

#### **4IC 5-14-3**

### **Chapter 3. Access to Public Records**

#### **IC 5-14-3-1**

##### **Public policy; construction; burden of proof for nondisclosure**

Sec. 1. A fundamental philosophy of the American constitutional form of representative government is that government is the servant of the people and not their master. Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information. This chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record. *As added by P.L. 19-1983, SEC. 6. Amended by P.L. 77-1995, SEC. 1.*

#### **IC 5-14-3-2**

##### **Definitions**

Sec. 2. (a) The definitions set forth in this section apply throughout this chapter.

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

(c) "Criminal intelligence information" means data that has been evaluated to determine that the data is relevant to:

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

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

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

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

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

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

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

- (1) is by means of an electronic device other than an electronic

device provided by a public agency in the office of the public agency; or

(2) requires the compilation or creation of a list or report that does not result in the permanent electronic storage of the information.

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

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

(1) Manually transcribe and make notes, abstracts, or memoranda.

(2) In the case of tape recordings or other aural public records, to listen and manually transcribe or duplicate, or make notes, abstracts, or other memoranda from them.

(3) In the case of public records available:

(A) by enhanced access under section 3.5 of this chapter; or

(B) to a governmental entity under section 3(c)(2) of this chapter;

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

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

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

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

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

(l) "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

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

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

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

(2) Any:

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

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

(C) other entity, or any office thereof, by whatever name

designated, exercising in a limited geographical area the executive, administrative, judicial, or legislative power of the state or a delegated local governmental power.

- (3) Any entity or office that is subject to:
  - (A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or
  - (B) an audit by the state board of accounts that is required by statute, rule, or regulation.
- (4) Any building corporation of a political subdivision that issues bonds for the purpose of constructing public facilities.
- (5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.
- (6) Any law enforcement agency, which means an agency or a department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the state police department, the police or sheriff's department of a political subdivision, prosecuting attorneys, members of the excise police division of the alcohol and tobacco commission, conservation officers of the department of natural resources, gaming agents of the Indiana gaming commission, gaming control officers of the Indiana gaming commission, and the security division of the state lottery commission.
- (7) Any license branch staffed by employees of the bureau of motor vehicles commission under IC 9-16.
- (8) The state lottery commission established by IC 4-30-3-1, including any department, division, or office of the commission.
- (9) The Indiana gaming commission established under IC 4-33, including any department, division, or office of the commission.
- (10) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

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

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

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

(r) "Work product of an attorney" means information compiled by an attorney in reasonable anticipation of litigation. The term includes

the attorney's:

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

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

*As added by P.L.19-1983, SEC.6. Amended by P.L.34-1984, SEC.1; P.L.54-1985, SEC.1; P.L.50-1986, SEC.1; P.L.42-1986, SEC.2; P.L.341-1989(ss), SEC.6; P.L.2-1991, SEC.29; P.L.2-1992, SEC.53; P.L.2-1993, SEC.49; P.L.58-1993, SEC.1; P.L.8-1993, SEC.57; P.L.277-1993(ss), SEC.128; P.L.1-1994, SEC.21; P.L.77-1995, SEC.2; P.L.50-1995, SEC.15; P.L.1-1999, SEC.6; P.L.256-1999, SEC.1; P.L.204-2001, SEC.12; P.L.90-2002, SEC.18; P.L.261-2003, SEC.5; P.L.2-2005, SEC.16; P.L.170-2005, SEC.17; P.L.1-2006, SEC.101; P.L.1-2007, SEC.28; P.L.179-2007, SEC.7; P.L.227-2007, SEC.57; P.L.3-2008, SEC.28; P.L.51-2008, SEC.1; P.L.248-2013, SEC.2.*

#### **IC 5-14-3-2.1**

##### **"Public agency"; certain providers exempted**

Sec. 2.1. "Public agency", for purposes of this chapter, does not mean a provider of goods, services, or other benefits that meets the following requirements:

- (1) The provider receives public funds through an agreement with the state, a county, or a municipality that meets the following requirements:
  - (A) The agreement provides for the payment of fees to the entity in exchange for services, goods, or other benefits.
  - (B) The amount of fees received by the entity under the agreement is not based upon or does not involve a consideration of the tax revenues or receipts of the state, county, or municipality.
  - (C) The amount of the fees are negotiated by the entity and the state, county, or municipality.
  - (D) The state, county, or municipality is billed for fees by the entity for the services, goods, or other benefits actually provided by the entity.
- (2) The provider is not required by statute, rule, or regulation to be audited by the state board of accounts.

