

SENATE BILL No. 191

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-14; IC 34-30-2-14.5; IC 36-4-5-3.

Synopsis: Records requests by city legislative body. Requires a city agency (agency) to provide a public record, without redacting any confidential information in the record, to the city council or to a member of the city council (requestor) for a legislative purpose if the following requirements are met: (1) A request: (A) is in writing; (B) complies with all other requirements for a request under the public records act; and (C) contains a statement that the public record is requested for a legislative purpose. (2) The requestor provides proof of membership on the city legislative body. Requires an agency to provide the public record without redacting information or separating disclosable from nondisclosable information. Allows an agency to require the requestor to sign a confidentiality agreement as a condition precedent to releasing the public record. Makes it a Class A infraction for a member of the city legislative body or an employee or staff member of the city legislative body to disclose the public record to anyone other than a member of the city legislative body or an employee or staff member of the city legislative body. Provides that an agency that discloses a public record does not: (1) waive or affect the confidentiality of the public record for purposes of state or federal law; or (2) waive the right in the future to assert exceptions to disclosure of the public record. Provides that an action may be brought under the public records act to compel disclosure of the unredacted public record, except that attorney's fees may not be awarded to the prevailing party. Provides that the provisions in the public records act that permit civil penalties to be assessed against an agency official or employee do not apply to a request for a public record by the city council or member of the city council. Makes a technical correction.

Effective: July 1, 2014.

Yoder

January 8, 2014, read first time and referred to Committee on Local Government.



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.

SENATE BILL No. 191

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 5-14-3-10, AS AMENDED BY P.L.126-2012,
2 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]: Sec. 10. (a) A public employee, a public official, or an
4 employee or officer of a contractor or subcontractor of a public agency,
5 except as provided by IC 4-15-10 or **IC 5-14-3.1**, who knowingly or
6 intentionally discloses information classified as confidential by state
7 statute, including information declared confidential under:
8 (1) section 4(a) of this chapter; or
9 (2) section 4(b) of this chapter if the public agency having control
10 of the information declares it to be confidential;
11 commits a Class A infraction.
12 (b) A public employee may be disciplined in accordance with the
13 personnel policies of the agency by which the employee is employed
14 if the employee intentionally, knowingly, or recklessly discloses or fails
15 to protect information classified as confidential by state statute.
16 (c) A public employee, a public official, or an employee or officer



1 of a contractor or subcontractor of a public agency who unintentionally
 2 and unknowingly discloses confidential or erroneous information in
 3 response to a request under IC 5-14-3-3(d) or who discloses
 4 confidential information in reliance on an advisory opinion by the
 5 public access counselor is immune from liability for such a disclosure.

6 (d) This section does not apply to any provision incorporated into
 7 state law from a federal statute.

8 SECTION 2. IC 5-14-3.1 IS ADDED TO THE INDIANA CODE
 9 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2014]:

11 **Chapter 3.1. Request for Confidential Records by a City**
 12 **Legislative Body**

13 **Sec. 1. This chapter applies only to a city.**

14 **Sec. 2. This chapter does not apply to the following public**
 15 **records:**

16 (1) IC 5-14-3-4(a)(3) through IC 5-14-3-4(a)(12).

17 (2) IC 5-14-3-4(b)(1).

18 (3) IC 5-14-3-4(b)(2).

19 (4) IC 5-14-3-4(b)(19).

20 (5) IC 5-14-3-4(b)(25).

21 (6) A judicial public record sealed under IC 5-14-3-5.5.

22 **Sec. 3. The definitions in IC 5-14-3 apply throughout this**
 23 **chapter.**

24 **Sec. 4. (a) As used in this chapter, "agency" means any board,**
 25 **commission, department, division, bureau, committee, office,**
 26 **instrumentality, or authority of a city. The term does not include**
 27 **any office or entity of the judicial branch of government.**

28 **(b) The term does not include a school corporation, library**
 29 **district, local housing authority, fire protection district, public**
 30 **transportation corporation, local building authority, local hospital**
 31 **authority or corporation, local airport authority, special service**
 32 **district, or other separate local governmental entity that may sue**
 33 **and be sued.**

34 **Sec. 5. As used in this chapter, "requestor" means:**

35 (1) a city legislative body; or

36 (2) any member of a city legislative body;

37 **that requests an agency to disclose a public record under this**
 38 **chapter.**

39 **Sec. 6. In fulfilling the city executive's duty to provide**
 40 **information regarding city affairs under IC 36-4-5-3, the city**
 41 **executive or an agency may permit inspection and copying of a**
 42 **public record without complying with or requiring compliance**



1 with this chapter. However, if a request for inspection and copying
 2 of a public record that complies with this chapter is submitted to
 3 an agency, the agency shall permit inspection and copying in
 4 accordance with this chapter.

