



January 14, 2016

HOUSE BILL No. 1019

DIGEST OF HB 1019 (Updated January 12, 2016 12:59 pm - DI 87)

Citations Affected: IC 5-14; IC 35-31.5; IC 35-46.

Synopsis: Law enforcement recordings. Restricts public records requests for law enforcement recordings by: (1) requiring only recordings depicting a law enforcement activity to be produced for inspection or copying; and (2) restricting the persons who must be allowed to inspect a law enforcement recording. Provides that a person may petition to obtain a court order to inspect or copy a law enforcement recording if the person demonstrates on the facts of the particular case that: (1) the public interest will be served by allowing access to the recording; (2) access to or dissemination of the recording does not create a significant risk of substantial harm to any person or to the general public; and (3) the release of the recording does not create a prejudicial effect on ongoing civil or criminal proceedings. Provides that if a law enforcement recording depicts an airport building or facility, the public agency that owns, occupies, leases, or maintains the airport on which the building or facility is located must approve the disclosure of the recording. Specifies information that must be obscured from a law enforcement recording before it is disclosed. Establishes the length of time that a law enforcement recording must be retained by a public agency. Exempts a law enforcement recording from a criminal statute prohibiting placement of a camera on the private property of another person. (The introduced version of this bill was prepared by the interim study committee on government.)

Effective: July 1, 2016.

Mahan, Price, Negele, DeLaney

January 5, 2016, read first time and referred to Committee on Government and Regulatory Reform.
January 13, 2016, reported — Do Pass.

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January 14, 2016

Second Regular Session of the 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1019

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 5-14-3-2, AS AMENDED BY P.L.248-2013,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 2. (a) The definitions set forth in this section apply
4 throughout this chapter.
5 (b) "Copy" includes transcribing by handwriting, photocopying,
6 xerography, duplicating machine, duplicating electronically stored data
7 onto a disk, tape, drum, or any other medium of electronic data storage,
8 and reproducing by any other means.
9 (c) "Criminal intelligence information" means data that has been
10 evaluated to determine that the data is relevant to:
11 (1) the identification of; and
12 (2) the criminal activity engaged in by;
13 an individual who or organization that is reasonably suspected of
14 involvement in criminal activity.
15 (d) "Direct cost" means one hundred five percent (105%) of the sum
16 of the cost of:
17 (1) the initial development of a program, if any;

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- 1 (2) the labor required to retrieve electronically stored data; and
 2 (3) any medium used for electronic output;
 3 for providing a duplicate of electronically stored data onto a disk, tape,
 4 drum, or other medium of electronic data retrieval under section 8(g)
 5 of this chapter, or for reprogramming a computer system under section
 6 6(c) of this chapter.
- 7 (e) "Electronic map" means copyrighted data provided by a public
 8 agency from an electronic geographic information system.
- 9 (f) "Enhanced access" means the inspection of a public record by a
 10 person other than a governmental entity and that:
 11 (1) is by means of an electronic device other than an electronic
 12 device provided by a public agency in the office of the public
 13 agency; or
 14 (2) requires the compilation or creation of a list or report that does
 15 not result in the permanent electronic storage of the information.
- 16 (g) "Facsimile machine" means a machine that electronically
 17 transmits exact images through connection with a telephone network.
- 18 (h) "Inspect" includes the right to do the following:
 19 (1) Manually transcribe and make notes, abstracts, or memoranda.
 20 (2) In the case of tape recordings or other aural public records, to
 21 listen and manually transcribe or duplicate, or make notes,
 22 abstracts, or other memoranda from them.
 23 (3) In the case of public records available:
 24 (A) by enhanced access under section 3.5 of this chapter; or
 25 (B) to a governmental entity under section 3(c)(2) of this
 26 chapter;
 27 to examine and copy the public records by use of an electronic
 28 device.
 29 (4) In the case of electronically stored data, to manually transcribe
 30 and make notes, abstracts, or memoranda or to duplicate the data
 31 onto a disk, tape, drum, or any other medium of electronic
 32 storage.
- 33 (i) "Investigatory record" means information compiled in the course
 34 of the investigation of a crime.
- 35 (j) "Law enforcement activity" means:
 36 (1) a traffic stop;
 37 (2) a pedestrian stop;
 38 (3) an arrest;
 39 (4) a search;
 40 (5) an investigation;
 41 (6) a pursuit;
 42 (7) crowd control;



1 **(8) traffic control; or**

2 **(9) any other instance in which a law enforcement officer is**
 3 **enforcing the law.**

4 **The term does not include an administrative activity, including the**
 5 **completion of paperwork related to a law enforcement activity.**

6 **(k) "Law enforcement recording" means an audio, visual, or**
 7 **audiovisual recording of a law enforcement activity captured by a**
 8 **camera or other device that is:**