*As added by P.L.179-2007, SEC.8.*

#### **IC 5-14-3-3**

##### **Right to inspect and copy public agency records; electronic data storage; use of information for commercial purposes; contracts**

Sec. 3. (a) Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of this chapter. A request for

inspection or copying must:

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

No request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute.

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

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

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

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

(d) Except as provided in subsection (e), a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. This subsection does not apply to an electronic map.

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

(f) Notwithstanding the other provisions of this section, a public agency is not required to create or provide copies of lists of names

and addresses (including electronic mail account addresses) unless the public agency is required to publish such lists and disseminate them to the public under a statute. However, if a public agency has created a list of names and addresses (excluding electronic mail account addresses) it must permit a person to inspect and make memoranda abstracts from the list unless access to the list is prohibited by law. The lists of names and addresses (including electronic mail account addresses) described in subdivisions (1) through (3) may not be disclosed by public agencies to any individual or entity for political purposes and may not be used by any individual or entity for political purposes. In addition, the lists of names and addresses (including electronic mail account addresses) described in subdivisions (1) through (3) may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes. The prohibition in this subsection against the disclosure of lists for political or commercial purposes applies to the following lists of names and addresses (including electronic mail account addresses):

- (1) A list of employees of a public agency.
- (2) A list of persons attending conferences or meetings at a state educational institution or of persons involved in programs or activities conducted or supervised by the state educational institution.
- (3) A list of students who are enrolled in a public school corporation if the governing body of the public school corporation adopts a policy:
  - (A) with respect to disclosure related to a commercial purpose, prohibiting the disclosure of the list to commercial entities for commercial purposes;
  - (B) with respect to disclosure related to a commercial purpose, specifying the classes or categories of commercial entities to which the list may not be disclosed or by which the list may not be used for commercial purposes; or
  - (C) with respect to disclosure related to a political purpose, prohibiting the disclosure of the list to individuals and entities for political purposes.

A policy adopted under subdivision (3)(A) or (3)(B) must be uniform and may not discriminate among similarly situated commercial entities. For purposes of this subsection, "political purposes" means influencing the election of a candidate for federal, state, legislative, local, or school board office or the outcome of a public question or attempting to solicit a contribution to influence the election of a candidate for federal, state, legislative, local, or school board office or the outcome of a public question.

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

- (1) for the storage or copying of public records; or
- (2) that requires the public to obtain a license or pay copyright royalties for obtaining the right to inspect and copy the records

unless otherwise provided by applicable statute;  
if the contract, obligation, license, or copyright unreasonably impairs  
the right of the public to inspect and copy the agency's public records.

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

*As added by P.L.19-1983, SEC.6. Amended by P.L.54-1985, SEC.2;  
P.L.51-1986, SEC.1; P.L.58-1993, SEC.2; P.L.77-1995, SEC.3;  
P.L.173-2003, SEC.4 and P.L.261-2003, SEC.6; P.L.22-2006,  
SEC.1; P.L.1-2007, SEC.29; P.L.2-2007, SEC.100; P.L.134-2012,  
SEC.17.*

### **IC 5-14-3-3.5**

#### **State agencies; enhanced access to public records; office of technology**

Sec. 3.5. (a) As used in this section, "state agency" has the  
meaning set forth in IC 4-13-1-1. The term does not include the  
office of the following elected state officials:

- (1) Secretary of state.
- (2) Auditor.
- (3) Treasurer.
- (4) Attorney general.
- (5) Superintendent of public instruction.

However, each state office described in subdivisions (1) through (5)  
and the judicial department of state government may use the  
computer gateway administered by the office of technology  
established by IC 4-13.1-2-1, subject to the requirements of this  
section.

(b) As an additional means of inspecting and copying public  
records, a state agency may provide enhanced access to public  
records maintained by the state agency.

(c) If the state agency has entered into a contract with a third party  
under which the state agency provides enhanced access to the person  
through the third party's computer gateway or otherwise, all of the  
following apply to the contract:

- (1) The contract between the state agency and the third party  
must provide for the protection of public records in accordance  
with subsection (d).
- (2) The contract between the state agency and the third party  
may provide for the payment of a reasonable fee to the state  
agency by either:
  - (A) the third party; or
  - (B) the person.