5 Sec. 7. The legislative body of a city or a member of the
 6 legislative body of a city may inspect and copy a public record:

- 7 (1) of an agency of the city; and
- 8 (2) that IC 5-14-3 requires or allows an agency to withhold in
 9 whole or in part from disclosure to the public.

10 Sec. 8. An agency that discloses a public record in accordance
 11 with this chapter does not:

- 12 (1) waive or affect the confidentiality of the public record for
 13 purposes of state or federal law; or
- 14 (2) waive the right in the future to assert exceptions to
 15 disclosure of the public record.

16 Sec. 9. (a) Subject to section 12 of this chapter, if a requestor:

- 17 (1) makes a request in accordance with IC 5-14-3:
 18 (A) for inspection or copying of a public record that is
 19 excepted from disclosure under IC 5-14-3; and
 20 (B) on the request form, states that a copy of the public
 21 record is requested for legislative purposes; and
- 22 (2) provides proof to the agency that the requestor is a
 23 member of the city legislative body;

24 the agency shall permit the requestor to inspect and copy the
 25 public record. The penalty provisions of IC 5-14-3-9.5 do not apply
 26 to a request for a public record under this chapter.

27 (b) The agency may not:

- 28 (1) separate disclosable from nondisclosable information; or
- 29 (2) redact any information;

30 from the public record provided to the requestor.

31 Sec. 10. (a) If an agency denies a request under section 9(a) of
 32 this chapter, the requestor may bring an action to compel
 33 production of the unredacted public record under IC 5-14-3-9.
 34 However, IC 5-14-3-9(i) and IC 5-14-3-9(j) do not apply to an
 35 action under this chapter.

36 (b) The agency or the requestor may obtain a formal or
 37 informal advisory opinion from the public access counselor before
 38 an action is filed. If the agency submits a copy of the public record
 39 to the public access counselor, all confidential information in the
 40 public record must be redacted.

41 Sec. 11. (a) A member of the city legislative body or an employee
 42 or staff member of the city legislative body may disclose a



1 **confidential public record covered by this chapter only to:**

2 (1) a member of the city legislative body; or

3 (2) an employee or staff member of the city legislative body.

4 **A person who violates this section commits a Class A infraction.**

5 (b) An access to public records request that is made by a
6 requestor under IC 5-14-3 is void if the request is for a public
7 record (including any copies made of the public record and all
8 notes taken from the public record implicating the confidential
9 nature of the public record) obtained by a requestor under this
10 chapter.

11 **Sec. 12. (a) As a condition precedent to disclosing a record**
12 **under this chapter, an agency may require the requestor to sign a**
13 **written confidentiality agreement. The agreement must include a**
14 **provision that the requestor agrees to disclose the public record,**
15 **including any copies made of the public record and all notes taken**
16 **from the public record implicating the confidential nature of the**
17 **public record only:**

18 (1) to a member of the city legislative body or an employee or
19 staff member of the city legislative body; and

20 (2) for the legislative purpose for which the public record was
21 requested.

22 (b) This chapter does not prohibit a person who is a member of
23 the city legislative body from making a request in accordance with
24 IC 5-14-3 at any time as a private citizen, and not in the person's
25 official capacity as a member of the city legislative body.

26 **Sec. 13. A person who discloses information in accordance with**
27 **this chapter is immune from civil or criminal liability for such**
28 **disclosure.**

29 SECTION 3. IC 34-30-2-14.5 IS ADDED TO THE INDIANA
30 CODE AS A NEW SECTION TO READ AS FOLLOWS
31 [EFFECTIVE JULY 1, 2014]: **Sec. 14.5. IC 5-14-3.1-13 (Concerning**
32 **a person who discloses certain confidential information).**

33 SECTION 4. IC 36-4-5-3 IS AMENDED TO READ AS FOLLOWS
34 [EFFECTIVE JULY 1, 2014]: Sec. 3. The executive shall:

35 (1) enforce the ordinances of the city and the statutes of the state;

36 (2) provide a statement of the finances and general condition of
37 the city to the city legislative body at least once a year;

38 (3) provide any information regarding city affairs that the
39 legislative body or any member of the legislative body requests;

40 (4) recommend, in writing, to the legislative body actions that the
41 executive considers proper;

42 (5) call special meetings of the legislative body when necessary;



- 1 (6) supervise subordinate officers;
- 2 (7) insure efficient government of the city;
- 3 (8) fill vacancies in city offices when required by IC 3-13-8;
- 4 (9) sign all bonds, deeds, and contracts of the city and all licenses
- 5 issued by the city; and
- 6 (10) approve or veto ordinances, orders, and resolutions of the
- 7 legislative body under ~~IC 36-4-6-15~~. **IC 36-4-6-16.**

