



Reprinted
February 26, 2014

ENGROSSED HOUSE BILL No. 1306

DIGEST OF HB 1306 (Updated February 25, 2014 4:32 pm - DI 87)

Citations Affected: IC 5-14.

Synopsis: Search fee for public records requests. Allows a state or local government public agency to charge a fee for the time required by the public agency in excess of two hours, to search for a public record. Restricts the hourly rate charged for the search. Prohibits a public agency from charging a fee for the public agency to: (1) transmit a public record by electronic mail; or (2) permit a person (not including a commercial entity) to use a cellular phone to copy a public record that contains the person's name. Provides that if a public record is in an electronic format, a public agency (excluding the office of the county recorder) shall provide an electronic copy or a paper copy, at the option of the person making the request for a public record. Provides that a search fee collected by a department, agency, or office of a county, city, town, or township shall be deposited in the general fund of the county, city, town, or township.

Effective: July 1, 2014.

Friend, Richardson, Hale

(SENATE SPONSORS — HOLDMAN, HEAD, ARNOLD J)

January 15, 2014, read first time and referred to Committee on Government and Regulatory Reform.

January 28, 2014, reported — Do Pass.

January 30, 2014, read second time, ordered engrossed. Engrossed.

February 3, 2014, read third time, passed. Yeas 86, nays 8.

SENATE ACTION

February 10, 2014, read first time and referred to Committee on Local Government.

February 20, 2014, amended, reported favorably — Do Pass.

February 25, 2014, read second time, amended, ordered engrossed.

EH 1306—LS 6739/DI 87



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February 26, 2014

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1306

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, 2014]: Sec. 2. (a) The definitions set forth in this section apply
4 throughout this chapter.

5 (b) **"Computer processing time" means the amount of time a**
6 **computer takes to process a command or script to extract or copy**
7 **electronically stored data that is the subject of a public records**
8 **request.**

9 (b) (c) "Copy" includes transcribing by handwriting, photocopying,
10 xerography, duplicating machine, duplicating electronically stored data
11 onto a disk, tape, drum, or any other medium of electronic data storage,
12 and reproducing by any other means.

13 (e) (d) "Criminal intelligence information" means data that has been
14 evaluated to determine that the data is relevant to:

- 15 (1) the identification of; and
16 (2) the criminal activity engaged in by;

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1 an individual who or organization that is reasonably suspected of
2 involvement in criminal activity.

3 ~~(d)~~ (e) "Direct cost" means one hundred five percent (105%) of the
4 sum of the cost of:

- 5 (1) the initial development of a program, if any;
- 6 (2) the labor required to retrieve electronically stored data; and
- 7 (3) any medium used for electronic output;

8 for providing a duplicate of electronically stored data onto a disk, tape,
9 drum, or other medium of electronic data retrieval under section 8(g)
10 of this chapter, or for reprogramming a computer system under section
11 6(c) of this chapter.

12 ~~(e)~~ (f) "Electronic map" means copyrighted data provided by a
13 public agency from an electronic geographic information system.

14 ~~(f)~~ (g) "Enhanced access" means the inspection of a public record
15 by a person other than a governmental entity and that:

- 16 (1) is by means of an electronic device other than an electronic
17 device provided by a public agency in the office of the public
18 agency; or
- 19 (2) requires the compilation or creation of a list or report that does
20 not result in the permanent electronic storage of the information.

21 ~~(g)~~ (h) "Facsimile machine" means a machine that electronically
22 transmits exact images through connection with a telephone network.

23 ~~(h)~~ (i) "Inspect" includes the right to do the following:

- 24 (1) Manually transcribe and make notes, abstracts, or memoranda.
- 25 (2) In the case of tape recordings or other aural public records, to
26 listen and manually transcribe or duplicate, or make notes,
27 abstracts, or other memoranda from them.
- 28 (3) In the case of public records available:

- 29 (A) by enhanced access under section 3.5 of this chapter; or
- 30 (B) to a governmental entity under section 3(c)(2) of this
31 chapter;

32 to examine and copy the public records by use of an electronic
33 device.

- 34 (4) In the case of electronically stored data, to manually transcribe
35 and make notes, abstracts, or memoranda or to duplicate the data
36 onto a disk, tape, drum, or any other medium of electronic
37 storage.

38 ~~(i)~~ (j) "Investigatory record" means information compiled in the
39 course of the investigation of a crime.

