



February 26, 2016

ENGROSSED HOUSE BILL No. 1019

DIGEST OF HB 1019 (Updated February 24, 2016 12:18 pm - DI 106)

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

Synopsis: Law enforcement recordings. Establishes a procedure for the release of law enforcement recordings under the public records law. Exempts custodial interrogations described in Indiana Evidence Rule 617 from provisions applicable to other law enforcement recordings. Provides that a person who: (1) is the victim of a crime; or (2) suffers a loss due to personal injury or property damage; is a "requestor" as defined in the statute if the events depicted in the recording are relevant
(Continued next page)

Effective: July 1, 2016.

Mahan, Price, Negele, DeLaney

(SENATE SPONSORS — BRAY, CRIDER, HOLDMAN, TAYLOR,
RANDOLPH LONNIE M)

January 5, 2016, read first time and referred to Committee on Government and Regulatory Reform.

January 13, 2016, reported — Do Pass.

January 25, 2016, read second time, ordered engrossed.

January 26, 2016, engrossed. Read third time, passed. Yeas 65, nays 30.

SENATE ACTION

February 3, 2016, read first time and referred to Committee on Judiciary.

February 25, 2016, amended, reported favorably — Do Pass.

EH 1019—LS 6077/DI 87



Digest Continued

to the crime committed against the person or to the person's loss. Requires a public agency to permit inspection and copying of a recording under certain conditions, specifies the procedure to obtain a court order for the release of a law enforcement recording, and requires a court to expedite the proceedings. Caps the fee that may be charged for copying a law enforcement recording, specifies that the agency collecting the fee may spend the fee for certain purposes, and provides that a recording that captures information relating to airport security may not be released for public inspection without the approval of the airport operator. Specifies information that must be obscured from a law enforcement recording before it is disclosed. Establishes the length of time that a law enforcement recording must be retained by a public agency. Exempts a law enforcement recording from a criminal statute prohibiting placement of a camera on the private property of another person. (The introduced version of this bill was prepared by the interim study committee on government.)



February 26, 2016

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

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1019

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-14-3-2, AS AMENDED BY P.L.248-2013,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 2. (a) The definitions set forth in this section apply
4 throughout this chapter.

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

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

11 (1) the identification of; and
12 (2) the criminal activity engaged in by;
13 an individual who or organization that is reasonably suspected of
14 involvement in criminal activity.

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

17 (1) the initial development of a program, if any;

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



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

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

4 **The term does not include an administrative activity, including the**
 5 **completion of paperwork related to a law enforcement activity, or**
 6 **a custodial interrogation conducted in a place of detention as**
 7 **described in Indiana Evidence Rule 617, regardless of the ultimate**
 8 **admissibility of a statement made during the custodial**
 9 **interrogation.**

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

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

15 **(2) designed to be worn by a law enforcement officer or**
 16 **attached to the vehicle or transportation of a law enforcement**
 17 **officer.**

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

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

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

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

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

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

35 **(2) Any:**

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

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

41 **(C) other entity, or any office thereof, by whatever name**
 42 **designated, exercising in a limited geographical area the**



- 1 executive, administrative, judicial, or legislative power of the
 2 state or a delegated local governmental power.
- 3 (3) Any entity or office that is subject to:
- 4 (A) budget review by either the department of local
 5 government finance or the governing body of a county, city,
 6 town, township, or school corporation; or
- 7 (B) an audit by the state board of accounts that is required by
 8 statute, rule, or regulation.
- 9 (4) Any building corporation of a political subdivision that issues
 10 bonds for the purpose of constructing public facilities.
- 11 (5) Any advisory commission, committee, or body created by
 12 statute, ordinance, or executive order to advise the governing
 13 body of a public agency, except medical staffs or the committees
 14 of any such staff.
- 15 (6) Any law enforcement agency, which means an agency or a
 16 department of any level of government that engages in the
 17 investigation, apprehension, arrest, or prosecution of alleged
 18 criminal offenders, such as the state police department, the police
 19 or sheriff's department of a political subdivision, prosecuting
 20 attorneys, members of the excise police division of the alcohol
 21 and tobacco commission, conservation officers of the department
 22 of natural resources, gaming agents of the Indiana gaming
 23 commission, gaming control officers of the Indiana gaming
 24 commission, and the security division of the state lottery
 25 commission.
- 26 (7) Any license branch staffed by employees of the bureau of
 27 motor vehicles commission under IC 9-16.
- 28 (8) The state lottery commission established by IC 4-30-3-1,
 29 including any department, division, or office of the commission.
- 30 (9) The Indiana gaming commission established under IC 4-33,
 31 including any department, division, or office of the commission.
- 32 (10) The Indiana horse racing commission established by IC 4-31,
 33 including any department, division, or office of the commission.
- 34 ~~(p)~~ **(q)** "Public record" means any writing, paper, report, study, map,
 35 photograph, book, card, tape recording, or other material that is
 36 created, received, retained, maintained, or filed by or with a public
 37 agency and which is generated on paper, paper substitutes,
 38 photographic media, chemically based media, magnetic or machine
 39 readable media, electronically stored data, or any other material,
 40 regardless of form or characteristics.
- 41 ~~(p)~~ **(r)** "Standard-sized documents" includes all documents that can
 42 be mechanically reproduced (without mechanical reduction) on paper



1 sized eight and one-half (8 1/2) inches by eleven (11) inches or eight
2 and one-half (8 1/2) inches by fourteen (14) inches.

