keeping or security system.
 7 (11) Computer programs, computer codes, computer filing
 8 systems, and other software that are owned by the public agency
 9 or entrusted to it and portions of electronic maps entrusted to a
 10 public agency by a utility.
 11 (12) Records specifically prepared for discussion or developed
 12 during discussion in an executive session under IC 5-14-1.5-6.1.
 13 However, this subdivision does not apply to that information
 14 required to be available for inspection and copying under
 15 subdivision (8).
 16 (13) The work product of the legislative services agency under
 17 personnel rules approved by the legislative council.
 18 (14) The work product of individual members and the partisan
 19 staffs of the general assembly.
 20 (15) The identity of a donor of a gift made to a public agency if:
 21 (A) the donor requires nondisclosure of the donor's identity as
 22 a condition of making the gift; or
 23 (B) after the gift is made, the donor or a member of the donor's
 24 family requests nondisclosure.
 25 (16) Library or archival records:
 26 (A) which can be used to identify any library patron; or
 27 (B) deposited with or acquired by a library upon a condition
 28 that the records be disclosed only:
 29 (i) to qualified researchers;
 30 (ii) after the passing of a period of years that is specified in
 31 the documents under which the deposit or acquisition is
 32 made; or
 33 (iii) after the death of persons specified at the time of the
 34 acquisition or deposit.
 35 However, nothing in this subdivision shall limit or affect contracts
 36 entered into by the Indiana state library pursuant to IC 4-1-6-8.
 37 (17) The identity of any person who contacts the bureau of motor
 38 vehicles concerning the ability of a driver to operate a motor
 39 vehicle safely and the medical records and evaluations made by
 40 the bureau of motor vehicles staff or members of the driver
 41 licensing medical advisory board regarding the ability of a driver
 42 to operate a motor vehicle safely. However, upon written request

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to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations.

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

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

- (A) a record assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2;
- (B) vulnerability assessments;
- (C) risk planning documents;
- (D) needs assessments;
- (E) threat assessments;
- (F) intelligence assessments;
- (G) domestic preparedness strategies;
- (H) the location of community drinking water wells and surface water intakes;
- (I) the emergency contact information of emergency responders and volunteers;
- (J) infrastructure records that disclose the configuration of critical systems such as communication, electrical, ventilation, water, and wastewater systems; and
- (K) detailed drawings or specifications of structural elements, floor plans, and operating, utility, or security systems, whether in paper or electronic form, of any building or facility located on an airport (as defined in IC 8-21-1-1) that is owned, occupied, leased, or maintained by a public agency. A record described in this clause may not be released for public inspection by any public agency without the prior approval of the public agency that owns, occupies, leases, or maintains the airport. The public agency that owns, occupies, leases, or maintains the airport:
 - (i) is responsible for determining whether the public disclosure of a record or a part of a record has a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack; and
 - (ii) must identify a record described under item (i) and clearly mark the record as "confidential and not subject to

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- 1 public disclosure under IC 5-14-3-4(b)(19)(J) without
 2 approval of (insert name of submitting public agency)".
 3 This subdivision does not apply to a record or portion of a record
 4 pertaining to a location or structure owned or protected by a
 5 public agency in the event that an act of terrorism under
 6 IC 35-47-12-1 or an act of agricultural terrorism under
 7 IC 35-47-12-2 has occurred at that location or structure, unless
 8 release of the record or portion of the record would have a
 9 reasonable likelihood of threatening public safety by exposing a
 10 vulnerability of other locations or structures to terrorist attack.
 11 (20) The following personal information concerning a customer
 12 of a municipally owned utility (as defined in IC 8-1-2-1):
 13 (A) Telephone number.
 14 (B) Address.
 15 (C) Social Security number.
 16 (21) The following personal information about a complainant
 17 contained in records of a law enforcement agency:
 18 (A) Telephone number.
 19 (B) The complainant's address. However, if the complainant's
 20 address is the location of the suspected crime, infraction,
 21 accident, or complaint reported, the address shall be made
 22 available for public inspection and copying.
 23 (22) Notwithstanding subdivision (8)(A), the name,
 24 compensation, job title, business address, business telephone
 25 number, job description, education and training background,
 26 previous work experience, or dates of first employment of a law
 27 enforcement officer who is operating in an undercover capacity.
 28 (23) Records requested by an offender that:
 29 (A) contain personal information relating to:
 30 (i) a correctional officer (as defined in IC 5-10-10-1.5);
 31 (ii) a law enforcement officer (as defined in
 32 IC 35-31.5-2-185);
 33 (iii) a judge (as defined in IC 33-38-12-3);
 34 (iv) the victim of a crime; or
 35 (v) a family member of a correctional officer, law
 36 enforcement officer (as defined in IC 35-31.5-2-185), judge
 37 (as defined in IC 33-38-12-3), or victim of a crime; or
 38 (B) concern or could affect the security of a jail or correctional
 39 facility.
 40 (24) Information concerning an individual less than eighteen (18)
 41 years of age who participates in a conference, meeting, program,
 42 or activity conducted or supervised by a state educational