(d) A contract required by this section must provide that the  
person and the third party will not engage in the following:

- (1) Unauthorized enhanced access to public records.
- (2) Unauthorized alteration of public records.
- (3) Disclosure of confidential public records.

(e) A state agency shall provide enhanced access to public records  
only through the computer gateway administered by the office of

technology.

*As added by P.L.58-1993, SEC.3. Amended by P.L.77-1995, SEC.4; P.L.19-1997, SEC.2; P.L.14-2004, SEC.183; P.L.177-2005, SEC.15.*

#### **IC 5-14-3-3.6**

##### **Public agencies; enhanced access to public records; office of technology**

Sec. 3.6. (a) As used in this section "public agency" does not include a state agency (as defined in section 3.5(a) of this chapter).

(b) As an additional means of inspecting and copying public records, a public agency may provide enhanced access to public records maintained by the public agency.

(c) A public agency may provide a person with enhanced access to public records if any of the following apply:

(1) The public agency provides enhanced access to the person through its own computer gateway and provides for the protection of public records under subsection (d).

(2) The public agency has entered into a contract with a third party under which the public agency provides enhanced access to the person through the third party's computer gateway or otherwise, and the contract between the public agency and the third party provides for the protection of public records in accordance with subsection (d).

(d) A contract entered into under this section and any other provision of enhanced access must provide that the third party and the person will not engage in the following:

(1) Unauthorized enhanced access to public records.

(2) Unauthorized alteration of public records.

(3) Disclosure of confidential public records.

(e) A contract entered into under this section or any provision of enhanced access may require the payment of a reasonable fee to either the third party to a contract or to the public agency, or both, from the person.

(f) A public agency may provide enhanced access to public records through the computer gateway administered by the office of technology established by IC 4-13.1-2-1.

*As added by P.L.19-1997, SEC.3. Amended by P.L.177-2005, SEC.16.*

#### **IC 5-14-3-4**

##### **Records excepted from disclosure; time limitations; destruction of records**

Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute.

(2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as

confidential granted to the public agency by statute.

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

(4) Records containing trade secrets.

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

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

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

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

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

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

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

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

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

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

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

(A) Contact information for a debtor, as described in IC 32-30-10.5-8(d)(1)(B).

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

(14) The following information obtained from a call made to a fraud hotline established under IC 36-1-8-8.5:

(A) The identity of any individual who makes a call to the fraud hotline.

(B) A report, transcript, audio recording, or other information concerning a call to the fraud hotline.

However, records described in this subdivision may be disclosed to a law enforcement agency, the attorney general, the inspector general, the state examiner, or a prosecuting attorney.

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

(1) Investigatory records of law enforcement agencies. Law enforcement agencies may share investigatory records with a person who advocates on behalf of a crime victim, including a

victim advocate (as defined in IC 35-37-6-3.5) or a victim service provider (as defined in IC 35-37-6-5), for the purposes of providing services to a victim or describing services that may be available to a victim, without the law enforcement agency losing its discretion to keep those records confidential from other records requesters. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

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

(A) a public agency;

(B) the state; or

(C) an individual.

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

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

(5) The following:

(A) Records relating to negotiations between the Indiana economic development corporation, the ports of Indiana, the Indiana state department of agriculture, the Indiana finance authority, an economic development commission, a local economic development organization (as defined in IC 5-28-11-2(3)), or a governing body of a political subdivision with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the Indiana economic development corporation, the ports of Indiana, the Indiana finance authority, an economic development commission, or a governing body of a political subdivision to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the Indiana economic development corporation shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(D) Notwithstanding clause (A), an incentive agreement with an incentive recipient shall be available for inspection and copying under section 3 of this chapter after the date the incentive recipient and the Indiana economic development corporation execute the incentive agreement regardless of whether negotiations are in progress with the recipient after that date regarding a modification or extension of the incentive agreement.

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

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

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

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a record keeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

(A) the donor requires nondisclosure of the donor's identity as a condition of making the gift; or

(B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition

that the records be disclosed only:

- (i) to qualified researchers;
- (ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or
- (iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing medical advisory board regarding the ability of a driver to operate a motor vehicle safely. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations.