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

4 ~~(r)~~ (t) "Work product of an attorney" means information compiled
5 by an attorney in reasonable anticipation of litigation. The term
6 includes the attorney's:

7 (1) notes and statements taken during interviews of prospective
8 witnesses; and

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

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

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

20 (1) identify with reasonable particularity the record being
21 requested; and

22 (2) be, at the discretion of the agency, in writing on or in a form
23 provided by the agency.

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

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

32 (1) provide the requested copies to the person making the request;
33 or

34 (2) allow the person to make copies:
35 (A) on the agency's equipment; or
36 (B) on the person's own equipment.

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

39 (1) In accordance with a contract described in section 3.5 of this
40 chapter, permit a person to inspect and copy through the use of
41 enhanced access public records containing information owned by
42 or entrusted to the public agency.



1 (2) Permit a governmental entity to use an electronic device to
2 inspect and copy public records containing information owned by
3 or entrusted to the public agency.

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

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

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



1 against the disclosure of lists for political or commercial purposes
 2 applies to the following lists of names and addresses (including
 3 electronic mail account addresses):

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

5 (2) A list of persons attending conferences or meetings at a state
 6 educational institution or of persons involved in programs or
 7 activities conducted or supervised by the state educational
 8 institution.

9 (3) A list of students who are enrolled in a public school
 10 corporation if the governing body of the public school corporation
 11 adopts a policy:

12 (A) with respect to disclosure related to a commercial purpose,
 13 prohibiting the disclosure of the list to commercial entities for
 14 commercial purposes;

15 (B) with respect to disclosure related to a commercial purpose,
 16 specifying the classes or categories of commercial entities to
 17 which the list may not be disclosed or by which the list may
 18 not be used for commercial purposes; or

19 (C) with respect to disclosure related to a political purpose,
 20 prohibiting the disclosure of the list to individuals and entities
 21 for political purposes.

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

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

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

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

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

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

40 **(i) A request to inspect or copy a law enforcement recording**
 41 **must be in writing. A request identifies a law enforcement**
 42 **recording with reasonable particularity as required by this section**



1 **only if the request provides the following information regarding**
 2 **the law enforcement activity depicted in the recording:**

3 **(1) The date and approximate time of the law enforcement**
 4 **activity.**

5 **(2) The specific location where the law enforcement activity**
 6 **occurred.**

7 **(3) The name of at least one (1) individual, other than a law**
 8 **enforcement officer, who was directly involved in the law**
 9 **enforcement activity.**

10 SECTION 3. IC 5-14-3-4, AS AMENDED BY P.L.181-2015,
 11 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2016]: Sec. 4. (a) The following public records are excepted
 13 from section 3 of this chapter and may not be disclosed by a public
 14 agency, unless access to the records is specifically required by a state
 15 or federal statute or is ordered by a court under the rules of discovery:

16 (1) Those declared confidential by state statute.

17 (2) Those declared confidential by rule adopted by a public
 18 agency under specific authority to classify public records as
 19 confidential granted to the public agency by statute.

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

21 (4) Records containing trade secrets.

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

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

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

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

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

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

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

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

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



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



1 consented to the release of the person's scores.

2 (5) The following:

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

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

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

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

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

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

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

40 (A) the name, compensation, job title, business address,
41 business telephone number, job description, education and
42 training background, previous work experience, or dates of



- 1 first and last employment of present or former officers or
 2 employees of the agency;
- 3 (B) information relating to the status of any formal charges
 4 against the employee; and
- 5 (C) the factual basis for a disciplinary action in which final
 6 action has been taken and that resulted in the employee being
 7 suspended, demoted, or discharged.
- 8 However, all personnel file information shall be made available
 9 to the affected employee or the employee's representative. This
 10 subdivision does not apply to disclosure of personnel information
 11 generally on all employees or for groups of employees without the
 12 request being particularized by employee name.
- 13 (9) Minutes or records of hospital medical staff meetings.
- 14 (10) Administrative or technical information that would
 15 jeopardize a record keeping or security system.
- 16 (11) Computer programs, computer codes, computer filing
 17 systems, and other software that are owned by the public agency
 18 or entrusted to it and portions of electronic maps entrusted to a
 19 public agency by a utility.
- 20 (12) Records specifically prepared for discussion or developed
 21 during discussion in an executive session under IC 5-14-1.5-6.1.
 22 However, this subdivision does not apply to that information
 23 required to be available for inspection and copying under
 24 subdivision (8).
- 25 (13) The work product of the legislative services agency under
 26 personnel rules approved by the legislative council.
- 27 (14) The work product of individual members and the partisan
 28 staffs of the general assembly.
- 29 (15) The identity of a donor of a gift made to a public agency if:
 30 (A) the donor requires nondisclosure of the donor's identity as
 31 a condition of making the gift; or
 32 (B) after the gift is made, the donor or a member of the donor's
 33 family requests nondisclosure.
- 34 (16) Library or archival records:
 35 (A) which can be used to identify any library patron; or
 36 (B) deposited with or acquired by a library upon a condition
 37 that the records be disclosed only:
 38 (i) to qualified researchers;
 39 (ii) after the passing of a period of years that is specified in
 40 the documents under which the deposit or acquisition is
 41 made; or
 42 (iii) after the death of persons specified at the time of the



