

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Engrossed House Bill 1276 be amended to read as follows:

- 1           Page 1, between the enacting clause and line 1, begin a new  
2 paragraph and insert:  
3           "SECTION 1. IC 5-14-3-4, AS AMENDED BY P.L.120-2008,  
4 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
5 JULY 1, 2010]: Sec. 4. (a) The following public records are excepted  
6 from section 3 of this chapter and may not be disclosed by a public  
7 agency, unless access to the records is specifically required by a state  
8 or federal statute or is ordered by a court under the rules of discovery:  
9           (1) Those declared confidential by state statute.  
10           (2) Those declared confidential by rule adopted by a public  
11 agency under specific authority to classify public records as  
12 confidential granted to the public agency by statute.  
13           (3) Those required to be kept confidential by federal law.  
14           (4) Records containing trade secrets.  
15           (5) Confidential financial information obtained, upon request,  
16 from a person. However, this does not include information that is  
17 filed with or received by a public agency pursuant to state statute.  
18           (6) Information concerning research, including actual research  
19 documents, conducted under the auspices of a state educational  
20 institution, including information:  
21           (A) concerning any negotiations made with respect to the  
22 research; and  
23           (B) received from another party involved in the research.  
24           (7) Grade transcripts and license examination scores obtained as  
25 part of a licensure process.  
26           (8) Those declared confidential by or under rules adopted by the  
27 supreme court of Indiana.  
28           (9) Patient medical records and charts created by a provider,  
29 unless the patient gives written consent under IC 16-39 **or as**  
30 **provided under IC 16-41-8.**

- 1 (10) Application information declared confidential by the board  
2 of the Indiana economic development corporation under  
3 IC 5-28-16.
- 4 (11) A photograph, a video recording, or an audio recording of an  
5 autopsy, except as provided in IC 36-2-14-10.
- 6 (12) A Social Security number contained in the records of a  
7 public agency.
- 8 (b) Except as otherwise provided by subsection (a), the following  
9 public records shall be excepted from section 3 of this chapter at the  
10 discretion of a public agency:
- 11 (1) Investigatory records of law enforcement agencies. However,  
12 certain law enforcement records must be made available for  
13 inspection and copying as provided in section 5 of this chapter.
- 14 (2) The work product of an attorney representing, pursuant to  
15 state employment or an appointment by a public agency:
- 16 (A) a public agency;  
17 (B) the state; or  
18 (C) an individual.
- 19 (3) Test questions, scoring keys, and other examination data used  
20 in administering a licensing examination, examination for  
21 employment, or academic examination before the examination is  
22 given or if it is to be given again.
- 23 (4) Scores of tests if the person is identified by name and has not  
24 consented to the release of the person's scores.
- 25 (5) The following:
- 26 (A) Records relating to negotiations between the Indiana  
27 economic development corporation, the ports of Indiana, the  
28 Indiana state department of agriculture, the Indiana finance  
29 authority, an economic development commission, a local  
30 economic development organization (as defined in  
31 IC 5-28-11-2(3)), or a governing body of a political  
32 subdivision with industrial, research, or commercial prospects,  
33 if the records are created while negotiations are in progress.
- 34 (B) Notwithstanding clause (A), the terms of the final offer of  
35 public financial resources communicated by the Indiana  
36 economic development corporation, the ports of Indiana, the  
37 Indiana finance authority, an economic development  
38 commission, or a governing body of a political subdivision to  
39 an industrial, a research, or a commercial prospect shall be  
40 available for inspection and copying under section 3 of this  
41 chapter after negotiations with that prospect have terminated.
- 42 (C) When disclosing a final offer under clause (B), the Indiana  
43 economic development corporation shall certify that the  
44 information being disclosed accurately and completely  
45 represents the terms of the final offer.
- 46 (6) Records that are intra-agency or interagency advisory or

1 deliberative material, including material developed by a private  
 2 contractor under a contract with a public agency, that are  
 3 expressions of opinion or are of a speculative nature, and that are  
 4 communicated for the purpose of decision making.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (16) Library or archival records:

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

- 1 (B) deposited with or acquired by a library upon a condition  
 2 that the records be disclosed only:
- 3 (i) to qualified researchers;
  - 4 (ii) after the passing of a period of years that is specified in  
 5 the documents under which the deposit or acquisition is  
 6 made; or
  - 7 (iii) after the death of persons specified at the time of the  
 8 acquisition or deposit.
- 9 However, nothing in this subdivision shall limit or affect contracts  
 10 entered into by the Indiana state library pursuant to IC 4-1-6-8.
- 11 (17) The identity of any person who contacts the bureau of motor  
 12 vehicles concerning the ability of a driver to operate a motor  
 13 vehicle safely and the medical records and evaluations made by  
 14 the bureau of motor vehicles staff or members of the driver  
 15 licensing medical advisory board regarding the ability of a driver  
 16 to operate a motor vehicle safely. However, upon written request  
 17 to the commissioner of the bureau of motor vehicles, the driver  
 18 must be given copies of the driver's medical records and  
 19 evaluations.
- 20 (18) School safety and security measures, plans, and systems,  
 21 including emergency preparedness plans developed under 511  
 22 IAC 6.1-2-2.5.
- 23 (19) A record or a part of a record, the public disclosure of which  
 24 would have a reasonable likelihood of threatening public safety  
 25 by exposing a vulnerability to terrorist attack. A record described  
 26 under this subdivision includes:
- 27 (A) a record assembled, prepared, or maintained to prevent,  
 28 mitigate, or respond to an act of terrorism under IC 35-47-12-1  
 29 or an act of agricultural terrorism under IC 35-47-12-2;
  - 30 (B) vulnerability assessments;
  - 31 (C) risk planning documents;
  - 32 (D) needs assessments;
  - 33 (E) threat assessments;
  - 34 (F) intelligence assessments;
  - 35 (G) domestic preparedness strategies;
  - 36 (H) the location of community drinking water wells and  
 37 surface water intakes;
  - 38 (I) the emergency contact information of emergency  
 39 responders and volunteers;
  - 40 (J) infrastructure records that disclose the configuration of  
 41 critical systems such as communication, electrical, ventilation,  
 42 water, and wastewater systems; and
  - 43 (K) detailed drawings or specifications of structural elements,  
 44 floor plans, and operating, utility, or security systems, whether  
 45 in paper or electronic form, of any building or facility located  
 46 on an airport (as defined in IC 8-21-1-1) that is owned,

1 occupied, leased, or maintained by a public agency. A record  
 2 described in this clause may not be released for public  
 3 inspection by any public agency without the prior approval of  
 4 the public agency that owns, occupies, leases, or maintains the  
 5 airport. The public agency that owns, occupies, leases, or  
 6 maintains the airport:

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

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

15 This subdivision does not apply to a record or portion of a record  
 16 pertaining to a location or structure owned or protected by a  
 17 public agency in the event that an act of terrorism under  
 18 IC 35-47-12-1 or an act of agricultural terrorism under  
 19 IC 35-47-12-2 has occurred at that location or structure, unless  
 20 release of the record or portion of the record would have a  
 21 reasonable likelihood of threatening public safety by exposing a  
 22 vulnerability of other locations or structures to terrorist attack.

23 (20) The following personal information concerning a customer  
 24 of a municipally owned utility (as defined in IC 8-1-2-1):

25 (A) Telephone number.

26 (B) Address.

27 (C) Social Security number.

28 (21) The following personal information about a complainant  
 29 contained in records of a law enforcement agency:

30 (A) Telephone number.

31 (B) The complainant's address. However, if the complainant's  
 32 address is the location of the suspected crime, infraction,  
 33 accident, or complaint reported, the address shall be made  
 34 available for public inspection and copying.

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

40 (23) Records requested by an offender that:

41 (A) contain personal information relating to:

42 (i) a correctional officer (as defined in IC 5-10-10-1.5);

43 (ii) the victim of a crime; or

44 (iii) a family member of a correctional officer or the victim  
 45 of a crime; or

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

1 facility.

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

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

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

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

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

14 Renumber all SECTIONS consecutively.

(Reference is to EHB 1276 as printed February 19, 2010.)

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Senator STEELE