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1 institution, including the following information regarding the
2 individual or the individual's parent or guardian:

- 3 (A) Name.
4 (B) Address.
5 (C) Telephone number.
6 (D) Electronic mail account address.

7 **(25) Information from an agency of the federal government**
8 **that is:**

- 9 **(A) exempt from disclosure to the public under the**
10 **Freedom of Information Act under 5 U.S.C. 552; or**
11 **(B) designated by an agency of the federal government as**
12 **Sensitive But Unclassified Information, including**
13 **information designated as:**

- 14 **(i) For Official Use Only;**
15 **(ii) Law Enforcement Sensitive;**
16 **(iii) Sensitive Homeland Security Information;**
17 **(iv) Sensitive Security Information;**
18 **(v) Protected Critical Infrastructure Information; or**
19 **(vi) Chemical-terrorism Vulnerability Information.**

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

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

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

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

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

38 (h) Notwithstanding subsection (d) and section 7 of this chapter:

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

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1 SECTION 2. IC 5-14-3-4.2 IS ADDED TO THE INDIANA CODE
 2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 3 UPON PASSAGE]: **Sec. 4.2. This section applies if a requested
 4 public record was created by a public agency other than the agency
 5 from which the record is requested. The public agency that
 6 receives the request may do any of the following:**

7 (1) Refer the requested record to the public agency that
 8 created the record for that agency's review and
 9 recommendation regarding the record's confidentiality.

10 (2) Transfer the request for the record to the appropriate
 11 local or state public agency that created the record and notify
 12 the person making the request of the transfer. The agency
 13 that created the record shall treat the transferred request as
 14 a new request addressed to the agency, and the response times
 15 in section 9 of this chapter begin to run when the transferred
 16 request is received by the agency.

17 (3) If the agency that created the record is an agency of the
 18 federal government, the agency may direct the person to
 19 request the information directly from the federal government
 20 under the Freedom of Information Act, 5 U.S.C. 552.

21 **An action taken by a public agency under this section may not be
 22 considered a denial of disclosure under section 9 of this chapter.**

23 SECTION 3. IC 5-14-3-4.4 IS ADDED TO THE INDIANA CODE
 24 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 25 UPON PASSAGE]: **Sec. 4.4. (a) This section applies to a request for
 26 a record that the public agency considers to be excepted from
 27 disclosure under section 4(b)(1) or 4(b)(25) of this chapter. The
 28 public agency may do any of the following:**

29 (1) Deny disclosure of the record or a part of the record. The
 30 person requesting the information may appeal the denial
 31 under section 9 of this chapter.

32 (2) Refuse to confirm or deny the existence of the record,
 33 regardless of whether the record exists or does not exist, if the
 34 fact of the record's existence or nonexistence would reveal
 35 information that would:

36 (A) impede or compromise an ongoing law enforcement
 37 investigation or result in danger to an individual's safety,
 38 including the safety of a law enforcement officer or a
 39 confidential source; or

40 (B) reveal information that would have a reasonable
 41 likelihood of threatening public safety.

42 (3) If the record or information did not originate with the

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1 agency, take an action under section 4.2 of this chapter.