- 1 acquisition or deposit.
- 2 However, nothing in this subdivision shall limit or affect contracts
- 3 entered into by the Indiana state library pursuant to IC 4-1-6-8.
- 4 (17) The identity of any person who contacts the bureau of motor
- 5 vehicles concerning the ability of a driver to operate a motor
- 6 vehicle safely and the medical records and evaluations made by
- 7 the bureau of motor vehicles staff or members of the driver
- 8 licensing medical advisory board regarding the ability of a driver
- 9 to operate a motor vehicle safely. However, upon written request
- 10 to the commissioner of the bureau of motor vehicles, the driver
- 11 must be given copies of the driver's medical records and
- 12 evaluations.
- 13 (18) School safety and security measures, plans, and systems,
- 14 including emergency preparedness plans developed under 511
- 15 IAC 6.1-2-2.5.
- 16 (19) A record or a part of a record, the public disclosure of which
- 17 would have a reasonable likelihood of threatening public safety
- 18 by exposing a vulnerability to terrorist attack. A record described
- 19 under this subdivision includes **the following**:
- 20 (A) A record assembled, prepared, or maintained to prevent,
- 21 mitigate, or respond to an act of terrorism under IC 35-47-12-1
- 22 or an act of agricultural terrorism under IC 35-47-12-2.
- 23 (B) Vulnerability assessments.
- 24 (C) Risk planning documents.
- 25 (D) Needs assessments.
- 26 (E) Threat assessments.
- 27 (F) Intelligence assessments.
- 28 (G) Domestic preparedness strategies.
- 29 (H) The location of community drinking water wells and
- 30 surface water intakes.
- 31 (I) The emergency contact information of emergency
- 32 responders and volunteers.
- 33 (J) Infrastructure records that disclose the configuration of
- 34 critical systems such as communication, electrical, ventilation,
- 35 water, and wastewater systems.
- 36 (K) Detailed drawings or specifications of structural elements,
- 37 floor plans, and operating, utility, or security systems, whether
- 38 in paper or electronic form, of any building or facility located
- 39 on an airport (as defined in IC 8-21-1-1) that is owned,
- 40 occupied, leased, or maintained by a public agency, **or any**
- 41 **part of a law enforcement recording that captures**
- 42 **information about airport security procedures, areas, or**



1 **systems.** A record described in this clause may not be released
 2 for public inspection by any public agency without the prior
 3 approval of the public agency that owns, occupies, leases, or
 4 maintains the airport. **Both of the following apply to the**
 5 **public agency that owns, occupies, leases, or maintains the**
 6 **airport:**

7 (i) **The public agency** is responsible for determining
 8 whether the public disclosure of a record or a part of a
 9 record, **including a law enforcement recording**, has a
 10 reasonable likelihood of threatening public safety by
 11 exposing a **security procedure, area, system, or**
 12 **vulnerability to terrorist attack. and**

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

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

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

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

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

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

32 This subdivision does not apply to a record or portion of a record
 33 pertaining to a location or structure owned or protected by a
 34 public agency in the event that an act of terrorism under
 35 IC 35-47-12-1 or an act of agricultural terrorism under
 36 IC 35-47-12-2 has occurred at that location or structure, unless
 37 release of the record or portion of the record would have a
 38 reasonable likelihood of threatening public safety by exposing a
 39 vulnerability of other locations or structures to terrorist attack.

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

42 (A) Telephone number.



- 1 (B) Address.
- 2 (C) Social Security number.
- 3 (21) The following personal information about a complainant
- 4 contained in records of a law enforcement agency:
- 5 (A) Telephone number.
- 6 (B) The complainant's address. However, if the complainant's
- 7 address is the location of the suspected crime, infraction,
- 8 accident, or complaint reported, the address shall be made
- 9 available for public inspection and copying.
- 10 (22) Notwithstanding subdivision (8)(A), the name,
- 11 compensation, job title, business address, business telephone
- 12 number, job description, education and training background,
- 13 previous work experience, or dates of first employment of a law
- 14 enforcement officer who is operating in an undercover capacity.
- 15 (23) Records requested by an offender that:
- 16 (A) contain personal information relating to:
- 17 (i) a correctional officer (as defined in IC 5-10-10-1.5);
- 18 (ii) a law enforcement officer (as defined in
- 19 IC 35-31.5-2-185);
- 20 (iii) a judge (as defined in IC 33-38-12-3);
- 21 (iv) the victim of a crime; or
- 22 (v) a family member of a correctional officer, law
- 23 enforcement officer (as defined in IC 35-31.5-2-185), judge
- 24 (as defined in IC 33-38-12-3), or victim of a crime; or
- 25 (B) concern or could affect the security of a jail or correctional
- 26 facility.
- 27 (24) Information concerning an individual less than eighteen (18)
- 28 years of age who participates in a conference, meeting, program,
- 29 or activity conducted or supervised by a state educational
- 30 institution, including the following information regarding the
- 31 individual or the individual's parent or guardian:
- 32 (A) Name.
- 33 (B) Address.
- 34 (C) Telephone number.
- 35 (D) Electronic mail account address.
- 36 (25) Criminal intelligence information.
- 37 (26) The following information contained in a report of unclaimed
- 38 property under IC 32-34-1-26 or in a claim for unclaimed
- 39 property under IC 32-34-1-36:
- 40 (A) Date of birth.
- 41 (B) Driver's license number.
- 42 (C) Taxpayer identification number.