9 **(1) provided to or used by a law enforcement officer in the**
 10 **scope of the officer's duties; and**

11 **(2) designed to be worn by a law enforcement officer or**
 12 **attached to the vehicle or transportation of a law enforcement**
 13 **officer.**

14 ~~(j)~~ **(l) "Offender" means a person confined in a penal institution as**
 15 **the result of the conviction for a crime.**

16 ~~(k)~~ **(m) "Patient" has the meaning set out in IC 16-18-2-272(d).**

17 ~~(h)~~ **(n) "Person" means an individual, a corporation, a limited**
 18 **liability company, a partnership, an unincorporated association, or a**
 19 **governmental entity.**

20 ~~(m)~~ **(o) "Provider" has the meaning set out in IC 16-18-2-295(b) and**
 21 **includes employees of the state department of health or local boards of**
 22 **health who create patient records at the request of another provider or**
 23 **who are social workers and create records concerning the family**
 24 **background of children who may need assistance.**

25 ~~(n)~~ **(p) "Public agency", except as provided in section 2.1 of this**
 26 **chapter, means the following:**

27 **(1) Any board, commission, department, division, bureau,**
 28 **committee, agency, office, instrumentality, or authority, by**
 29 **whatever name designated, exercising any part of the executive,**
 30 **administrative, judicial, or legislative power of the state.**

31 **(2) Any:**

32 **(A) county, township, school corporation, city, or town, or any**
 33 **board, commission, department, division, bureau, committee,**
 34 **office, instrumentality, or authority of any county, township,**
 35 **school corporation, city, or town;**

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

37 **(C) other entity, or any office thereof, by whatever name**
 38 **designated, exercising in a limited geographical area the**
 39 **executive, administrative, judicial, or legislative power of the**
 40 **state or a delegated local governmental power.**

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

42 **(A) budget review by either the department of local**



- 1 government finance or the governing body of a county, city,
 2 town, township, or school corporation; or
 3 (B) an audit by the state board of accounts that is required by
 4 statute, rule, or regulation.
- 5 (4) Any building corporation of a political subdivision that issues
 6 bonds for the purpose of constructing public facilities.
- 7 (5) Any advisory commission, committee, or body created by
 8 statute, ordinance, or executive order to advise the governing
 9 body of a public agency, except medical staffs or the committees
 10 of any such staff.
- 11 (6) Any law enforcement agency, which means an agency or a
 12 department of any level of government that engages in the
 13 investigation, apprehension, arrest, or prosecution of alleged
 14 criminal offenders, such as the state police department, the police
 15 or sheriff's department of a political subdivision, prosecuting
 16 attorneys, members of the excise police division of the alcohol
 17 and tobacco commission, conservation officers of the department
 18 of natural resources, gaming agents of the Indiana gaming
 19 commission, gaming control officers of the Indiana gaming
 20 commission, and the security division of the state lottery
 21 commission.
- 22 (7) Any license branch staffed by employees of the bureau of
 23 motor vehicles commission under IC 9-16.
- 24 (8) The state lottery commission established by IC 4-30-3-1,
 25 including any department, division, or office of the commission.
- 26 (9) The Indiana gaming commission established under IC 4-33,
 27 including any department, division, or office of the commission.
- 28 (10) The Indiana horse racing commission established by IC 4-31,
 29 including any department, division, or office of the commission.
- 30 ~~(q)~~ (q) "Public record" means any writing, paper, report, study, map,
 31 photograph, book, card, tape recording, or other material that is
 32 created, received, retained, maintained, or filed by or with a public
 33 agency and which is generated on paper, paper substitutes,
 34 photographic media, chemically based media, magnetic or machine
 35 readable media, electronically stored data, or any other material,
 36 regardless of form or characteristics.
- 37 ~~(r)~~ (r) "Standard-sized documents" includes all documents that can
 38 be mechanically reproduced (without mechanical reduction) on paper
 39 sized eight and one-half (8 1/2) inches by eleven (11) inches or eight
 40 and one-half (8 1/2) inches by fourteen (14) inches.
- 41 ~~(s)~~ (s) "Trade secret" has the meaning set forth in IC 24-2-3-2.
- 42 ~~(t)~~ (t) "Work product of an attorney" means information compiled



1 by an attorney in reasonable anticipation of litigation. The term
2 includes the attorney's:

- 3 (1) notes and statements taken during interviews of prospective
4 witnesses; and
5 (2) legal research or records, correspondence, reports, or
6 memoranda to the extent that each contains the attorney's
7 opinions, theories, or conclusions.

