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## HOUSE BILL No. 1142

Proposed Changes to January 31, 2023 printing by AM114201

### DIGEST OF PROPOSED AMENDMENT

Reasonable attorney's fees. Provides that the costs of reviewing and obscuring nondisclosable electronic data may not exceed reasonable attorney's fees if the actions are performed by an attorney.

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.64-2020,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2023]: 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  
16 sum of the cost of:  
17 (1) the initial development of a program, if any;  
18 (2) the labor required to retrieve electronically stored data; ~~and~~  
19 (3) **the labor required to:**  
20 (A) **obscure nondisclosable information; and**

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(B) perform an administrative review to determine if all  
nondisclosable information has been obscured;  
in a law enforcement recording; and

(3) (4) any medium used for electronic output;  
for providing a duplicate of electronically stored data onto a disk, tape,  
drum, or other medium of electronic data retrieval under section 8(g)  
of this chapter, or for reprogramming a computer system under section  
6(c) of this chapter. However, if the labor described in subdivision  
(3) is performed by an attorney, the cost under subdivision (3) may  
not exceed reasonable attorney's fees.

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

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

(1) is by means of an electronic device other than an electronic  
device provided by a public agency in the office of the public  
agency; or

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

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

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

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

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

(3) In the case of public records available:

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

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

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

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

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

(j) "Law enforcement activity" means:

(1) a traffic stop;

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- 1 (2) a pedestrian stop;  
 2 (3) an arrest;  
 3 (4) a search;  
 4 (5) an investigation;  
 5 (6) a pursuit;  
 6 (7) crowd control;  
 7 (8) traffic control; or  
 8 (9) any other instance in which a law enforcement officer is  
 9 enforcing the law.
- 10 The term does not include an administrative activity, including the  
 11 completion of paperwork related to a law enforcement activity, or a  
 12 custodial interrogation conducted in a place of detention as described  
 13 in Indiana Evidence Rule 617, regardless of the ultimate admissibility  
 14 of a statement made during the custodial interrogation.
- 15 (k) "Law enforcement recording" means an audio, visual, or  
 16 audiovisual recording of a law enforcement activity captured by a  
 17 camera or other device that is:
- 18 (1) provided to or used by a law enforcement officer in the scope  
 19 of the officer's duties; and  
 20 (2) designed to be worn by a law enforcement officer or attached  
 21 to the vehicle or transportation of a law enforcement officer.
- 22 (l) "Offender" means a person confined in a prison, county jail,  
 23 detention facility, penal institution, or in a community corrections  
 24 program as the result of the person's arrest or conviction for a crime.
- 25 (m) "Patient" has the meaning set out in IC 16-18-2-272(d).
- 26 (n) "Person" means an individual, a corporation, a limited liability  
 27 company, a partnership, an unincorporated association, or a  
 28 governmental entity.
- 29 (o) "Private university police department" means the police  
 30 officers appointed by the governing board of a private university under  
 31 IC 21-17-5.
- 32 (p) "Provider" has the meaning set out in IC 16-18-2-295(b) and  
 33 includes employees of the state department of health or local boards of  
 34 health who create patient records at the request of another provider or  
 35 who are social workers and create records concerning the family  
 36 background of children who may need assistance.
- 37 (q) "Public agency", except as provided in section 2.1 of this  
 38 chapter, means the following:
- 39 (1) Any board, commission, department, division, bureau,  
 40 committee, agency, office, instrumentality, or authority, by  
 41 whatever name designated, exercising any part of the executive,  
 42 administrative, judicial, or legislative power of the state.