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

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

- (A) a record assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2;
- (B) vulnerability assessments;
- (C) risk planning documents;
- (D) needs assessments;
- (E) threat assessments;
- (F) intelligence assessments;
- (G) domestic preparedness strategies;
- (H) the location of community drinking water wells and surface water intakes;
- (I) the emergency contact information of emergency responders and volunteers;
- (J) infrastructure records that disclose the configuration of critical systems such as communication, electrical, ventilation, water, and wastewater systems;
- (K) detailed drawings or specifications of structural elements, floor plans, and operating, utility, or security systems, whether in paper or electronic form, of any building or facility located on an airport (as defined in IC 8-21-1-1) that is owned, occupied, leased, or maintained by a public agency. A record described in this clause may not be released

for public inspection by any public agency without the prior approval of the public agency that owns, occupies, leases, or maintains the airport. The public agency that owns, occupies, leases, or maintains the airport:

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

(ii) must identify a record described under item (i) and clearly mark the record as "confidential and not subject to public disclosure under IC 5-14-3-4(b)(19)(J) without approval of (insert name of submitting public agency)"; and

(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 address is the location of the suspected crime, infraction, accident, or complaint reported, the address shall be made available for public inspection and copying.

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

(23) Records requested by an offender that:

(A) contain personal information relating to:

- (i) a correctional officer (as defined in IC 5-10-10-1.5);
- (ii) a law enforcement officer (as defined in IC 35-31.5-2-185);
- (iii) a judge (as defined in IC 33-38-12-3);
- (iv) the victim of a crime; or
- (v) a family member of a correctional officer, law enforcement officer (as defined in IC 35-31.5-2-185), judge (as defined in IC 33-38-12-3), or victim of a crime;

or  
(B) concern or could affect the security of a jail or correctional facility.

(24) Information concerning an individual less than eighteen (18) years of age who participates in a conference, meeting, program, or activity conducted or supervised by a state educational institution, including the following information regarding the individual or the individual's parent or guardian:

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

(25) Criminal intelligence information.

(26) The following information contained in a report of unclaimed property under IC 32-34-1-26 or in a claim for unclaimed property under IC 32-34-1-36:

- (A) date of birth;
- (B) driver's license number;
- (C) taxpayer identification number;
- (D) employer identification number; or
- (E) account number.

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

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

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

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

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

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

- (1) public records subject to IC 5-15 may be destroyed only in

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

*As added by P.L.19-1983, SEC.6. Amended by P.L.57-1983, SEC.1; P.L.34-1984, SEC.2; P.L.54-1985, SEC.3; P.L.50-1986, SEC.2; P.L.20-1988, SEC.12; P.L.11-1990, SEC.111; P.L.1-1991, SEC.38; P.L.10-1991, SEC.9; P.L.50-1991, SEC.1; P.L.49-1991, SEC.1; P.L.1-1992, SEC.11; P.L.2-1993, SEC.50; P.L.58-1993, SEC.4; P.L.190-1999, SEC.2; P.L.37-2000, SEC.2; P.L.271-2001, SEC.1; P.L.201-2001, SEC.1; P.L.1-2002, SEC.17; P.L.173-2003, SEC.5; P.L.261-2003, SEC.7; P.L.208-2003, SEC.1; P.L.200-2003, SEC.3; P.L.210-2005, SEC.1; P.L.1-2006, SEC.102; P.L.101-2006, SEC.4; P.L.2-2007, SEC.101; P.L.172-2007, SEC.1; P.L.179-2007, SEC.9; P.L.3-2008, SEC.29; P.L.51-2008, SEC.2; P.L.98-2008, SEC.4; P.L.120-2008, SEC.2; P.L.94-2010, SEC.1; P.L.170-2011, SEC.1; P.L.134-2012, SEC.18; P.L.184-2013, SEC.1; P.L.248-2013, SEC.3; P.L.175-2013, SEC.1; P.L.56-2014, SEC.1; P.L.168-2014, SEC.9; P.L.9-2015, SEC.1; P.L.181-2015, SEC.20.*

#### **IC 5-14-3-4.1**

##### **Repealed**

*(Repealed by P.L.1-1989, SEC.75.)*

#### **IC 5-14-3-4.3**

##### **Job title or job descriptions of law enforcement officers**

Sec. 4.3. Nothing contained in section 4(b)(8) of this chapter requires a law enforcement agency to release to the public the job title or job description of law enforcement officers.