40 ~~(j)~~ (k) "Offender" means a person confined in a penal institution as
41 the result of the conviction for a crime.

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



1 ⊕ (m) "Person" means an individual, a corporation, a limited
2 liability company, a partnership, an unincorporated association, or a
3 governmental entity.

4 ~~(m)~~ (n) "Provider" has the meaning set out in IC 16-18-2-295(b) and
5 includes employees of the state department of health or local boards of
6 health who create patient records at the request of another provider or
7 who are social workers and create records concerning the family
8 background of children who may need assistance.

9 ~~(n)~~ (o) "Public agency", except as provided in section 2.1 of this
10 chapter, means the following:

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

15 (2) Any:

16 (A) county, township, school corporation, city, or town, or any
17 board, commission, department, division, bureau, committee,
18 office, instrumentality, or authority of any county, township,
19 school corporation, city, or town;

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

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

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

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

29 (B) an audit by the state board of accounts that is required by
30 statute, rule, or regulation.

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

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

37 (6) Any law enforcement agency, which means an agency or a
38 department of any level of government that engages in the
39 investigation, apprehension, arrest, or prosecution of alleged
40 criminal offenders, such as the state police department, the police
41 or sheriff's department of a political subdivision, prosecuting
42 attorneys, members of the excise police division of the alcohol



1 and tobacco commission, conservation officers of the department
 2 of natural resources, gaming agents of the Indiana gaming
 3 commission, gaming control officers of the Indiana gaming
 4 commission, and the security division of the state lottery
 5 commission.

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

8 (8) The state lottery commission established by IC 4-30-3-1,
 9 including any department, division, or office of the commission.

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

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

14 ~~(p)~~ **(p)** "Public record" means any writing, paper, report, study, map,
 15 photograph, book, card, tape recording, or other material that is
 16 created, received, retained, maintained, or filed by or with a public
 17 agency and which is generated on paper, paper substitutes,
 18 photographic media, chemically based media, magnetic or machine
 19 readable media, electronically stored data, or any other material,
 20 regardless of form or characteristics.

21 ~~(p)~~ **(q)** "Standard-sized documents" includes all documents that can
 22 be mechanically reproduced (without mechanical reduction) on paper
 23 sized eight and one-half (8 1/2) inches by eleven (11) inches or eight
 24 and one-half (8 1/2) inches by fourteen (14) inches.

25 ~~(q)~~ **(r)** "Trade secret" has the meaning set forth in IC 24-2-3-2.

26 ~~(r)~~ **(s)** "Work product of an attorney" means information compiled
 27 by an attorney in reasonable anticipation of litigation. The term
 28 includes the attorney's:

29 (1) notes and statements taken during interviews of prospective
 30 witnesses; and

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

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

36 SECTION 2. IC 5-14-3-3, AS AMENDED BY P.L.134-2012,
 37 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2014]: Sec. 3. (a) Any person may inspect and copy the public
 39 records of any public agency during the regular business hours of the
 40 agency, except as provided in section 4 of this chapter. A request for
 41 inspection or copying must:

42 (1) identify with reasonable particularity the record being



- 1 requested; and
 2 (2) be, at the discretion of the agency, in writing on or in a form
 3 provided by the agency.
 4 No request may be denied because the person making the request
 5 refuses to state the purpose of the request, unless such condition is
 6 required by other applicable statute.
- 7 (b) A public agency may not deny or interfere with the exercise of
 8 the right stated in subsection (a). Within a reasonable time after the
 9 request is received by the agency, the public agency shall either:
 10 (1) provide the requested copies to the person making the request;
 11 or
 12 (2) allow the person to make copies:
 13 (A) on the agency's equipment; or
 14 (B) on the person's own equipment.
- 15 (c) Notwithstanding subsections (a) and (b), a public agency may or
 16 may not do the following:
 17 (1) In accordance with a contract described in section 3.5 of this
 18 chapter, permit a person to inspect and copy through the use of
 19 enhanced access public records containing information owned by
 20 or entrusted to the public agency.
 21 (2) Permit a governmental entity to use an electronic device to
 22 inspect and copy public records containing information owned by
 23 or entrusted to the public agency.
- 24 (d) Except as provided in subsection (e), a public agency that
 25 maintains or contracts for the maintenance of public records in an
 26 electronic data storage system shall make reasonable efforts to provide
 27 to a person making a request a copy of all disclosable data contained
 28 in the records on paper, disk, tape, drum, or any other method of
 29 electronic retrieval if the medium requested is compatible with the
 30 agency's data storage system. This subsection does not apply to an
 31 electronic map.
- 32 (e) A state agency may adopt a rule under IC 4-22-2, and a political
 33 subdivision may enact an ordinance, prescribing the conditions under
 34 which a person who receives information on disk or tape under
 35 subsection (d) may or may not use the information for commercial
 36 purposes, including to sell, advertise, or solicit the purchase of
 37 merchandise, goods, or services, or sell, loan, give away, or otherwise
 38 deliver the information obtained by the request to any other person for
 39 these purposes. Use of information received under subsection (d) in
 40 connection with the preparation or publication of news, for nonprofit
 41 activities, or for academic research is not prohibited. A person who
 42 uses information in a manner contrary to a rule or ordinance adopted