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- 1 (2) Any:  
 2 (A) county, township, school corporation, city, or town, or  
 3 any board, commission, department, division, bureau,  
 4 committee, office, instrumentality, or authority of any  
 5 county, township, school corporation, city, or town;  
 6 (B) political subdivision (as defined by IC 36-1-2-13); or  
 7 (C) other entity, or any office thereof, by whatever name  
 8 designated, exercising in a limited geographical area the  
 9 executive, administrative, judicial, or legislative power of  
 10 the state or a delegated local governmental power.
- 11 (3) Any entity or office that is subject to:  
 12 (A) budget review by either the department of local  
 13 government finance or the governing body of a county, city,  
 14 town, township, or school corporation; or  
 15 (B) an audit by the state board of accounts that is required  
 16 by statute, rule, or regulation.
- 17 (4) Any building corporation of a political subdivision that issues  
 18 bonds for the purpose of constructing public facilities.
- 19 (5) Any advisory commission, committee, or body created by  
 20 statute, ordinance, or executive order to advise the governing  
 21 body of a public agency, except medical staffs or the committees  
 22 of any such staff.
- 23 (6) Any law enforcement agency, which means an agency or a  
 24 department of any level of government that engages in the  
 25 investigation, apprehension, arrest, or prosecution of alleged  
 26 criminal offenders, such as the state police department, the  
 27 police or sheriff's department of a political subdivision,  
 28 prosecuting attorneys, members of the excise police division of  
 29 the alcohol and tobacco commission, conservation officers of the  
 30 department of natural resources, gaming agents of the Indiana  
 31 gaming commission, gaming control officers of the Indiana  
 32 gaming commission, and the security division of the state lottery  
 33 commission.
- 34 (7) Any license branch operated under IC 9-14.1.
- 35 (8) The state lottery commission established by IC 4-30-3-1,  
 36 including any department, division, or office of the commission.
- 37 (9) The Indiana gaming commission established under IC 4-33,  
 38 including any department, division, or office of the commission.
- 39 (10) The Indiana horse racing commission established by  
 40 IC 4-31, including any department, division, or office of the  
 41 commission.
- 42 (11) A private university police department. The term does not

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1 include the governing board of a private university or any other  
 2 department, division, board, entity, or office of a private  
 3 university.

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

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

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

16 (u) "Work product of an attorney" means information compiled by  
 17 an attorney in reasonable anticipation of litigation. The term includes  
 18 the attorney's:

19 (1) notes and statements taken during interviews of prospective  
 20 witnesses; and

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

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

26 SECTION 2. IC 5-14-3-3, AS AMENDED BY P.L.171-2018,  
 27 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 28 JULY 1, 2023]: Sec. 3. (a) Any person may inspect and copy the public  
 29 records of any public agency during the regular business hours of the  
 30 agency, except as provided in section 4 of this chapter. A request for  
 31 inspection or copying must:

32 (1) identify with reasonable particularity the record being  
 33 requested; and

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

36 No request may be denied because the person making the request  
 37 refuses to state the purpose of the request, unless such condition is  
 38 required by other applicable statute. If a request is for inspection or  
 39 copying of a law enforcement recording, the request must provide the  
 40 information required under subsection (i).

41 (b) A public agency may not deny or interfere with the exercise of  
 42 the right stated in subsection (a). **If the public agency does not deny**

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1 **the request**, within a reasonable time after the request is received by  
 2 the agency the public agency shall either:

3 (1) provide the requested copies to the person making the  
 4 request; or

5 (2) allow the person to make copies:

6 (A) on the agency's equipment; or

7 (B) on the person's own equipment.

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

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

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

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

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

39 (f) Notwithstanding the other provisions of this section, a public  
 40 agency is not required to create or provide copies of lists of names and  
 41 addresses (including electronic mail account addresses) unless the  
 42 public agency is required to publish such lists and disseminate them to

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

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

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

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

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

(2) that requires the public to obtain a license or pay copyright royalties for obtaining the right to inspect and copy the records unless otherwise provided by applicable statute; if the contract, obligation, license, or copyright unreasonably impairs the right of the public to inspect and copy the agency's public records.

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

(i) A request to inspect or copy a law enforcement recording must be in writing. A request identifies a law enforcement recording with reasonable particularity as required by this section only if the request provides the following information regarding the law enforcement activity depicted in the recording:

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

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

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

(j) This subsection applies to a public record that is in an electronic format. This subsection does not apply to a public record recorded in the office of the county recorder. A public agency shall provide an electronic copy or a paper copy of a public record, at the option of the person making the request for the public record. This subsection does not require a public agency to change the format of a public record.

SECTION 3. IC 5-14-3-5.2, AS AMENDED BY P.L.85-2017, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5.2. (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

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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 as defined in section 2 of this chapter and notwithstanding its exclusion under section 4(b)(1) of this chapter; 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 (e), if applicable.

(b) If a public agency denies a person the opportunity to inspect or copy a law enforcement recording under subsection (a), 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 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, as defined in section 2 of this chapter, notwithstanding its exclusion under section 4 of this chapter; or

(D) would not serve the public interest.

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

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

**Any copy of the recording must be made by the public agency.**

(e) A public agency that discloses a law enforcement recording under this section:

(1) shall obscure:

(A) any information that is required to be obscured under section 4(a) of 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 the safety of the witness or individual who reports a crime; and

(2) may obscure:

(A) any information identifying:

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

(ii) a confidential informant; and

(B) any information that the public agency may withhold from disclosure under section 4(b)(2) through 4(b)(26) of this chapter.

(f) 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

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1 section not later than thirty (30) days after the date the petition is filed.  
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