1 (D) Employer identification number. or

2 (E) Account number.

3 **(27) Except as provided in subdivision (19) and sections 5.1**
 4 **and 5.2 of this chapter, a law enforcement recording.**
 5 **However, before disclosing the recording, the public agency**
 6 **must comply with the obscuring requirements of sections 5.1**
 7 **and 5.2 of this chapter, if applicable.**

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

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

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

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

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

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

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

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

31 SECTION 4. IC 5-14-3-5.1 IS ADDED TO THE INDIANA CODE
 32 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 33 1, 2016]: **Sec. 5.1. (a) As used in this section, "requestor" means the**
 34 **following:**

35 **(1) An individual who is depicted in a law enforcement**
 36 **recording.**

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

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

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



- 1 **(3) If the individual described in subdivision (1) is an**
- 2 **incapacitated person (as defined in IC 29-3-1-7.5), the legal**
- 3 **guardian, attorney, or attorney in fact of the incapacitated**
- 4 **person.**
- 5 **(4) A person that is an owner, tenant, lessee, or occupant of**
- 6 **real property, if the interior of the real property is depicted in**
- 7 **the recording.**
- 8 **(5) A person who:**
 - 9 **(A) is the victim of a crime; or**
 - 10 **(B) suffers a loss due to personal injury or property**
 - 11 **damage;**
 - 12 **if the events depicted in the law enforcement recording are**
 - 13 **relevant to the person's loss or to the crime committed against**
 - 14 **the person.**
- 15 **(b) A public agency shall allow a requestor to inspect a law**
- 16 **enforcement recording at least twice, if:**
 - 17 **(1) the requestor submits a written request under section 3 of**
 - 18 **this chapter for inspection of the recording; and**
 - 19 **(2) if section 4(b)(19) of this chapter applies, the public agency**
 - 20 **that owns, occupies, leases, or maintains the airport approves**
 - 21 **the disclosure of the recording.**
- 22 **The public agency shall allow the requestor to inspect the**
- 23 **recording in the company of the requestor's attorney. A law**
- 24 **enforcement recording may not be copied or recorded by the**
- 25 **requestor or the requestor's attorney during an inspection.**
- 26 **(c) Before an inspection under subsection (b), the public agency:**
 - 27 **(1) shall obscure in the recording any information described**
 - 28 **in section 4(a) of this chapter; and**
 - 29 **(2) may obscure:**
 - 30 **(A) an undercover law enforcement officer; or**
 - 31 **(B) a confidential informant.**
- 32 **(d) If a person is denied access to inspect a recording under this**
- 33 **section, the person may appeal the denial under section 9 of this**
- 34 **chapter.**
- 35 **SECTION 5. IC 5-14-3-5.2 IS ADDED TO THE INDIANA CODE**
- 36 **AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
- 37 **1, 2016]: Sec. 5.2. (a) A public agency shall permit any person to**
- 38 **inspect or copy a law enforcement recording depicting evidence**
- 39 **pertaining to:**
 - 40 **(1) the excessive use of force; or**
 - 41 **(2) a civil rights violation, tortious act, or other unlawful act;**
- 42 **by a law enforcement officer, unless section 4(b)(19) of this chapter**



1 applies and the person has not demonstrated that the public agency
 2 that owns, occupies, leases, or maintains the airport approves the
 3 disclosure of the recording. However, before permitting a person
 4 to inspect or copy the recording, the public agency must comply
 5 with the obscuring provisions of subsection (f), if applicable. The
 6 act of releasing a law enforcement recording under this subsection
 7 is not an admission of wrongdoing by the public agency and may
 8 not be considered by a trier of fact in adjudicating any action to
 9 which matters depicted on the recording are relevant.

10 (b) This subsection does not apply to a law enforcement
 11 recording described in subsection (a). A public agency shall permit
 12 any person to inspect or copy a law enforcement recording unless
 13 one (1) or more of the following circumstances apply:

14 (1) Section 4(b)(19) of this chapter applies and the person has
 15 not demonstrated that the public agency that owns, occupies,
 16 leases, or maintains the airport approves the disclosure of the
 17 recording.

18 (2) The public agency finds, after due consideration of the
 19 facts of the particular case, that access to or dissemination of
 20 the recording:

21 (A) creates a significant risk of substantial harm to any
 22 person or to the general public;

23 (B) is likely to interfere with the ability of a person to
 24 receive a fair trial by creating prejudice or bias concerning
 25 the person or a claim or defense presented by the person;

26 (C) may affect an ongoing investigation, if the recording is
 27 an investigatory record of a law enforcement agency; or

28 (D) would not serve the public interest.

29 However, before permitting a person to inspect or copy the
 30 recording, the public agency must comply with the obscuring
 31 provisions of subsection (f), if applicable.

32 (c) If a public agency denies a person the opportunity to inspect
 33 or copy a law enforcement recording under subsection (a) or (b),
 34 the person may petition the circuit or superior court of the county
 35 in which the law enforcement recording was made for an order
 36 permitting inspection or copying of a law enforcement recording.
 37 The court shall review the decision of the public agency de novo
 38 and grant the order unless one (1) or more of the following apply:

39 (1) If section 4(b)(19) of this chapter applies, the petitioner
 40 fails to establish by a preponderance of the evidence that the
 41 public agency that owns, occupies, leases, or maintains the
 42 airport approves the disclosure of the recording.