1 under this subsection may be prohibited by the state agency or political
 2 subdivision from obtaining a copy or any further data under subsection
 3 (d).

4 (f) Notwithstanding the other provisions of this section, a public
 5 agency is not required to create or provide copies of lists of names and
 6 addresses (including electronic mail account addresses) unless the
 7 public agency is required to publish such lists and disseminate them to
 8 the public under a statute. However, if a public agency has created a
 9 list of names and addresses (excluding electronic mail account
 10 addresses) it must permit a person to inspect and make memoranda
 11 abstracts from the list unless access to the list is prohibited by law. The
 12 lists of names and addresses (including electronic mail account
 13 addresses) described in subdivisions (1) through (3) may not be
 14 disclosed by public agencies to any individual or entity for political
 15 purposes and may not be used by any individual or entity for political
 16 purposes. In addition, the lists of names and addresses (including
 17 electronic mail account addresses) described in subdivisions (1)
 18 through (3) may not be disclosed by public agencies to commercial
 19 entities for commercial purposes and may not be used by commercial
 20 entities for commercial purposes. The prohibition in this subsection
 21 against the disclosure of lists for political or commercial purposes
 22 applies to the following lists of names and addresses (including
 23 electronic mail account addresses):

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

25 (2) A list of persons attending conferences or meetings at a state
 26 educational institution or of persons involved in programs or
 27 activities conducted or supervised by the state educational
 28 institution.

29 (3) A list of students who are enrolled in a public school
 30 corporation if the governing body of the public school corporation
 31 adopts a policy:

32 (A) with respect to disclosure related to a commercial purpose,
 33 prohibiting the disclosure of the list to commercial entities for
 34 commercial purposes;

35 (B) with respect to disclosure related to a commercial purpose,
 36 specifying the classes or categories of commercial entities to
 37 which the list may not be disclosed or by which the list may
 38 not be used for commercial purposes; or

39 (C) with respect to disclosure related to a political purpose,
 40 prohibiting the disclosure of the list to individuals and entities
 41 for political purposes.

42 A policy adopted under subdivision (3)(A) or (3)(B) must be uniform



1 and may not discriminate among similarly situated commercial entities.
 2 For purposes of this subsection, "political purposes" means influencing
 3 the election of a candidate for federal, state, legislative, local, or school
 4 board office or the outcome of a public question or attempting to solicit
 5 a contribution to influence the election of a candidate for federal, state,
 6 legislative, local, or school board office or the outcome of a public
 7 question.

8 (g) A public agency may not enter into or renew a contract or an
 9 obligation:

10 (1) for the storage or copying of public records; or

11 (2) that requires the public to obtain a license or pay copyright
 12 royalties for obtaining the right to inspect and copy the records
 13 unless otherwise provided by applicable statute;

14 if the contract, obligation, license, or copyright unreasonably impairs
 15 the right of the public to inspect and copy the agency's public records.

16 (h) If this section conflicts with IC 3-7, the provisions of IC 3-7
 17 apply.

18 **(i) This subsection applies to a public record that is in an**
 19 **electronic format. This subsection does not apply to a public record**
 20 **recorded in the office of the county recorder. The public agency**
 21 **shall provide an electronic copy or a paper copy, at the option of**
 22 **the person making the request for a public record. This subsection**
 23 **does not require a public agency to change the format of a public**
 24 **record.**

25 SECTION 3. IC 5-14-3-8, AS AMENDED BY P.L.16-2008,
 26 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2014]: Sec. 8. (a) For the purposes of this section, "state
 28 agency" has the meaning set forth in IC 4-13-1-1.