*As added by P.L.35-1984, SEC.1.*

#### **IC 5-14-3-4.4**

##### **Investigatory records, records relating to criminal intelligence information, records relating to public safety; agency actions; court actions**

Sec. 4.4. (a) This section applies to a request for a record that the public agency considers to be excepted from disclosure under section 4(b)(1) or 4(b)(25) of this chapter. The public agency may do either of the following:

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

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

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

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

(b) This subsection applies to a request for a record that the public agency considers to be excepted from disclosure under section 4(b)(19) of this chapter. The agency may consult with the counterterrorism and security council established by IC 10-19-8-1 in formulating a response. The public agency may do either of the following:

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

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

(c) If a public agency does not respond to a request for a record under this section:

(1) within twenty-four (24) hours of receiving the request for a record from a person who:

(A) is physically present in the agency office;

(B) makes the request by telephone; or

(C) requests enhanced access to a document; or

(2) within seven (7) days of receiving the request for a record made by mail or facsimile;

the request for the record is deemed denied. The person requesting the information may appeal the denial under section 9 of this chapter.

(d) If a public agency refuses to confirm or deny the existence of a record under this section, the name and title or position of the person responsible for the refusal shall be given to the person making the records request.

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

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

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

(f) The court shall determine the matter de novo, with the burden of proof on the public agency to sustain its refusal to confirm or deny the existence of the record. The public agency meets its burden of proof by filing a public affidavit with the court that provides with reasonable specificity of detail, and not simply conclusory

statements, the basis of the agency's claim that it cannot be required to confirm or deny the existence of the requested record. If the public agency meets its burden of proof, the burden of proof shifts to the person requesting access to the record. The person requesting access to the record meets the person's burden of proof by proving any of the following:

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

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

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

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

(B) matches the previously disclosed information.

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

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

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

(1) the plaintiff substantially prevails; or

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

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

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

*As added by P.L.248-2013, SEC.4.*

#### **IC 5-14-3-4.5**

##### **Repealed**

*(As added by P.L.4-2005, SEC.29. Repealed by P.L.175-2013, SEC.2.)*

#### **IC 5-14-3-4.7**

##### **Negotiation records; final offers; certification of final offer disclosure**

Sec. 4.7. (a) Records relating to negotiations between the Indiana finance authority and industrial, research, or commercial prospects are excepted from section 3 of this chapter at the discretion of the authority if the records are created while negotiations are in progress.

(b) Notwithstanding subsection (a), the terms of the final offer of public financial resources communicated by the authority to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(c) When disclosing a final offer under subsection (b), the authority shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

*As added by P.L.235-2005, SEC.85.*

#### **IC 5-14-3-4.8**

##### **Records exempt from disclosure requirements; office of tourism development negotiations; final offers public**

Sec. 4.8. (a) Records relating to negotiations between the office of tourism development and industrial, research, or commercial prospects are excepted from section 3 of this chapter at the discretion of the office of tourism development if the records are created while negotiations are in progress.

(b) Notwithstanding subsection (a), the terms of the final offer of public financial resources communicated by the office of tourism development to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(c) When disclosing a final offer under subsection (b), the office of tourism development shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

*As added by P.L.229-2005, SEC.3.*

#### **IC 5-14-3-4.9**

##### **Ports of Indiana negotiation records excepted from disclosure; disclosure of final offers**

Sec. 4.9. (a) Records relating to negotiations between the ports of Indiana and industrial, research, or commercial prospects are excepted from section 3 of this chapter at the discretion of the ports of Indiana if the records are created while negotiations are in progress.

(b) Notwithstanding subsection (a), the terms of the final offer of public financial resources communicated by the ports of Indiana to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(c) When disclosing a final offer under subsection (b), the ports of Indiana shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

*As added by P.L.98-2008, SEC.5.*

**IC 5-14-3-5**

**Information relating to arrest or summons; jailed persons; agency records**

Sec. 5. (a) If a person is arrested or summoned for an offense, the following information shall be made available for inspection and copying:

- (1) Information that identifies the person including the person's name, age, and address.
- (2) Information concerning any charges on which the arrest or summons is based.
- (3) Information relating to the circumstances of the arrest or the issuance of the summons, such as the:
  - (A) time and location of the arrest or the issuance of the summons;
  - (B) investigating or arresting officer (other than an undercover officer or agent); and
  - (C) investigating or arresting law enforcement agency.

(b) If a person is received in a jail or lock-up, the following information shall be made available for inspection and copying:

- (1) Information that identifies the person including the person's name, age, and address.
- (2) Information concerning the reason for the person being placed in the jail or lock-up, including the name of the person on whose order the person is being held.
- (3) The time and date that the person was received and the time and date of the person's discharge or transfer.
- (4) The amount of the person's bail or bond, if it has been fixed.