8 This definition does not restrict the application of any exception under
9 section 4 of this chapter.

10 SECTION 2. IC 5-14-3-3, AS AMENDED BY P.L.134-2012,
11 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2016]: Sec. 3. (a) Any person may inspect and copy the public
13 records of any public agency during the regular business hours of the
14 agency, except as provided in section 4 of this chapter. A request for
15 inspection or copying must:

- 16 (1) identify with reasonable particularity the record being
17 requested; and
18 (2) be, at the discretion of the agency, in writing on or in a form
19 provided by the agency.

20 No request may be denied because the person making the request
21 refuses to state the purpose of the request, unless such condition is
22 required by other applicable statute. **If a request is for inspection or
23 copying of a law enforcement recording, the request must provide
24 the information required under subsection (i).**

25 (b) A public agency may not deny or interfere with the exercise of
26 the right stated in subsection (a). Within a reasonable time after the
27 request is received by the agency, the public agency shall either:

- 28 (1) provide the requested copies to the person making the request;
29 or
30 (2) allow the person to make copies:
31 (A) on the agency's equipment; or
32 (B) on the person's own equipment.

33 (c) Notwithstanding subsections (a) and (b), a public agency may or
34 may not do the following:

- 35 (1) In accordance with a contract described in section 3.5 of this
36 chapter, permit a person to inspect and copy through the use of
37 enhanced access public records containing information owned by
38 or entrusted to the public agency.
39 (2) Permit a governmental entity to use an electronic device to
40 inspect and copy public records containing information owned by
41 or entrusted to the public agency.

42 (d) Except as provided in subsection (e), a public agency that



1 maintains or contracts for the maintenance of public records in an
2 electronic data storage system shall make reasonable efforts to provide
3 to a person making a request a copy of all disclosable data contained
4 in the records on paper, disk, tape, drum, or any other method of
5 electronic retrieval if the medium requested is compatible with the
6 agency's data storage system. This subsection does not apply to an
7 electronic map.

8 (e) A state agency may adopt a rule under IC 4-22-2, and a political
9 subdivision may enact an ordinance, prescribing the conditions under
10 which a person who receives information on disk or tape under
11 subsection (d) may or may not use the information for commercial
12 purposes, including to sell, advertise, or solicit the purchase of
13 merchandise, goods, or services, or sell, loan, give away, or otherwise
14 deliver the information obtained by the request to any other person for
15 these purposes. Use of information received under subsection (d) in
16 connection with the preparation or publication of news, for nonprofit
17 activities, or for academic research is not prohibited. A person who
18 uses information in a manner contrary to a rule or ordinance adopted
19 under this subsection may be prohibited by the state agency or political
20 subdivision from obtaining a copy or any further data under subsection
21 (d).

22 (f) Notwithstanding the other provisions of this section, a public
23 agency is not required to create or provide copies of lists of names and
24 addresses (including electronic mail account addresses) unless the
25 public agency is required to publish such lists and disseminate them to
26 the public under a statute. However, if a public agency has created a
27 list of names and addresses (excluding electronic mail account
28 addresses), it must permit a person to inspect and make memoranda
29 abstracts from the list unless access to the list is prohibited by law. The
30 lists of names and addresses (including electronic mail account
31 addresses) described in subdivisions (1) through (3) may not be
32 disclosed by public agencies to any individual or entity for political
33 purposes and may not be used by any individual or entity for political
34 purposes. In addition, the lists of names and addresses (including
35 electronic mail account addresses) described in subdivisions (1)
36 through (3) may not be disclosed by public agencies to commercial
37 entities for commercial purposes and may not be used by commercial
38 entities for commercial purposes. The prohibition in this subsection
39 against the disclosure of lists for political or commercial purposes
40 applies to the following lists of names and addresses (including
41 electronic mail account addresses):

42 (1) A list of employees of a public agency.



- 1 (2) A list of persons attending conferences or meetings at a state
 2 educational institution or of persons involved in programs or
 3 activities conducted or supervised by the state educational
 4 institution.
- 5 (3) A list of students who are enrolled in a public school
 6 corporation if the governing body of the public school corporation
 7 adopts a policy:
- 8 (A) with respect to disclosure related to a commercial purpose,
 9 prohibiting the disclosure of the list to commercial entities for
 10 commercial purposes;
- 11 (B) with respect to disclosure related to a commercial purpose,
 12 specifying the classes or categories of commercial entities to
 13 which the list may not be disclosed or by which the list may
 14 not be used for commercial purposes; or
- 15 (C) with respect to disclosure related to a political purpose,
 16 prohibiting the disclosure of the list to individuals and entities
 17 for political purposes.
- 18 A policy adopted under subdivision (3)(A) or (3)(B) must be uniform
 19 and may not discriminate among similarly situated commercial entities.
 20 For purposes of this subsection, "political purposes" means influencing
 21 the election of a candidate for federal, state, legislative, local, or school
 22 board office or the outcome of a public question or attempting to solicit
 23 a contribution to influence the election of a candidate for federal, state,
 24 legislative, local, or school board office or the outcome of a public
 25 question.
- 26 (g) A public agency may not enter into or renew a contract or an
 27 obligation:
- 28 (1) for the storage or copying of public records; or
 29 (2) that requires the public to obtain a license or pay copyright
 30 royalties for obtaining the right to inspect and copy the records
 31 unless otherwise provided by applicable statute;
- 32 if the contract, obligation, license, or copyright unreasonably impairs
 33 the right of the public to inspect and copy the agency's public records.
- 34 (h) If this section conflicts with IC 3-7, the provisions of IC 3-7
 35 apply.
- 36 **(i) A request to inspect or copy a law enforcement recording**
 37 **must be in writing. A request identifies a law enforcement**
 38 **recording with reasonable particularity as required by this section**
 39 **only if the request provides the following information regarding**
 40 **the law enforcement activity depicted in the recording:**
- 41 (1) The date and approximate time of the law enforcement
 42 activity.



