



January 31, 2023

HOUSE BILL No. 1142

DIGEST OF HB 1142 (Updated January 31, 2023 11:22 am - DI 140)

Citations Affected: IC 5-14.

Synopsis: Law enforcement recordings. Provides that the direct cost that a state or local agency may charge for providing a copy of a law enforcement recording (recording) includes labor costs incurred to: (1) obscure nondisclosable information in the recording; and (2) perform an administrative review of the recording to determine if all nondisclosable information has been obscured. Provides that if a court issues an order for disclosure of a law enforcement recording, any copy of the recording must be made by the public agency.

Effective: July 1, 2023.

Prescott, McNamara, Gore, Bartels

January 10, 2023, read first time and referred to Committee on Government and Regulatory Reform.
January 31, 2023, reported — Do Pass.

HB 1142—LS 6692/DI 87



January 31, 2023

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

HOUSE BILL No. 1142

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



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



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



1 university.

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

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

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

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

17 (1) notes and statements taken during interviews of prospective
18 witnesses; and

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

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

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

30 (1) identify with reasonable particularity the record being
31 requested; and

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

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

39 (b) A public agency may not deny or interfere with the exercise of
40 the right stated in subsection (a). **If the public agency does not deny**
41 **the request**, within a reasonable time after the request is received by
42 the agency the public agency shall either:



- 1 (1) provide the requested copies to the person making the request;
2 or
3 (2) allow the person to make copies:
4 (A) on the agency's equipment; or
5 (B) on the person's own equipment.
- 6 (c) Notwithstanding subsections (a) and (b), a public agency may or
7 may not do the following:
8 (1) In accordance with a contract described in section 3.5 of this
9 chapter, permit a person to inspect and copy through the use of
10 enhanced access public records containing information owned by
11 or entrusted to the public agency.
12 (2) Permit a governmental entity to use an electronic device to
13 inspect and copy public records containing information owned by
14 or entrusted to the public agency.
- 15 (d) Except as provided in subsection (e) and subject to subsection
16 (j), a public agency that maintains or contracts for the maintenance of
17 public records in an electronic data storage system shall make
18 reasonable efforts to provide to a person making a request a copy of all
19 disclosable data contained in the records on paper, disk, tape, drum, or
20 any other method of electronic retrieval if the medium requested is
21 compatible with the agency's data storage system. This subsection does
22 not apply to an electronic map.
- 23 (e) A state agency may adopt a rule under IC 4-22-2, and a political
24 subdivision may enact an ordinance, prescribing the conditions under
25 which a person who receives information on disk or tape under
26 subsection (d) may or may not use the information for commercial
27 purposes, including to sell, advertise, or solicit the purchase of
28 merchandise, goods, or services, or sell, loan, give away, or otherwise
29 deliver the information obtained by the request to any other person for
30 these purposes. Use of information received under subsection (d) in
31 connection with the preparation or publication of news, for nonprofit
32 activities, or for academic research is not prohibited. A person who
33 uses information in a manner contrary to a rule or ordinance adopted
34 under this subsection may be prohibited by the state agency or political
35 subdivision from obtaining a copy or any further data under subsection
36 (d).
- 37 (f) Notwithstanding the other provisions of this section, a public
38 agency is not required to create or provide copies of lists of names and
39 addresses (including electronic mail account addresses) unless the
40 public agency is required to publish such lists and disseminate them to
41 the public under a statute. However, if a public agency has created a
42 list of names and addresses (excluding electronic mail account



1 addresses), it must permit a person to inspect and make memoranda
 2 abstracts from the list unless access to the list is prohibited by law. The
 3 lists of names and addresses (including electronic mail account
 4 addresses) described in subdivisions (1) through (3) may not be
 5 disclosed by public agencies to any individual or entity for political
 6 purposes and may not be used by any individual or entity for political
 7 purposes. In addition, the lists of names and addresses (including
 8 electronic mail account addresses) described in subdivisions (1)
 9 through (3) may not be disclosed by public agencies to commercial
 10 entities for commercial purposes and may not be used by commercial
 11 entities for commercial purposes. The prohibition in this subsection
 12 against the disclosure of lists for political or commercial purposes
 13 applies to the following lists of names and addresses (including
 14 electronic mail account addresses):

- 15 (1) A list of employees of a public agency.
 16 (2) A list of persons attending conferences or meetings at a state
 17 educational institution or of persons involved in programs or
 18 activities conducted or supervised by the state educational
 19 institution.
 20 (3) A list of students who are enrolled in a public school
 21 corporation if the governing body of the public school corporation
 22 adopts a policy:
 23 (A) with respect to disclosure related to a commercial purpose,
 24 prohibiting the disclosure of the list to commercial entities for
 25 commercial purposes;
 26 (B) with respect to disclosure related to a commercial purpose,
 27 specifying the classes or categories of commercial entities to
 28 which the list may not be disclosed or by which the list may
 29 not be used for commercial purposes; or
 30 (C) with respect to disclosure related to a political purpose,
 31 prohibiting the disclosure of the list to individuals and entities
 32 for political purposes.