1 **(2) The law enforcement recording is not a recording**
 2 **described in subsection (a) and the public agency establishes**
 3 **by a preponderance of the evidence in light of the facts of the**
 4 **particular case, that access to or dissemination of the**
 5 **recording:**

6 **(A) creates a significant risk of substantial harm to any**
 7 **person or to the general public;**

8 **(B) is likely to interfere with the ability of a person to**
 9 **receive a fair trial by creating prejudice or bias concerning**
 10 **the person or a claim or defense presented by the person;**

11 **(C) may affect an ongoing investigation, if the recording is**
 12 **an investigatory record of a law enforcement agency; or**

13 **(D) would not serve the public interest.**

14 **(d) Notwithstanding section 9(i) of this chapter, a person that**
 15 **obtains an order for inspection of or to copy a law enforcement**
 16 **recording under this section may not be awarded attorney's fees,**
 17 **court costs, and other reasonable expenses of litigation. The**
 18 **penalty provisions of section 9.5 of this chapter do not apply to a**
 19 **petition filed under this section.**

20 **(e) If the court grants a petition for inspection of or to copy the**
 21 **law enforcement recording, the public agency shall disclose the**
 22 **recording. However, before disclosing the recording, the public**
 23 **agency must comply with the obscuring provisions of subsection**
 24 **(f), if applicable.**

25 **(f) A public agency that discloses a law enforcement recording**
 26 **under this section:**

27 **(1) shall obscure:**

28 **(A) any information described in:**

29 **(i) section 4(a) of this chapter; and**

30 **(ii) section 4(b)(2) through 4(b)(26) of this chapter,**
 31 **unless disclosure is expressly permitted or required by**
 32 **this chapter; and**

33 **(B) depictions of:**

34 **(i) an individual's death or a dead body;**

35 **(ii) acts of severe violence that are against any individual**
 36 **who is clearly visible and that result in serious bodily**
 37 **injury (as defined in IC 35-31.5-2-292);**

38 **(iii) serious bodily injury (as defined in**
 39 **IC 35-31.5-2-292);**

40 **(iv) nudity (as defined in IC 35-49-1-5);**

41 **(v) an individual whom the public agency reasonably**
 42 **believes is less than eighteen (18) years of age;**



- 1 (vi) personal medical information;
- 2 (vii) a victim of a crime, or any information identifying
- 3 the victim of a crime, if the public agency finds that
- 4 obscuring this information is necessary for the victim's
- 5 safety; and
- 6 (viii) a witness to a crime or an individual who reports a
- 7 crime, or any information identifying a witness to a
- 8 crime or an individual who reports a crime, if the public
- 9 agency finds that obscuring this information is necessary
- 10 for safety of the witness or individual who reports a
- 11 crime; and
- 12 (2) may obscure:
- 13 (A) a law enforcement officer operating in an undercover
- 14 capacity; or
- 15 (B) a confidential informant.
- 16 (g) A court shall expedite a proceeding filed under this section.
- 17 Unless prevented by extraordinary circumstances, the court shall
- 18 conduct a hearing (if required) and rule on a petition filed under
- 19 this section not later than thirty (30) days after the date the petition
- 20 is filed.
- 21 SECTION 6. IC 5-14-3-5.3 IS ADDED TO THE INDIANA CODE
- 22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 23 1, 2016]: Sec. 5.3. (a) Except as provided in subsection (c), a public
- 24 agency that is not the state or a state agency shall retain an
- 25 unaltered, unobscured law enforcement recording for at least one
- 26 hundred ninety (190) days after the date of the recording.
- 27 (b) Except as provided in subsection (c), a public agency that is
- 28 the state or a state agency shall retain an unaltered, unobscured
- 29 law enforcement recording for at least two hundred eighty (280)
- 30 days after the date of the recording.
- 31 (c) A public agency shall retain an unaltered, unobscured law
- 32 enforcement recording for a period longer than the period
- 33 described in subsections (a) and (b) if the following conditions are
- 34 met:
- 35 (1) Except as provided in subdivision (3), if a person defined
- 36 as a requestor as set forth in section 5.1(a) of this chapter
- 37 notifies the public agency in writing not more than:
- 38 (A) one hundred eighty (180) days (if the public agency is
- 39 not the state or a state agency); or
- 40 (B) two hundred seventy (270) days (if the public agency is
- 41 the state or a state agency);
- 42 after the date of the recording that the recording is to be



1 retained, the recording shall be retained for at least two (2)
 2 years after the date of the recording. The public agency may
 3 not request or require the person to provide a reason for the
 4 retention.

5 (2) Except as provided in subdivision (3), if a formal or
 6 informal complaint is filed with the public agency regarding
 7 a law enforcement activity depicted in the recording less than:

8 (A) one hundred eighty (180) days (if the public agency is
 9 not the state or a state agency); or

10 (B) two hundred seventy (270) days (if the public agency is
 11 the state or a state agency);

12 after the date of the recording, the public agency shall
 13 automatically retain the recording for at least two (2) years
 14 after the date of the recording.

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

18 (d) The public agency may retain a recording for training
 19 purposes for any length of time.

20 SECTION 7. IC 5-14-3-8, AS AMENDED BY P.L.16-2008,
 21 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2016]: Sec. 8. (a) For the purposes of this section, "state
 23 agency" has the meaning set forth in IC 4-13-1-1.