(c) An agency shall maintain a daily log or record that lists suspected crimes, accidents, or complaints, and the following information shall be made available for inspection and copying:

- (1) The time, substance, and location of all complaints or requests for assistance received by the agency.
- (2) The time and nature of the agency's response to all complaints or requests for assistance.
- (3) If the incident involves an alleged crime or infraction:
  - (A) the time, date, and location of occurrence;
  - (B) the name and age of any victim, unless the victim is a victim of a crime under IC 35-42-4 or IC 35-42-3.5;
  - (C) the factual circumstances surrounding the incident; and
  - (D) a general description of any injuries, property, or weapons involved.

The information required in this subsection shall be made available for inspection and copying in compliance with this chapter. The record containing the information must be created not later than twenty-four (24) hours after the suspected crime, accident, or complaint has been reported to the agency.

(d) This chapter does not affect IC 5-2-4, IC 10-13-3, or

IC 5-11-1-9.

*As added by P.L.19-1983, SEC.6. Amended by P.L.39-1992, SEC.1; P.L.2-2003, SEC.24; P.L.1-2012, SEC.1.*

#### **IC 5-14-3-5.5**

##### **Sealing certain records by court; hearing; notice**

Sec. 5.5. (a) This section applies to a judicial public record.

(b) As used in this section, "judicial public record" does not include a record submitted to a court for the sole purpose of determining whether the record should be sealed.

(c) Before a court may seal a public record not declared confidential under section 4(a) of this chapter, it must hold a hearing at a date and time established by the court. Notice of the hearing shall be posted at a place designated for posting notices in the courthouse.

(d) At the hearing, parties or members of the general public must be permitted to testify and submit written briefs. A decision to seal all or part of a public record must be based on findings of fact and conclusions of law, showing that the remedial benefits to be gained by effectuating the public policy of the state declared in section 1 of this chapter are outweighed by proof by a preponderance of the evidence by the person seeking the sealing of the record that:

- (1) a public interest will be secured by sealing the record;
- (2) dissemination of the information contained in the record will create a serious and imminent danger to that public interest;
- (3) any prejudicial effect created by dissemination of the information cannot be avoided by any reasonable method other than sealing the record;
- (4) there is a substantial probability that sealing the record will be effective in protecting the public interest against the perceived danger; and
- (5) it is reasonably necessary for the record to remain sealed for a period of time.

Sealed records shall be unsealed at the earliest possible time after the circumstances necessitating the sealing of the records no longer exist.  
*As added by P.L.54-1985, SEC.4. Amended by P.L.68-1987, SEC.1.*

#### **IC 5-14-3-6**

##### **Partially disclosable records; computer or microfilm record systems; fees**

Sec. 6. (a) If a public record contains disclosable and nondisclosable information, the public agency shall, upon receipt of a request under this chapter, separate the material that may be disclosed and make it available for inspection and copying.

(b) If a public record stored on computer tape, computer disks, microfilm, or a similar or analogous record system is made available to:

- (1) a person by enhanced access under section 3.5 of this chapter; or
- (2) a governmental entity by an electronic device;

the public agency may not make the record available for inspection without first separating the material in the manner required by subsection (a).

(c) A public agency may charge a person who makes a request for disclosable information the agency's direct cost of reprogramming a computer system if:

- (1) the disclosable information is stored on a computer tape, computer disc, or a similar or analogous record system; and
- (2) the public agency is required to reprogram the computer system to separate the disclosable information from nondisclosable information.

(d) A public agency is not required to reprogram a computer system to provide:

- (1) enhanced access; or
- (2) access to a governmental entity by an electronic device.

*As added by P.L.19-1983, SEC.6. Amended by P.L.54-1985, SEC.5; P.L.58-1993, SEC.5; P.L.77-1995, SEC.5.*

### **IC 5-14-3-6.5**

#### **Confidentiality of public record**

Sec. 6.5. A public agency that receives a confidential public record from another public agency shall maintain the confidentiality of the public record.

*As added by P.L.34-1984, SEC.3.*

### **IC 5-14-3-7**

#### **Protection against loss, alteration, destruction, and unauthorized enhanced access**

Sec. 7. (a) A public agency shall protect public records from loss, alteration, mutilation, or destruction, and regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees.

(b) A public agency shall take precautions that protect the contents of public records from unauthorized enhanced access, unauthorized access by an electronic device, or alteration.