- 1 **(2) The specific location where the law enforcement activity**
 2 **occurred.**
 3 **(3) The name of at least one (1) individual, other than a law**
 4 **enforcement officer, who was directly involved in the law**
 5 **enforcement activity.**
 6 SECTION 3. IC 5-14-3-4, AS AMENDED BY P.L.181-2015,
 7 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2016]: Sec. 4. (a) The following public records are excepted
 9 from section 3 of this chapter and may not be disclosed by a public
 10 agency, unless access to the records is specifically required by a state
 11 or federal statute or is ordered by a court under the rules of discovery:
 12 (1) Those declared confidential by state statute.
 13 (2) Those declared confidential by rule adopted by a public
 14 agency under specific authority to classify public records as
 15 confidential granted to the public agency by statute.
 16 (3) Those required to be kept confidential by federal law.
 17 (4) Records containing trade secrets.
 18 (5) Confidential financial information obtained, upon request,
 19 from a person. However, this does not include information that is
 20 filed with or received by a public agency pursuant to state statute.
 21 (6) Information concerning research, including actual research
 22 documents, conducted under the auspices of a state educational
 23 institution, including information:
 24 (A) concerning any negotiations made with respect to the
 25 research; and
 26 (B) received from another party involved in the research.
 27 (7) Grade transcripts and license examination scores obtained as
 28 part of a licensure process.
 29 (8) Those declared confidential by or under rules adopted by the
 30 supreme court of Indiana.
 31 (9) Patient medical records and charts created by a provider,
 32 unless the patient gives written consent under IC 16-39 or as
 33 provided under IC 16-41-8.
 34 (10) Application information declared confidential by the board
 35 of the Indiana economic development corporation under
 36 IC 5-28-16.
 37 (11) A photograph, a video recording, or an audio recording of an
 38 autopsy, except as provided in IC 36-2-14-10.
 39 (12) A Social Security number contained in the records of a
 40 public agency.
 41 (13) The following information that is part of a foreclosure action
 42 subject to IC 32-30-10.5:



- 1 (A) Contact information for a debtor, as described in
 2 IC 32-30-10.5-8(d)(1)(B).
 3 (B) Any document submitted to the court as part of the debtor's
 4 loss mitigation package under IC 32-30-10.5-10(a)(3).
 5 (14) The following information obtained from a call made to a
 6 fraud hotline established under IC 36-1-8-8.5:
 7 (A) The identity of any individual who makes a call to the
 8 fraud hotline.
 9 (B) A report, transcript, audio recording, or other information
 10 concerning a call to the fraud hotline.
 11 However, records described in this subdivision may be disclosed
 12 to a law enforcement agency, the attorney general, the inspector
 13 general, the state examiner, or a prosecuting attorney.
 14 (b) Except as otherwise provided by subsection (a), the following
 15 public records shall be excepted from section 3 of this chapter at the
 16 discretion of a public agency:
 17 (1) Investigatory records of law enforcement agencies. **For**
 18 **purposes of this chapter, a law enforcement recording is not**
 19 **an investigatory record.** Law enforcement agencies may share
 20 investigatory records with a person who advocates on behalf of a
 21 crime victim, including a victim advocate (as defined in
 22 IC 35-37-6-3.5) or a victim service provider (as defined in
 23 IC 35-37-6-5), for the purposes of providing services to a victim
 24 or describing services that may be available to a victim, without
 25 the law enforcement agency losing its discretion to keep those
 26 records confidential from other records requesters. However,
 27 certain law enforcement records must be made available for
 28 inspection and copying as provided in section 5 of this chapter.
 29 (2) The work product of an attorney representing, pursuant to
 30 state employment or an appointment by a public agency:
 31 (A) a public agency;
 32 (B) the state; or
 33 (C) an individual.
 34 (3) Test questions, scoring keys, and other examination data used
 35 in administering a licensing examination, examination for
 36 employment, or academic examination before the examination is
 37 given or if it is to be given again.
 38 (4) Scores of tests if the person is identified by name and has not
 39 consented to the release of the person's scores.
 40 (5) The following:
 41 (A) Records relating to negotiations between the Indiana
 42 economic development corporation, the ports of Indiana, the