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

26 (1) to inspect a public record; or

27 (2) to search for, examine, or review a record to determine
 28 whether the record may be disclosed.

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

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



1 of:

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

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

10 (e) If:

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

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

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

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

- 33 (1) The agency's direct cost of supplying the information in that
 34 form. **However, the fee for a copy of a law enforcement**
 35 **recording may not exceed one hundred fifty dollars (\$150).**
 36 (2) The standard cost for selling the same information to the
 37 public in the form of a publication if the agency has published the
 38 information and made the publication available for sale.
 39 (3) In the case of the legislative services agency, a reasonable
 40 percentage of the agency's direct cost of maintaining the system
 41 in which the information is stored. However, the amount charged
 42 by the legislative services agency under this subdivision may not



1 exceed the sum of the amounts it may charge under subdivisions
2 (1) and (2).

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

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

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

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

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

29 (l) **This subsection does not apply to a state agency. A fee**
30 **collected under subsection (g) for the copying of a law enforcement**
31 **recording may be:**

- 32 (1) **retained by the public agency; and**
- 33 (2) **used without appropriation for one (1) or more of the**
34 **following purposes:**

35 (A) **To purchase cameras and other equipment for use in**
36 **connection with the agency's law enforcement recording**
37 **program.**

38 (B) **For training concerning law enforcement recording.**

39 (C) **To defray the expenses of storing, producing, and**
40 **copying law enforcement recordings.**

41 **Money from a fee described in this subsection does not revert to**
42 **the local general fund at the end of a fiscal year.**



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

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

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

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

16 whichever occurs first.

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

20 (d) If a request is made orally, either in person or by telephone, a
 21 public agency may deny the request orally. However, if a request
 22 initially is made in writing, by facsimile, or through enhanced access,
 23 or if an oral request that has been denied is renewed in writing or by
 24 facsimile, a public agency may deny the request if:

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

26 (2) the denial includes:

27 (A) a statement of the specific exemption or exemptions
 28 authorizing the withholding of all or part of the public record;
 29 and

30 (B) the name and the title or position of the person responsible
 31 for the denial.

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

39 (1) that a request for release of the public record has been denied;
 40 and

41 (2) whether the denial was in compliance with an informal inquiry
 42 response or advisory opinion of the public access counselor.



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

5 (f) The court shall determine the matter de novo, with the burden of
 6 proof on the public agency to sustain its denial. If the issue in de novo
 7 review under this section is whether a public agency properly denied
 8 access to a public record because the record is exempted under section
 9 4(a) of this chapter, the public agency meets its burden of proof under
 10 this subsection by establishing the content of the record with adequate
 11 specificity and not by relying on a conclusory statement or affidavit.

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

15 (1) the public agency meets its burden of proof under this
 16 subsection by:

17 (A) proving that: ~~the:~~

18 (i) ~~the~~ record falls within any one (1) of the categories of
 19 exempted records under section 4(b) of this chapter; and

20 (ii) **if the action is for denial of access under section 5.1**
 21 **of this chapter, the plaintiff is not a "requestor" as that**
 22 **term is defined in section 5.1 of this chapter; and**

23 (B) establishing the content of the record with adequate
 24 specificity and not by relying on a conclusory statement or
 25 affidavit; and

26 (2) a person requesting access to a public record meets the
 27 person's burden of proof under this subsection by proving that the
 28 denial of access is arbitrary or capricious.

29 (h) The court may review the public record in camera to determine
 30 whether any part of it may be withheld under this chapter. However, if
 31 the complaint alleges that a public agency denied disclosure of a public
 32 record by redacting information in the public record, the court shall
 33 conduct an in camera inspection of the public record with the redacted
 34 information included.

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

38 (1) the plaintiff substantially prevails; or

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

41 **Except as provided in subsection (k),** the plaintiff is not eligible for
 42 the awarding of attorney's fees, court costs, and other reasonable



1 expenses if the plaintiff filed the action without first seeking and
 2 receiving an informal inquiry response or advisory opinion from the
 3 public access counselor, unless the plaintiff can show the filing of the
 4 action was necessary because the denial of access to a public record
 5 under this chapter would prevent the plaintiff from presenting that
 6 public record to a public agency preparing to act on a matter of
 7 relevance to the public record whose disclosure was denied.

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

12 (k) **This subsection applies only to an action to appeal the denial**
 13 **of access to a law enforcement recording under section 5.1 of this**
 14 **chapter. A requestor (as defined in section 5.1 of this chapter) may**
 15 **bring an action to appeal from the denial of access to a law**
 16 **enforcement recording without first seeking or receiving an**
 17 **informal inquiry response or advisory opinion from the public**
 18 **access counselor. If the requestor prevails in an action under this**
 19 **subsection:**

20 (1) **the requestor is eligible for an award of reasonable**
 21 **attorney's fees, court costs, and other reasonable expenses;**
 22 **and**

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

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

27 SECTION 9. IC 35-31.5-2-185.4 IS ADDED TO THE INDIANA
 28 CODE AS A NEW SECTION TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 2016]: **Sec. 185.4. "Law enforcement**
 30 **recording device" means a camera or other device for creating**
 31 **audio, visual, or audiovisual recordings that is:**

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

34 (2) **designed to be worn by a law enforcement officer or**
 35 **attached to the vehicle or transportation of a law enforcement**
 36 **officer.**