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

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



- 1 (1) for the storage or copying of public records; or
- 2 (2) that requires the public to obtain a license or pay copyright
- 3 royalties for obtaining the right to inspect and copy the records
- 4 unless otherwise provided by applicable statute;
- 5 if the contract, obligation, license, or copyright unreasonably impairs
- 6 the right of the public to inspect and copy the agency's public records.
- 7 (h) If this section conflicts with IC 3-7, the provisions of IC 3-7
- 8 apply.
- 9 (i) A request to inspect or copy a law enforcement recording must
- 10 be in writing. A request identifies a law enforcement recording with
- 11 reasonable particularity as required by this section only if the request
- 12 provides the following information regarding the law enforcement
- 13 activity depicted in the recording:
 - 14 (1) The date and approximate time of the law enforcement
 - 15 activity.
 - 16 (2) The specific location where the law enforcement activity
 - 17 occurred.
 - 18 (3) The name of at least one (1) individual, other than a law
 - 19 enforcement officer, who was directly involved in the law
 - 20 enforcement activity.
- 21 (j) This subsection applies to a public record that is in an electronic
- 22 format. This subsection does not apply to a public record recorded in
- 23 the office of the county recorder. A public agency shall provide an
- 24 electronic copy or a paper copy of a public record, at the option of the
- 25 person making the request for the public record. This subsection does
- 26 not require a public agency to change the format of a public record.
- 27 SECTION 3. IC 5-14-3-5.2, AS AMENDED BY P.L.85-2017,
- 28 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 29 JULY 1, 2023]: Sec. 5.2. (a) A public agency shall permit any person
- 30 to inspect or copy a law enforcement recording unless one (1) or more
- 31 of the following circumstances apply:
 - 32 (1) Section 4(b)(19) of this chapter applies and the person has not
 - 33 demonstrated that the public agency that owns, occupies, leases,
 - 34 or maintains the airport approves the disclosure of the recording.
 - 35 (2) The public agency finds, after due consideration of the facts
 - 36 of the particular case, that access to or dissemination of the
 - 37 recording:
 - 38 (A) creates a significant risk of substantial harm to any person
 - 39 or to the general public;
 - 40 (B) is likely to interfere with the ability of a person to receive
 - 41 a fair trial by creating prejudice or bias concerning the person
 - 42 or a claim or defense presented by the person;



1 (C) may affect an ongoing investigation, if the recording is an
 2 investigatory record of a law enforcement agency as defined
 3 in section 2 of this chapter and notwithstanding its exclusion
 4 under section 4(b)(1) of this chapter; or

5 (D) would not serve the public interest.

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

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

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

20 (2) The public agency establishes by a preponderance of the
 21 evidence in light of the facts of the particular case, that access to
 22 or dissemination of the recording:

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

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

28 (C) may affect an ongoing investigation, if the recording is an
 29 investigatory record of a law enforcement agency, as defined
 30 in section 2 of this chapter, notwithstanding its exclusion
 31 under section 4 of this chapter; or

32 (D) would not serve the public interest.

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

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



- 1 **Any copy of the recording must be made by the public agency.**
2 (e) A public agency that discloses a law enforcement recording
3 under this section:
4 (1) shall obscure:
5 (A) any information that is required to be obscured under
6 section 4(a) of this chapter; and
7 (B) depictions of:
8 (i) an individual's death or a dead body;
9 (ii) acts of severe violence that are against any individual
10 who is clearly visible and that result in serious bodily injury
11 (as defined in IC 35-31.5-2-292);
12 (iii) serious bodily injury (as defined in IC 35-31.5-2-292);
13 (iv) nudity (as defined in IC 35-49-1-5);
14 (v) an individual whom the public agency reasonably
15 believes is less than eighteen (18) years of age;
16 (vi) personal medical information;
17 (vii) a victim of a crime, or any information identifying the
18 victim of a crime, if the public agency finds that obscuring
19 this information is necessary for the victim's safety; and
20 (viii) a witness to a crime or an individual who reports a
21 crime, or any information identifying a witness to a crime or
22 an individual who reports a crime, if the public agency finds
23 that obscuring this information is necessary for the safety of
24 the witness or individual who reports a crime; and
25 (2) may obscure:
26 (A) any information identifying:
27 (i) a law enforcement officer operating in an undercover
28 capacity; or
29 (ii) a confidential informant; and
30 (B) any information that the public agency may withhold from
31 disclosure under section 4(b)(2) through 4(b)(26) of this
32 chapter.
33 (f) A court shall expedite a proceeding filed under this section.
34 Unless prevented by extraordinary circumstances, the court shall
35 conduct a hearing (if required) and rule on a petition filed under this
36 section not later than thirty (30) days after the date the petition is filed.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1142, 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 1142 as introduced.)

MILLER D

Committee Vote: Yeas 10, Nays 0