29 (b) Except as provided in this section, a public agency may not
 30 charge any fee under this chapter **for the following:**

31 (1) **For a person** to inspect a public record. ~~or~~

32 (2) **For a person to search for a public record.**

33 (3) **For the public agency to search for a public record, if the**
 34 **search does not exceed two (2) hours.**

35 ~~(2) (4) For the public agency to search for, examine or review a~~
 36 ~~record to determine whether the record may be disclosed.~~

37 (5) **For the public agency to transmit an electronic copy of a**
 38 **public record by electronic mail. However, a public agency**
 39 **may charge a fee for a public record transmitted by electronic**
 40 **mail if the fee for the public record is authorized under:**

41 (A) subsection (f) or (j); or

42 (B) section 6(c) of this chapter.



1 **(6) For a person (not including a commercial entity) to use a**
 2 **cellular telephone to copy a public record for a**
 3 **noncommercial purpose, if the public record contains the**
 4 **person's name.**

5 (c) The Indiana department of administration shall establish a
 6 uniform copying fee for the copying of one (1) page of a standard-sized
 7 document by state agencies. The fee may not exceed the average cost
 8 of copying records by state agencies or ten cents (\$0.10) per page,
 9 whichever is greater. A state agency may not collect more than the
 10 uniform copying fee for providing a copy of a public record. However,
 11 a state agency shall establish and collect a reasonable fee for copying
 12 nonstandard-sized documents.

13 (d) This subsection applies to a public agency that is not a state
 14 agency. The fiscal body (as defined in IC 36-1-2-6) of the public
 15 agency, or the governing body, if there is no fiscal body, shall establish
 16 a fee schedule for the certification or copying of documents. The fee for
 17 certification of documents may not exceed five dollars (\$5) per
 18 document. The fee for copying documents may not exceed the greater
 19 of:

- 20 (1) ten cents (\$0.10) per page for copies that are not color copies
 21 or twenty-five cents (\$0.25) per page for color copies; or
 22 (2) the actual cost to the agency of copying the document.

23 As used in this subsection, "actual cost" means the cost of paper and
 24 the per-page cost for use of copying or facsimile equipment and does
 25 not include labor costs or overhead costs. A fee established under this
 26 subsection must be uniform throughout the public agency and uniform
 27 to all purchasers.

28 (e) If:

- 29 (1) a person is entitled to a copy of a public record under this
 30 chapter; and
 31 (2) the public agency which is in possession of the record has
 32 reasonable access to a machine capable of reproducing the public
 33 record;

34 the public agency must provide at least one (1) copy of the public
 35 record to the person. However, if a public agency does not have
 36 reasonable access to a machine capable of reproducing the record or if
 37 the person cannot reproduce the record by use of enhanced access
 38 under section 3.5 of this chapter, the person is only entitled to inspect
 39 and manually transcribe the record. A public agency may require that
 40 the payment for **search and** copying costs be made in advance.

41 (f) Notwithstanding subsection ~~(b)~~, **(b)(1)**, **(b)(2)**, **(b)(3)**, (c), (d),
 42 (g), (h), or (i), a public agency shall collect any certification, copying,



1 facsimile machine transmission, or search fee that is specified by
 2 statute or is ordered by a court. **Notwithstanding subsection (b)(4), a**
 3 **public agency shall collect any certification or search fee that is**
 4 **specified by statute or is ordered by a court.**

5 (g) Except as provided by subsection (h), for providing a duplicate
 6 of a computer tape, computer disc, microfilm, or similar or analogous
 7 record system containing information owned by the public agency or
 8 entrusted to it, a public agency may charge a fee, uniform to all
 9 purchasers, that does not exceed the sum of the following:

10 (1) The agency's direct cost of supplying the information in that
 11 form.

12 (2) The standard cost for selling the same information to the
 13 public in the form of a publication if the agency has published the
 14 information and made the publication available for sale.

15 (3) In the case of the legislative services agency, a reasonable
 16 percentage of the agency's direct cost of maintaining the system
 17 in which the information is stored. However, the amount charged
 18 by the legislative services agency under this subdivision may not
 19 exceed the sum of the amounts it may charge under subdivisions
 20 (1) and (2).

21 (h) This subsection applies to the fee charged by a public agency for
 22 providing enhanced access to a public record. A public agency may
 23 charge any reasonable fee agreed on in the contract under section 3.5
 24 of this chapter for providing enhanced access to public records.