37 SECTION 10. IC 35-46-8.5-1, AS ADDED BY P.L.170-2014,
 38 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2016]: Sec. 1. (a) This section does not apply to any of the
 40 following:

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



- 1 (A) IC 8-15-2.
2 (B) IC 8-15-3.
3 (C) IC 8-15.5.
4 (D) IC 8-15.7.
5 (E) IC 8-16.
6 (F) IC 9-21-3.5.
7 (2) A law enforcement officer who has obtained:
8 (A) a search warrant; or
9 (B) the consent of the owner or private property;
10 to place a camera or electronic surveillance equipment on private
11 property.
12 **(3) A law enforcement officer who uses a law enforcement**
13 **recording device in performance of the officer's duties.**
14 (b) A person who knowingly or intentionally places a camera or
15 electronic surveillance equipment that records images or data of any
16 kind while unattended on the private property of another person
17 without the consent of the owner or tenant of the private property
18 commits a Class A misdemeanor.



COMMITTEE REPORT

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

(Reference is to HB 1019 as introduced.)

MAHAN

Committee Vote: Yeas 13, Nays 0

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1019, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 5, delete "activity." and insert "**activity, or a custodial interrogation conducted in a place of detention as described in Indiana Evidence Rule 617, regardless of the ultimate admissibility of a statement made during the custodial interrogation.**".

Page 12, line 35, delete "or any part of a law".

Page 12, delete line 36.

Page 12, line 37, delete "located on an airport (as defined in IC 8-21-1-1)".

Page 12, line 38, delete "agency." and insert "**agency, or any part of a law enforcement recording that captures information about airport security procedures, areas, or systems.**".

Page 13, line 6, after "a" insert "**security procedure, area, system, or**".

Page 14, line 39, delete "section 5.1" and insert "**sections 5.1 and 5.2**".

Page 14, line 40, after "recording." insert "**However, before disclosing the recording, the public agency must comply with the obscuring requirements of sections 5.1 and 5.2 of this chapter, if applicable.**".

Page 15, between lines 40 and 41, begin a new line block indented and insert:

"(5) A person who:

(A) is the victim of a crime; or

(B) suffers a loss due to personal injury or property



**damage;
if the events depicted in the law enforcement recording are relevant to the person's loss or to the crime committed against the person."**

Page 16, delete lines 10 through 14, begin a new paragraph and insert:

"(c) Before an inspection under subsection (b), the public agency:

(1) shall obscure in the recording any information described in section 4(a) of this chapter; and

(2) may obscure:

(A) an undercover law enforcement officer; or

(B) a confidential informant."

Page 16, line 20, delete "Any person may petition to obtain a court" and insert "A public agency shall permit any person to inspect or copy a law enforcement recording depicting evidence pertaining to:

(1) the excessive use of force; or

(2) a civil rights violation, tortious act, or other unlawful act; by a law enforcement officer, unless section 4(b)(19) of this chapter applies and the person has not demonstrated that the public agency that owns, occupies, leases, or maintains the airport approves the disclosure of the recording. However, before permitting a person to inspect or copy the recording, the public agency must comply with the obscuring provisions of subsection (f), if applicable. The act of releasing a law enforcement recording under this subsection is not an admission of wrongdoing by the public agency and may not be considered by a trier of fact in adjudicating any action to which matters depicted on the recording are relevant.

(b) This subsection does not apply to a law enforcement recording described in subsection (a). A public agency shall permit any person to inspect or copy a law enforcement recording unless one (1) or more of the following circumstances apply:

(1) Section 4(b)(19) of this chapter applies and the person has not demonstrated that the public agency that owns, occupies, leases, or maintains the airport approves the disclosure of the recording.

(2) The public agency finds, after due consideration of the facts of the particular case, that access to or dissemination of the recording:

(A) creates a significant risk of substantial harm to any person or to the general public;

(B) is likely to interfere with the ability of a person to



receive a fair trial by creating prejudice or bias concerning the person or a claim or defense presented by the person; (C) may affect an ongoing investigation, if the recording is an investigatory record of a law enforcement agency; or (D) would not serve the public interest.

However, before permitting a person to inspect or copy the recording, the public agency must comply with the obscuring provisions of subsection (f), if applicable.

(c) If a public agency denies a person the opportunity to inspect or copy a law enforcement recording under subsection (a) or (b), the person may petition the circuit or superior court of the county in which the law enforcement recording was made for an order permitting inspection or copying of a law enforcement recording. The court shall review the decision of the public agency de novo and grant the order unless one (1) or more of the following apply:

(1) If section 4(b)(19) of this chapter applies, the petitioner fails to establish by a preponderance of the evidence that the public agency that owns, occupies, leases, or maintains the airport approves the disclosure of the recording.

(2) The law enforcement recording is not a recording described in subsection (a) and the public agency establishes by a preponderance of the evidence in light of the facts of the particular case, that access to or dissemination of the recording:

(A) creates a significant risk of substantial harm to any person or to the general public;

(B) is likely to interfere with the ability of a person to receive a fair trial by creating prejudice or bias concerning the person or a claim or defense presented by the person;

(C) may affect an ongoing investigation, if the recording is an investigatory record of a law enforcement agency; or

(D) would not serve the public interest."

Page 16, delete lines 21 through 33.

Page 16, line 34, delete "(b)" and insert "(d)".

Page 16, line 35, delete "a petition" and insert "an order".