2 (b) This subsection applies to a board, a commission, a
3 department, a division, a bureau, a committee, an agency, an office,
4 an instrumentality, or an authority, by whatever name designated,
5 exercising any part of the executive, administrative, judicial, or
6 legislative power of the state. This subsection applies to a request
7 for a record that the agency considers to be excepted from
8 disclosure under section 4(b)(19) of this chapter. The agency may
9 consult with the counterterrorism and security council established
10 by IC 10-19-8-1 in formulating a response. The agency may do any
11 of the following:

12 (1) Deny disclosure of the record or a part of the record. The
13 agency or the counterterrorism and security council shall
14 provide a general description of the record being withheld
15 and of how disclosure of the record would have a reasonable
16 likelihood of threatening public safety by exposing a
17 vulnerability to terrorist attack. The person requesting the
18 information may appeal the denial under section 9 of this
19 chapter.

20 (2) Refuse to confirm or deny the existence of the record
21 regardless of whether the record exists or does not exist, if the
22 fact of the record's existence or nonexistence would reveal
23 information that would have a reasonable likelihood of
24 threatening public safety.

25 (3) If the record or information did not originate with the
26 agency, take an action under section 4.2 of this chapter.

27 (c) A person who has received a refusal from an agency to
28 confirm or deny the existence of a record may file an action in the
29 circuit or superior court of the county in which the response was
30 received:

31 (1) to compel the public agency to confirm whether the record
32 exists or does not exist; and

33 (2) if the public agency confirms that the record exists, to
34 compel the agency to permit the person to inspect and copy
35 the record.

36 (d) The court shall determine the matter de novo, with the
37 burden of proof on the public agency to sustain its refusal to
38 confirm or deny the existence of the record. The public agency
39 meets its burden of proof by filing a public affidavit with the court
40 that provides with reasonable specificity of detail, and not simply
41 conclusory statements, the basis of the agency's claim that it cannot
42 be required to confirm or deny the existence of the requested

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1 record. If the public agency meets its burden of proof, the burden
 2 of proof shifts to the person requesting access to the record. The
 3 person requesting access to the record meets the person's burden
 4 of proof by proving any of the following:

5 (1) The agency's justifications for not confirming the existence
 6 of the record contradict other evidence in the trial record.

7 (2) The agency is withholding the record in bad faith.

8 (3) An official with authority to speak for the agency has
 9 acknowledged to the public in a documented disclosure that
 10 the record exists. The person requesting the record must
 11 prove that the information requested:

12 (A) is as specific as the information previously disclosed;
 13 and

14 (B) matches the previously disclosed information.

15 (e) Either party may make an interlocutory appeal of the trial
 16 court's determination on whether the agency's refusal to confirm
 17 or deny the existence of the record was proper.

18 (f) If the court, after the disposition of any interlocutory
 19 appeals, finds that the agency's refusal to confirm or deny was
 20 improper, the court shall order the agency to disclose whether the
 21 record exists or does not exist. If the record exists and the agency
 22 claims that the record is exempt from disclosure under this
 23 chapter, the court may review the public record in camera to
 24 determine whether any part of the record may be withheld.

25 (g) In an action filed under this section, the court shall award
 26 reasonable attorney's fees, court costs, and other reasonable
 27 expenses of litigation to the prevailing party if:

28 (1) the plaintiff substantially prevails; or

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

31 A plaintiff is eligible for the awarding of attorney's fees, court
 32 costs, and other reasonable expenses regardless of whether the
 33 plaintiff filed the action without first seeking and receiving an
 34 informal inquiry response or advisory opinion from the public
 35 access counselor.

36 (h) A court that hears an action under this section may not
 37 assess a civil penalty under section 9.5 of this chapter in connection
 38 with the action.

39 SECTION 4. IC 5-14-3-9, AS AMENDED BY P.L.134-2012,
 40 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 UPON PASSAGE]: Sec. 9. (a) This section does not apply to a
 42 request for information under section 4.4 of this chapter.