(c) This section does not operate to deny to any person the rights secured by section 3 of this chapter.

*As added by P.L.19-1983, SEC.6. Amended by P.L.58-1993, SEC.6.*

### **IC 5-14-3-8**

#### **Fees; copies**

Sec. 8. (a) For the purposes of this section, "state agency" has the meaning set forth in IC 4-13-1-1.

(b) Except as provided in this section, a public agency may not charge any fee under this chapter:

- (1) to inspect a public record; or
- (2) to search for, examine, or review a record to determine whether the record may be disclosed.

(c) The Indiana department of administration shall establish a

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

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

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

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

(e) If:

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

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

(f) Notwithstanding subsection (b), (c), (d), (g), (h), or (i), a public agency shall collect any certification, copying, facsimile machine transmission, or search fee that is specified by statute or is ordered by a court.

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

- (1) The agency's direct cost of supplying the information in that form.
- (2) The standard cost for selling the same information to the public in the form of a publication if the agency has published the information and made the publication available for sale.

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

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

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

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

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

- (1) Public agency program support.
- (2) Nonprofit activities.
- (3) Journalism.
- (4) Academic research.

*As added by P.L.19-1983, SEC.6. Amended by P.L.54-1985, SEC.6; P.L.51-1986, SEC.2; P.L.58-1993, SEC.7; P.L.78-1995, SEC.1; P.L.151-1999, SEC.1; P.L.89-2001, SEC.1; P.L.215-2007, SEC.1; P.L.16-2008, SEC.1.*

### **IC 5-14-3-8.3**

#### **Enhanced access fund; establishment by ordinance; purpose**

Sec. 8.3. (a) The fiscal body of a political subdivision having a public agency that charges a fee under section 8(h) or 8(i) of this chapter shall adopt an ordinance establishing an enhanced access fund. The ordinance must specify that the fund consists of fees collected under section 8(h) or 8(i) of this chapter. The fund shall be administered by the public agency or officer designated in the ordinance or resolution. Money in the fund must be appropriated and expended in the manner authorized in the ordinance.

- (b) The fund is a dedicated fund with the following purposes:
- (1) The replacement, improvement, and expansion of capital expenditures.
  - (2) The reimbursement of operating expenses incurred in providing enhanced access to public information.

*As added by P.L.58-1993, SEC.8.*

#### **IC 5-14-3-8.5**

##### **Electronic map generation fund; establishment by ordinance; purpose**

Sec. 8.5. (a) The fiscal body of a political subdivision having a public agency that charges a fee under section 8(j) of this chapter shall adopt an ordinance establishing an electronic map generation fund. The ordinance must specify that the fund consists of fees collected under section 8(j) of this chapter. The fund shall be administered by the public agency that collects the fees.

(b) The electronic map generation fund is a dedicated fund with the following purposes:

- (1) The maintenance, upgrading, and enhancement of the electronic map.
- (2) The reimbursement of expenses incurred by a public agency in supplying an electronic map in the form requested by a purchaser.

*As added by P.L.58-1993, SEC.9.*

#### **IC 5-14-3-9**

##### **Denial of disclosure; action to compel disclosure; intervenors; burden of proof; attorney's fees and costs**

Sec. 9. (a) This section does not apply to a request for information under section 4.4 of this chapter.

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

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

whichever occurs first.

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

(d) If a request is made orally, either in person or by telephone, a public agency may deny the request orally. However, if a request initially is made in writing, by facsimile, or through enhanced access,

or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the request if:

- (1) the denial is in writing or by facsimile; and
- (2) the denial includes:
  - (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and
  - (B) the name and the title or position of the person responsible for the denial.

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

- (1) that a request for release of the public record has been denied; and
- (2) whether the denial was in compliance with an informal inquiry response or advisory opinion of the public access counselor.

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

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

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

- (1) the public agency meets its burden of proof under this subsection by:
  - (A) proving that the record falls within any one (1) of the categories of exempted records under section 4(b) of this chapter; and
  - (B) establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit; and
- (2) a person requesting access to a public record meets the person's burden of proof under this subsection by proving that the denial of access is arbitrary or capricious.

(h) The court may review the public record in camera to determine whether any part of it may be withheld under this chapter. However,

if the complaint alleges that a public agency denied disclosure of a public record by redacting information in the public record, the court shall conduct an in camera inspection of the public record with the redacted information included.