- 1 Indiana state department of agriculture, the Indiana finance
 2 authority, an economic development commission, a local
 3 economic development organization (as defined in
 4 IC 5-28-11-2(3)), or a governing body of a political
 5 subdivision with industrial, research, or commercial prospects,
 6 if the records are created while negotiations are in progress.
- 7 (B) Notwithstanding clause (A), the terms of the final offer of
 8 public financial resources communicated by the Indiana
 9 economic development corporation, the ports of Indiana, the
 10 Indiana finance authority, an economic development
 11 commission, or a governing body of a political subdivision to
 12 an industrial, a research, or a commercial prospect shall be
 13 available for inspection and copying under section 3 of this
 14 chapter after negotiations with that prospect have terminated.
- 15 (C) When disclosing a final offer under clause (B), the Indiana
 16 economic development corporation shall certify that the
 17 information being disclosed accurately and completely
 18 represents the terms of the final offer.
- 19 (D) Notwithstanding clause (A), an incentive agreement with
 20 an incentive recipient shall be available for inspection and
 21 copying under section 3 of this chapter after the date the
 22 incentive recipient and the Indiana economic development
 23 corporation execute the incentive agreement regardless of
 24 whether negotiations are in progress with the recipient after
 25 that date regarding a modification or extension of the incentive
 26 agreement.
- 27 (6) Records that are intra-agency or interagency advisory or
 28 deliberative material, including material developed by a private
 29 contractor under a contract with a public agency, that are
 30 expressions of opinion or are of a speculative nature, and that are
 31 communicated for the purpose of decision making.
- 32 (7) Diaries, journals, or other personal notes serving as the
 33 functional equivalent of a diary or journal.
- 34 (8) Personnel files of public employees and files of applicants for
 35 public employment, except for:
- 36 (A) the name, compensation, job title, business address,
 37 business telephone number, job description, education and
 38 training background, previous work experience, or dates of
 39 first and last employment of present or former officers or
 40 employees of the agency;
- 41 (B) information relating to the status of any formal charges
 42 against the employee; and



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



1 vehicles concerning the ability of a driver to operate a motor
 2 vehicle safely and the medical records and evaluations made by
 3 the bureau of motor vehicles staff or members of the driver
 4 licensing medical advisory board regarding the ability of a driver
 5 to operate a motor vehicle safely. However, upon written request
 6 to the commissioner of the bureau of motor vehicles, the driver
 7 must be given copies of the driver's medical records and
 8 evaluations.

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

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

16 (A) A record assembled, prepared, or maintained to prevent,
 17 mitigate, or respond to an act of terrorism under IC 35-47-12-1
 18 or an act of agricultural terrorism under IC 35-47-12-2.

19 (B) Vulnerability assessments.

20 (C) Risk planning documents.

21 (D) Needs assessments.

22 (E) Threat assessments.

23 (F) Intelligence assessments.

24 (G) Domestic preparedness strategies.

25 (H) The location of community drinking water wells and
 26 surface water intakes.

27 (I) The emergency contact information of emergency
 28 responders and volunteers.

29 (J) Infrastructure records that disclose the configuration of
 30 critical systems such as communication, electrical, ventilation,
 31 water, and wastewater systems.

32 (K) Detailed drawings or specifications of structural elements,
 33 floor plans, and operating, utility, or security systems, whether
 34 in paper or electronic form, of any building or facility located
 35 on an airport (as defined in IC 8-21-1-1) **or any part of a law**
 36 **enforcement recording that depicts a building or facility**
 37 **located on an airport (as defined in IC 8-21-1-1)** that is
 38 owned, occupied, leased, or maintained by a public agency. A
 39 record described in this clause may not be released for public
 40 inspection by any public agency without the prior approval of
 41 the public agency that owns, occupies, leases, or maintains the
 42 airport. **Both of the following apply to the public agency that**



owns, occupies, leases, or maintains the airport:

(i) **The public agency** is responsible for determining whether the public disclosure of a record or a part of a record, **including a law enforcement recording**, has a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. ~~and~~

(ii) **The public agency** must identify a record described under item (i) and 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)". ~~and~~ **However, in the case of a law enforcement recording, the public agency must clearly mark the record as "confidential and not subject to public disclosure under IC 5-14-3-4(b)(19)(K) without approval of (insert name of the public agency that owns, occupies, leases, or maintains the airport)".**

(L) The home address, home telephone number, and emergency contact information for any:

(i) emergency management worker (as defined in IC 10-14-3-3);

(ii) public safety officer (as defined in IC 35-47-4.5-3);

(iii) emergency medical responder (as defined in IC 16-18-2-109.8); or

(iv) advanced emergency medical technician (as defined in IC 16-18-2-6.5).