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1 (a) ~~(b)~~ A denial of disclosure by a public agency occurs when the
2 person making the request is physically present in the office of the
3 agency, makes the request by telephone, or requests enhanced access
4 to a document and:

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

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

12 whichever occurs first.

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

16 ~~(c)~~ (d) If a request is made orally, either in person or by telephone,
17 a public agency may deny the request orally. However, if a request
18 initially is made in writing, by facsimile, or through enhanced access,
19 or if an oral request that has been denied is renewed in writing or by
20 facsimile, a public agency may deny the request if:

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

22 (2) the denial includes:

23 (A) a statement of the specific exemption or exemptions
24 authorizing the withholding of all or part of the public record;
25 and

26 (B) the name and the title or position of the person responsible
27 for the denial.

28 ~~(d)~~ This subsection applies to a board; a commission; a department;
29 a division; a bureau; a committee; an agency; an office; an
30 instrumentality; or an authority, by whatever name designated,
31 exercising any part of the executive, administrative, judicial, or
32 legislative power of the state. If an agency receives a request to inspect
33 or copy a record that the agency considers to be excepted from
34 disclosure under section 4(b)(19) of this chapter, the agency may
35 consult with the counterterrorism and security council established by
36 IC 10-19-8-1. If an agency denies the disclosure of a record or a part of
37 a record under section 4(b)(19) of this chapter, the agency or the
38 counterterrorism and security council shall provide a general
39 description of the record being withheld and of how disclosure of the
40 record would have a reasonable likelihood of threatening the public
41 safety.

42 (e) A person who has been denied the right to inspect or copy a

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1 public record by a public agency may file an action in the circuit or
 2 superior court of the county in which the denial occurred to compel the
 3 public agency to permit the person to inspect and copy the public
 4 record. Whenever an action is filed under this subsection, the public
 5 agency must notify each person who supplied any part of the public
 6 record at issue:

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

9 (2) whether the denial was in compliance with an informal inquiry
 10 response or advisory opinion of the public access counselor.

11 Such persons are entitled to intervene in any litigation that results from
 12 the denial. The person who has been denied the right to inspect or copy
 13 need not allege or prove any special damage different from that
 14 suffered by the public at large.

15 (f) The court shall determine the matter de novo, with the burden of
 16 proof on the public agency to sustain its denial. If the issue in de novo
 17 review under this section is whether a public agency properly denied
 18 access to a public record because the record is exempted under section
 19 4(a) of this chapter, the public agency meets its burden of proof under
 20 this subsection by establishing the content of the record with adequate
 21 specificity and not by relying on a conclusory statement or affidavit.

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

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

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

30 (B) establishing the content of the record with adequate
 31 specificity and not by relying on a conclusory statement or
 32 affidavit; and

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

36 (h) The court may review the public record in camera to determine
 37 whether any part of it may be withheld under this chapter. However, if
 38 the complaint alleges that a public agency denied disclosure of a public
 39 record by redacting information in the public record, the court shall
 40 conduct an in camera inspection of the public record with the redacted
 41 information included.

42 (i) In any action filed under this section, a court shall award

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1 reasonable attorney's fees, court costs, and other reasonable expenses
2 of litigation to the prevailing party if:

- 3 (1) the plaintiff substantially prevails; or
- 4 (2) the defendant substantially prevails and the court finds the
5 action was frivolous or vexatious.

6 The plaintiff is not eligible for the awarding of attorney's fees, court
7 costs, and other reasonable expenses if the plaintiff filed the action
8 without first seeking and receiving an informal inquiry response or
9 advisory opinion from the public access counselor, unless the plaintiff
10 can show the filing of the action was necessary because the denial of
11 access to a public record under this chapter would prevent the plaintiff
12 from presenting that public record to a public agency preparing to act
13 on a matter of relevance to the public record whose disclosure was
14 denied.

15 (j) A court may assess a civil penalty under section 9.5 of this
16 chapter only if the plaintiff obtained an advisory opinion from the
17 public access counselor before filing an action under this section as set
18 forth in section 9.5 of this chapter.

19 (k) A court shall expedite the hearing of an action filed under this
20 section.

21 **SECTION 5. An emergency is declared for this act.**

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