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

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

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

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

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

*As added by P.L.19-1983, SEC.6. Amended by P.L.54-1985, SEC.7; P.L.50-1986, SEC.3; P.L.68-1987, SEC.2; P.L.58-1993, SEC.10; P.L.19-1997, SEC.4; P.L.70-1999, SEC.2 and P.L.191-1999, SEC.2; P.L.173-2003, SEC.6 and P.L.261-2003, SEC.8; P.L.22-2005, SEC.2; P.L.134-2012, SEC.19; P.L.248-2013, SEC.5.*

### **IC 5-14-3-9.5**

#### **Civil penalties imposed on public agency, officer, or management level employee**

Sec. 9.5. (a) This section does not apply to any matter regarding:

- (1) the work product of the legislative services agency under personnel rules approved by the legislative council; or
- (2) the work product of individual members and the partisan staffs of the general assembly.

(b) As used in subsections (c) through (k), "individual" means:

- (1) an officer of a public agency; or
- (2) an individual employed in a management level position with a public agency.

(c) If an individual:

- (1) continues to deny a request that complies with section 3(b) of this chapter for inspection or copying of a public record after the public access counselor has issued an advisory opinion:
  - (A) regarding the request for inspection or copying of the public record; and

(B) that instructs the public agency to allow access to the public record; and

(2) denies the request with the specific intent to unlawfully withhold a public record that is subject to disclosure under this chapter;

the individual and the public agency employing the individual are subject to a civil penalty under subsection (h).

(d) If an individual intentionally charges a copying fee that the individual knows exceeds the amount set by statute, fee schedule, ordinance, or court order, the individual is subject to a civil penalty under subsection (h).

(e) A civil penalty may only be imposed as part of an action filed under section 9 of this chapter. A court may not impose a civil penalty under this section unless the public access counselor has issued an advisory opinion:

(1) to the complainant and the public agency;

(2) that instructs the public agency to allow access to the public record; and

(3) before the action under section 9 of this chapter is filed.

Nothing in this section prevents both the person requesting the public record and the public agency from requesting an advisory opinion from the public access counselor.

(f) It is a defense to the imposition of a civil penalty under this section that the individual denied access to a public record in reliance on either of the following:

(1) An opinion of the public agency's legal counsel.

(2) An opinion of the attorney general.

(g) A court may impose a civil penalty for a violation under subsection (c) against one (1) or more of the following:

(1) The individual named as a defendant in the action.

(2) The public agency named as a defendant in the action.

(h) In an action under this section, a court may impose the following civil penalties:

(1) Not more than one hundred dollars (\$100) for the first violation.

(2) Not more than five hundred dollars (\$500) for each additional violation.

A civil penalty imposed under this section is in addition to any other civil or criminal penalty imposed. However, in any one (1) action brought under this section, a court may impose only one (1) civil penalty against an individual, even if the court finds that the individual committed multiple violations. This subsection does not preclude a court from imposing another civil penalty against an individual in a separate action, but an individual may not be assessed more than one (1) civil penalty in any one (1) action brought under this section.

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

(j) An individual is personally liable for a civil penalty imposed on the individual under this section. A civil penalty imposed against a public agency under this section shall be paid from the public agency's budget.

(k) If an officer of a public agency directs an individual who is employed in a management level position to deny a request as described in subsection (c)(1), the management level employee is not subject to civil penalties under subsection (h).

*As added by P.L.134-2012, SEC.20.*

### **IC 5-14-3-10**

#### **Classified confidential information; unauthorized disclosure or failure to protect; offense; discipline**

Sec. 10. (a) A public employee, a public official, or an employee or officer of a contractor or subcontractor of a public agency, except as provided by IC 4-15-10, who knowingly or intentionally discloses information classified as confidential by state statute, including information declared confidential under:

(1) section 4(a) of this chapter; or

(2) section 4(b) of this chapter if the public agency having control of the information declares it to be confidential;

commits a Class A infraction.

(b) A public employee may be disciplined in accordance with the personnel policies of the agency by which the employee is employed if the employee intentionally, knowingly, or recklessly discloses or fails to protect information classified as confidential by state statute.

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

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

*As added by P.L.17-1984, SEC.2. Amended by P.L.54-1985, SEC.8; P.L.68-1987, SEC.3; P.L.77-1995, SEC.6; P.L.70-1999, SEC.3 and P.L.191-1999, SEC.3; P.L.126-2012, SEC.24.*