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



- 1 address is the location of the suspected crime, infraction,
 2 accident, or complaint reported, the address shall be made
 3 available for public inspection and copying.
- 4 (22) Notwithstanding subdivision (8)(A), the name,
 5 compensation, job title, business address, business telephone
 6 number, job description, education and training background,
 7 previous work experience, or dates of first employment of a law
 8 enforcement officer who is operating in an undercover capacity.
- 9 (23) Records requested by an offender that:
- 10 (A) contain personal information relating to:
- 11 (i) a correctional officer (as defined in IC 5-10-10-1.5);
 12 (ii) a law enforcement officer (as defined in
 13 IC 35-31.5-2-185);
 14 (iii) a judge (as defined in IC 33-38-12-3);
 15 (iv) the victim of a crime; or
 16 (v) a family member of a correctional officer, law
 17 enforcement officer (as defined in IC 35-31.5-2-185), judge
 18 (as defined in IC 33-38-12-3), or victim of a crime; or
- 19 (B) concern or could affect the security of a jail or correctional
 20 facility.
- 21 (24) Information concerning an individual less than eighteen (18)
 22 years of age who participates in a conference, meeting, program,
 23 or activity conducted or supervised by a state educational
 24 institution, including the following information regarding the
 25 individual or the individual's parent or guardian:
- 26 (A) Name.
 27 (B) Address.
 28 (C) Telephone number.
 29 (D) Electronic mail account address.
- 30 (25) Criminal intelligence information.
- 31 (26) The following information contained in a report of unclaimed
 32 property under IC 32-34-1-26 or in a claim for unclaimed
 33 property under IC 32-34-1-36:
- 34 (A) Date of birth.
 35 (B) Driver's license number.
 36 (C) Taxpayer identification number.
 37 (D) Employer identification number. ~~or~~
 38 (E) Account number.
- 39 **(27) Except as provided in subdivision (19) and section 5.1 of**
 40 **this chapter, a law enforcement recording.**
- 41 (c) Nothing contained in subsection (b) shall limit or affect the right
 42 of a person to inspect and copy a public record required or directed to



1 be made by any statute or by any rule of a public agency.

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

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

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

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

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

18 (1) public records subject to IC 5-15 may be destroyed only in
19 accordance with record retention schedules under IC 5-15; or

20 (2) public records not subject to IC 5-15 may be destroyed in the
21 ordinary course of business.

22 SECTION 4. IC 5-14-3-5.1 IS ADDED TO THE INDIANA CODE
23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
24 1, 2016]: **Sec. 5.1. (a) As used in this section, "requestor" means the
25 following:**

26 **(1) An individual who is depicted in a law enforcement
27 recording.**

28 **(2) If the individual described in subdivision (1) is deceased:**

29 **(A) the surviving spouse, father, mother, brother, sister,
30 son, or daughter of the individual; or**

31 **(B) the personal representative (as defined in IC 6-4.1-1-9)
32 of or an attorney representing the deceased individual's
33 estate.**

34 **(3) If the individual described in subdivision (1) is an
35 incapacitated person (as defined in IC 29-3-1-7.5), the legal
36 guardian, attorney, or attorney in fact of the incapacitated
37 person.**

38 **(4) A person that is an owner, tenant, lessee, or occupant of
39 real property, if the interior of the real property is depicted in
40 the recording.**

41 **(b) A public agency shall allow a requestor to inspect a law
42 enforcement recording at least twice, if:**



- 1 (1) the requestor submits a written request under section 3 of
 2 this chapter for inspection of the recording; and
 3 (2) if section 4(b)(19) of this chapter applies, the public agency
 4 that owns, occupies, leases, or maintains the airport approves
 5 the disclosure of the recording.

6 The public agency shall allow the requestor to inspect the
 7 recording in the company of the requestor's attorney. A law
 8 enforcement recording may not be copied or recorded by the
 9 requestor or the requestor's attorney during an inspection.

10 (c) Before an inspection under subsection (b), the public agency
 11 shall obscure in the recording any:

- 12 (1) information described in section 4(a) of this chapter;
 13 (2) undercover law enforcement officer; and
 14 (3) confidential informant.

15 (d) If a person is denied access to inspect a recording under this
 16 section, the person may appeal the denial under section 9 of this
 17 chapter.