Page 16, line 38, delete "an" and insert "a petition filed".

Page 16, line 39, delete "action".

Page 16, line 40, delete "(c)" and insert "(e)".

Page 16, line 41, after "disclose the" insert "recording. However, before disclosing the recording, the public agency must comply with the obscuring provisions of subsection (f), if applicable.

(f) A public agency that discloses a law enforcement recording



under this section:

(1) shall obscure:

(A) any information described in:

- (i) section 4(a) of this chapter; and
- (ii) section 4(b)(2) through 4(b)(26) of this chapter, unless disclosure is expressly permitted or required by this chapter; and

(B) depictions of:

- (i) an individual's death or a dead body;
- (ii) acts of severe violence that are against any individual who is clearly visible and that result in serious bodily injury (as defined in IC 35-31.5-2-292);
- (iii) serious bodily injury (as defined in IC 35-31.5-2-292);
- (iv) nudity (as defined in IC 35-49-1-5);
- (v) an individual whom the public agency reasonably believes is less than eighteen (18) years of age;
- (vi) personal medical information;
- (vii) a victim of a crime, or any information identifying the victim of a crime, if the public agency finds that obscuring this information is necessary for the victim's safety; and
- (viii) a witness to a crime or an individual who reports a crime, or any information identifying a witness to a crime or an individual who reports a crime, if the public agency finds that obscuring this information is necessary for safety of the witness or individual who reports a crime; and

(2) may obscure:

(A) a law enforcement officer operating in an undercover capacity; or

(B) a confidential informant.

(g) A court shall expedite a proceeding filed under this section. Unless prevented by extraordinary circumstances, the court shall conduct a hearing (if required) and rule on a petition filed under this section not later than thirty (30) days after the date the petition is filed."

Page 16, delete line 42.

Page 17, delete lines 1 through 22.

Page 17, line 25, delete "A" and insert "(a) Except as provided in subsection (c), a".

Page 17, line 25, after "agency" insert "that is not the state or a



state agency".

Page 17, line 27, delete "eighty (180)" and insert "**ninety (190)**".

Page 17, line 27, delete "recording, except in the" and insert "**recording.**".

Page 17, delete lines 28 through 42, begin a new paragraph and insert:

"(b) Except as provided in subsection (c), a public agency that is the state or a state agency shall retain an unaltered, unobscured law enforcement recording for at least two hundred eighty (280) days after the date of the recording.

(c) A public agency shall retain an unaltered, unobscured law enforcement recording for a period longer than the period described in subsections (a) and (b) if the following conditions are met:

(1) Except as provided in subdivision (3), if a person defined as a requestor as set forth in section 5.1(a) of this chapter notifies the public agency in writing not more than:

(A) one hundred eighty (180) days (if the public agency is not the state or a state agency); or

(B) two hundred seventy (270) days (if the public agency is the state or a state agency);

after the date of the recording that the recording is to be retained, the recording shall be retained for at least two (2) years after the date of the recording. The public agency may not request or require the person to provide a reason for the retention.

(2) Except as provided in subdivision (3), if a formal or informal complaint is filed with the public agency regarding a law enforcement activity depicted in the recording less than:

(A) one hundred eighty (180) days (if the public agency is not the state or a state agency); or

(B) two hundred seventy (270) days (if the public agency is the state or a state agency);

after the date of the recording, the public agency shall automatically retain the recording for at least two (2) years after the date of the recording.

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

(d) The public agency may retain a recording for training purposes for any length of time."

Page 18, delete lines 1 through 5, begin a new paragraph and insert:



"SECTION 7. IC 5-14-3-8, AS AMENDED BY P.L.16-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: 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, **law enforcement recording**, 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. **However, the fee for a copy of a law enforcement recording may not exceed one hundred fifty dollars (\$150).**
- (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.

(l) This subsection does not apply to a state agency. A fee collected under subsection (g) for the copying of a law enforcement recording may be:

- (1) retained by the public agency; and**
- (2) used without appropriation for one (1) or more of the following purposes:**
 - (A) To purchase cameras and other equipment for use in connection with the agency's law enforcement recording program.**
 - (B) For training concerning law enforcement recording.**
 - (C) To defray the expenses of storing, producing, and copying law enforcement recordings.**

Money from a fee described in this subsection does not revert to the local general fund at the end of a fiscal year."

Page 19, line 32, delete "subsection:" and insert "subsection".

Page 19, line 33, delete "(A)".

Page 19, delete line 34 and insert "capricious".

Page 19, run in lines 32 through 34.

Page 19, delete lines 35 through 37.

Page 20, line 21, delete "for" and insert "**to appeal the**".

Page 20, line 22, after "chapter." insert "**A requestor (as defined in section 5.1 of this chapter) may bring an action to appeal from the denial of access to a law enforcement recording without first seeking or receiving an informal inquiry response or advisory opinion from the public access counselor. If the requestor prevails in an action under this subsection:**".

Page 20, delete lines 23 through 25.

Page 20, line 26, delete "plaintiff" and insert "**requestor**".

Page 20, line 26, delete "the awarding of" and insert "**an award of reasonable**".



Page 20, line 27, delete "expenses if the plaintiff" and insert **"expenses; and"**.

Page 20, delete line 28.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1019 as printed January 14, 2016.)

STEELE, Chairperson

Committee Vote: Yeas 7, Nays 1.