25 (i) This subsection applies to the fee charged by a public agency for
 26 permitting a governmental entity to inspect public records by means of
 27 an electronic device. A public agency may charge any reasonable fee
 28 for the inspection of public records under this subsection, or the public
 29 agency may waive any fee for the inspection.

30 (j) Except as provided in subsection (k), a public agency may charge
 31 a fee, uniform to all purchasers, for providing an electronic map that is
 32 based upon a reasonable percentage of the agency's direct cost of
 33 maintaining, upgrading, and enhancing the electronic map and for the
 34 direct cost of supplying the electronic map in the form requested by the
 35 purchaser. If the public agency is within a political subdivision having
 36 a fiscal body, the fee is subject to the approval of the fiscal body of the
 37 political subdivision.

38 (k) The fee charged by a public agency under subsection (j) to cover
 39 costs for maintaining, upgrading, and enhancing an electronic map may
 40 be waived by the public agency if the electronic map for which the fee
 41 is charged will be used for a noncommercial purpose, including the
 42 following:



1 (1) Public agency program support.
2 (2) Nonprofit activities.
3 (3) Journalism.
4 (4) Academic research.
5 **(i) This subsection applies to a public agency that charges a fee**
6 **for the public agency to search for a public record. A public agency**
7 **may not charge a fee for the first two (2) hours required to search**
8 **for a record. A public agency may charge a search fee for any time**
9 **in excess of two (2) hours. If the public agency charges a search fee,**
10 **the agency shall charge an hourly fee that does not exceed the**
11 **lesser of:**
12 **(1) the hourly rate of the person making the search; or**
13 **(2) twenty dollars (\$20) per hour.**
14 **A public agency charging an hourly fee under this subsection for**
15 **searching for a record may charge only for time that the person**
16 **making the search actually spends in searching for the record. A**
17 **public agency may not charge for computer processing time, and**
18 **may not establish a minimum fee for searching for a record. A**
19 **public agency must make a good faith effort to complete a search**
20 **for a record within a reasonable time in order to minimize the**
21 **amount of a search fee. The fee shall be prorated to reflect any**
22 **search time of less than one (1) hour. If a fee is charged by a public**
23 **agency under subsection (g), (h), (i), or (j) for a public record, the**
24 **public agency may not charge a fee for searching for the record**
25 **under this subsection. A search fee collected by a department, an**
26 **agency, or an office of a county, city, town, or township shall be**
27 **deposited in the general fund of the county, city, town, or township.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1306, 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 1306 as introduced.)

Committee Vote: Yeas 11, Nays 0

Representative Mahan

COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred House Bill No. 1306, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 7, between lines 41 and 42, begin a new line block indented and insert:

"(5) A copy of a public record that is made with a cellular telephone:

(A) by a noncommercial entity; and

(B) for a noncommercial purpose;

if the public record contains the noncommercial entity's name."

and when so amended that said bill do pass.

(Reference is to HB 1306 as printed January 28, 2014.)

HEAD, Chairperson

Committee Vote: Yeas 7, Nays 3.



SENATE MOTION

Madam President: I move that Engrossed House Bill 1306 be amended to read as follows:

Page 7, line 31, delete "To" and insert "**For a person to**".

Page 7, delete lines 32 through 33, begin a new line block indented and insert:

"(2) For a person to search for a public record.

(3) For the public agency to search for a public record, if the search does not exceed two (2) hours."

Page 7, line 34, delete "(3) To" and insert "**(4) For the public agency to**".

Page 7, delete lines 36 through 42, begin a new line block indented and insert:

"(5) For the public agency to transmit an electronic copy of a public record by electronic mail. However, a public agency may charge a fee for a public record transmitted by electronic mail if the fee for the public record is authorized under:

(A) subsection (f) or (j); or

(B) section 6(c) of this chapter.

(6) For a person (not including a commercial entity) to use a cellular telephone to copy a public record for a noncommercial purpose, if the public record contains the person's name."

Page 8, delete lines 1 through 5.

Page 10, line 6, after "(1)" insert "**This subsection applies to a public agency that charges a fee for the public agency to search for a public record."**

(Reference is to EHB 1306 as printed February 21, 2014.)

HOLDMAN



SENATE MOTION

Madam President: I move that Engrossed House Bill 1306 be amended to read as follows:

Page 10, line 24, after "subsection." insert "**A search fee collected by a department, an agency, or an office of a county, city, town, or township shall be deposited in the general fund of the county, city, town, or township.**".

(Reference is to EHB 1306 as printed February 21, 2014.)

SMITH J