18 SECTION 5. IC 5-14-3-5.2 IS ADDED TO THE INDIANA CODE
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 20 1, 2016]: Sec. 5.2. (a) Any person may petition to obtain a court
 21 order to inspect or copy a law enforcement recording if the person
 22 demonstrates to the court the following:

- 23 (1) If section 4(b)(19) of this chapter applies, that the public
 24 agency that owns, occupies, leases, or maintains the airport
 25 approves the disclosure of the recording.
 26 (2) That on the facts of the particular case:
 27 (A) the public interest will be served by allowing access to
 28 the recording;
 29 (B) access to or dissemination of the recording does not
 30 create a significant risk of substantial harm to any person
 31 or to the general public; and
 32 (C) the release of the recording does not create a
 33 prejudicial effect on ongoing civil or criminal proceedings.

34 (b) Notwithstanding section 9(i) of this chapter, a person that
 35 obtains a petition for inspection of or to copy a law enforcement
 36 recording under this section may not be awarded attorney's fees,
 37 court costs, and other reasonable expenses of litigation. The
 38 penalty provisions of section 9.5 of this chapter do not apply to an
 39 action under this section.

40 (c) If the court grants a petition for inspection of or to copy the
 41 law enforcement recording, the public agency shall disclose the
 42 recording after obscuring:



- 1 (1) any information described in section 4(a) of this chapter;
 2 (2) depictions of:
 3 (A) an individual's death or a dead body;
 4 (B) acts of severe violence that:
 5 (i) are against any individual who is clearly visible; and
 6 (ii) result in serious bodily injury (as defined in
 7 IC 35-31.5-2-292);
 8 (C) serious bodily injury (as defined in IC 35-31.5-2-292);
 9 (D) nudity (as defined in IC 35-49-1-5);
 10 (E) an individual who is less than eighteen (18) years of
 11 age;
 12 (F) personal medical information;
 13 (G) a victim of a crime, or any information identifying the
 14 victim of a crime;
 15 (H) a witness to a crime or an individual who reports a
 16 crime, or any information identifying a witness to a crime
 17 or an individual who reports a crime;
 18 (I) a law enforcement officer operating in an undercover
 19 capacity; and
 20 (J) a confidential informant; and
 21 (3) any information that the public agency may obscure under
 22 section 4(b)(2) through 4(b)(18) of this chapter.
 23 SECTION 6. IC 5-14-3-5.3 IS ADDED TO THE INDIANA CODE
 24 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 25 1, 2016]: Sec. 5.3. A public agency shall retain an unaltered,
 26 unobscured law enforcement recording for at least one hundred
 27 eighty (180) days after the date of the recording, except in the
 28 following circumstances:
 29 (1) Except as provided in subdivision (3), if a person defined
 30 as a "requestor" as set forth in section 5.1(a) of this chapter
 31 notifies the public agency in writing not more than one
 32 hundred eighty (180) days after the date of the recording that
 33 the recording is to be retained, the recording shall be retained
 34 for at least two (2) years after the date of the recording. The
 35 public agency may not request or require the person to
 36 provide a reason for the retention.
 37 (2) Except as provided in subdivision (3), if a formal or
 38 informal complaint is filed with the public agency regarding
 39 a law enforcement activity depicted in the recording less than
 40 one hundred eighty (180) days after the date of the recording,
 41 the public agency shall automatically retain the recording for
 42 at least two (2) years after the date of the recording.



1 **(3) If a recording is used in a criminal, civil, or administrative**
 2 **proceeding, the public agency shall retain the recording until**
 3 **final disposition of all appeals and order from the court.**

4 **(4) The public agency may retain a recording for training**
 5 **purposes for any length of time.**

6 SECTION 7. IC 5-14-3-9, AS AMENDED BY P.L.248-2013,
 7 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2016]: Sec. 9. (a) This section does not apply to a request for
 9 information under section 4.4 of this chapter.

10 (b) A denial of disclosure by a public agency occurs when the
 11 person making the request is physically present in the office of the
 12 agency, makes the request by telephone, or requests enhanced access
 13 to a document and:

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

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

21 whichever occurs first.

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

25 (d) If a request is made orally, either in person or by telephone, a
 26 public agency may deny the request orally. However, if a request
 27 initially is made in writing, by facsimile, or through enhanced access,
 28 or if an oral request that has been denied is renewed in writing or by
 29 facsimile, a public agency may deny the request if:

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

31 (2) the denial includes:

32 (A) a statement of the specific exemption or exemptions
 33 authorizing the withholding of all or part of the public record;
 34 and

35 (B) the name and the title or position of the person responsible
 36 for the denial.

37 (e) A person who has been denied the right to inspect or copy a
 38 public record by a public agency may file an action in the circuit or
 39 superior court of the county in which the denial occurred to compel the
 40 public agency to permit the person to inspect and copy the public
 41 record. Whenever an action is filed under this subsection, the public
 42 agency must notify each person who supplied any part of the public



- 1 record at issue:
- 2 (1) that a request for release of the public record has been denied;
- 3 and
- 4 (2) whether the denial was in compliance with an informal inquiry
- 5 response or advisory opinion of the public access counselor.
- 6 Such persons are entitled to intervene in any litigation that results from
- 7 the denial. The person who has been denied the right to inspect or copy
- 8 need not allege or prove any special damage different from that
- 9 suffered by the public at large.
- 10 (f) The court shall determine the matter de novo, with the burden of
- 11 proof on the public agency to sustain its denial. If the issue in de novo
- 12 review under this section is whether a public agency properly denied
- 13 access to a public record because the record is exempted under section
- 14 4(a) of this chapter, the public agency meets its burden of proof under
- 15 this subsection by establishing the content of the record with adequate
- 16 specificity and not by relying on a conclusory statement or affidavit.
- 17 (g) If the issue in a de novo review under this section is whether a
- 18 public agency properly denied access to a public record because the
- 19 record is exempted under section 4(b) of this chapter:
- 20 (1) the public agency meets its burden of proof under this
- 21 subsection by:
- 22 (A) proving that: ~~the~~
- 23 **(i) the record falls within any one (1) of the categories of**
- 24 **exempted records under section 4(b) of this chapter; and**
- 25 **(ii) if the action is for denial of access under section 5.1**
- 26 **of this chapter, the plaintiff is not a "requestor" as that**
- 27 **term is defined in section 5.1 of this chapter; and**
- 28 (B) establishing the content of the record with adequate
- 29 specificity and not by relying on a conclusory statement or
- 30 affidavit; and
- 31 (2) a person requesting access to a public record meets the
- 32 person's burden of proof under this subsection:
- 33 **(A) by proving that the denial of access is arbitrary or**
- 34 **capricious; or**
- 35 **(B) if the plaintiff is requesting a court order under section**
- 36 **5.2 of this chapter, by demonstrating the matters set forth**
- 37 **in section 5.2(a) of this chapter.**
- 38 (h) The court may review the public record in camera to determine
- 39 whether any part of it may be withheld under this chapter. However, if
- 40 the complaint alleges that a public agency denied disclosure of a public
- 41 record by redacting information in the public record, the court shall
- 42 conduct an in camera inspection of the public record with the redacted



1 information included.

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

5 (1) the plaintiff substantially prevails; or

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

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

17 (j) **Except as provided in subsection (k),** a court may assess a civil
18 penalty under section 9.5 of this chapter only if the plaintiff obtained
19 an advisory opinion from the public access counselor before filing an
20 action under this section as set forth in section 9.5 of this chapter.

21 (k) **This subsection applies only to an action for denial of access
22 to a law enforcement recording under section 5.1 of this chapter.
23 If a plaintiff files an action under this section without first seeking
24 and receiving an informal inquiry response or advisory opinion
25 from the public access counselor:**

26 (1) **the plaintiff is eligible for the awarding of attorney's fees,
27 court costs, and other reasonable expenses if the plaintiff
28 prevails; and**

29 (2) **a court may assess a civil penalty under section 9.5 of this
30 chapter.**

31 ~~(l)~~ (l) A court shall expedite the hearing of an action filed under this
32 section.

33 SECTION 8. IC 35-31.5-2-185.4 IS ADDED TO THE INDIANA
34 CODE AS A NEW SECTION TO READ AS FOLLOWS
35 [EFFECTIVE JULY 1, 2016]: **Sec. 185.4. "Law enforcement
36 recording device" means a camera or other device for creating
37 audio, visual, or audiovisual recordings that is:**

38 (1) **provided to or used by a law enforcement officer in the
39 scope of the officer's duties; and**

40 (2) **designed to be worn by a law enforcement officer or
41 attached to the vehicle or transportation of a law enforcement
42 officer.**



1 SECTION 9. IC 35-46-8.5-1, AS ADDED BY P.L.170-2014,
2 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 1. (a) This section does not apply to any of the
4 following:

5 (1) Electronic or video toll collection facilities or activities
6 authorized under any of the following:

7 (A) IC 8-15-2.

8 (B) IC 8-15-3.

9 (C) IC 8-15.5.

10 (D) IC 8-15.7.

11 (E) IC 8-16.

12 (F) IC 9-21-3.5.

13 (2) A law enforcement officer who has obtained:

14 (A) a search warrant; or

15 (B) the consent of the owner or private property;
16 to place a camera or electronic surveillance equipment on private
17 property.

18 **(3) A law enforcement officer who uses a law enforcement**
19 **recording device in performance of the officer's duties.**

20 (b) A person who knowingly or intentionally places a camera or
21 electronic surveillance equipment that records images or data of any
22 kind while unattended on the private property of another person
23 without the consent of the owner or tenant of the private property
24 commits a Class A misdemeanor.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1019, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1019 as introduced.)

MAHAN

Committee Vote: Yeas 13, Nays 0

