

*Reprinted 3/14*

FILED MAR 2 1984

SENATE FILE 2294

BY COMMITTEE ON STATE GOVERNMENT  
*Approved 3/2 (y 645)*  
(FORMERLY SSB 313B)

Passed Senate, Date 3-12-84 (p. 772) Passed House, Date 3-28-84 (p. 1383)

Vote: Ayes 47 Nays 2 Vote: Ayes 88 Nays 7

Approved ~~3/1~~ May 4

### A BILL FOR

1 An Act relating to the examination of government records by  
2 providing for the procedures for their examination, for  
3 enforcement of those procedures, for the availability of  
4 certain records, and for the duties of the lawful  
5 custodians and providing for civil damages.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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*S. 2294*

1 Section 1. Section 68A.1, Code 1983, is amended by adding  
2 the following new unnumbered paragraph:

3 NEW UNNUMBERED PARAGRAPH. As used in this chapter "lawful  
4 custodian" means the public body which generated, gathered,  
5 otherwise created or received the records and any other public  
6 body which is in actual possession of the records. "Lawful  
7 custodian" does not mean an automated data processing unit  
8 of a public body if the data processing unit holds the records  
9 solely as the agent of another public body, nor does it mean  
10 a unit which holds the records of other public bodies solely  
11 for storage. To assure access to public records, the lawful  
12 custodian shall designate which of its personnel are authorized  
13 to exercise the functions of the lawful custodian under this  
14 chapter. However, whenever records are in the possession  
15 of other than a lawful custodian, the lawful custodian is  
16 deemed to be in constructive possession of the records.

17 Sec. 2. Section 68A.2, Code 1983, is amended by striking  
18 the section and inserting in lieu thereof the following:

19 68A.2 RIGHT TO EXAMINE PUBLIC RECORDS.

20 1. Every person shall have the right to examine and copy  
21 public records and to publish or otherwise disseminate public  
22 records or the information contained therein. The right to  
23 copy public records shall include the right to make photographs  
24 or photographic copies while the records are in the possession  
25 of the custodian of the records. All rights under this section  
26 are in addition to the right to obtain certified copies of  
27 records under section 622.46.

28 2. A government body shall not prevent the examination  
29 or copying of a public record by contracting with a  
30 nongovernment body to perform any of its duties or functions.

31 Sec. 3. Section 68A.4, Code 1983, is amended to read as  
32 follows:

33 68A.4 HOURS WHEN AVAILABLE. The rights of ~~citizens~~ persons  
34 under this chapter may be exercised at any time during the  
35 customary office hours of the lawful custodian of the records.

1 However, if the lawful custodian does not have customary  
2 office hours of at least thirty hours per week, such right  
3 may be exercised at any time from nine o'clock a.m. to noon  
4 and from one o'clock p.m. to four o'clock p.m. Monday through  
5 Friday, excluding legal holidays, unless the ~~citizen~~ person  
6 exercising such right and the lawful custodian agree on a  
7 different time.

8 Sec. 4. Section 68A.5, Code 1983, is amended to read as  
9 follows:

10 68A.5 ENFORCEMENT OF RIGHTS. The provisions of this  
11 chapter and all rights of ~~citizens~~ persons under this chapter  
12 may be enforced by mandamus or injunction, whether or not  
13 any other remedy is also available. In the alternative,  
14 rights under this chapter also may be enforced by an action  
15 for judicial review according to the provisions of the Iowa  
16 administrative procedure Act, if the records involved are  
17 records of an "agency" as defined in that Act.

18 Sec. 5. Section 68A.7, unnumbered paragraph one, and  
19 subsections 1 and 2, Code Supplement 1983, are amended to  
20 read as follows:

21 The following public records shall be kept confidential,  
22 unless otherwise ordered by a court, by the lawful custodian  
23 of the records, or by another person duly authorized to release  
24 such information by statute or agency rule:

25 1. Personal information in records regarding a student,  
26 prospective student, or former student ~~of the~~ maintained,  
27 created, collected or assembled by or for a school corporation  
28 or educational institution maintaining such records.

29 2. Hospital records, and medical records, and professional  
30 counselor records of the condition, diagnosis, care, or  
31 treatment of a patient or former patient or a counselee or  
32 former counselee, including outpatient.

33 Sec. 6. Section 68A.7, Code Supplement 1983, is amended  
34 by adding the following new subsections:

35 NEW SUBSECTION 18. Information concerning identified

1 licensees, other than driver's licenses, of a government body  
2 except the following:

- 3 a. Their name and address.
- 4 b. The terms and conditions of their licenses.
- 5 c. Their basic general qualifications for the license.
- 6 d. Any disciplinary action taken against them after that  
7 action occurs.

8 NEW SUBSECTION. 19. Communications not required by law  
9 or solicited by a government body that are made to a government  
10 body or to any of its employees by identified persons outside  
11 of government, to the extent that the government body receiving  
12 those communications from such persons outside of government  
13 could reasonably believe that those persons would be  
14 discouraged from making them to that government body if they  
15 were available for general public examination. Notwithstanding  
16 this provision:

17 a. The communication is a public record to the extent  
18 that the person outside of government making that communication  
19 consents to its treatment as a public record.

20 b. Information contained in the communication is a public  
21 record to the extent that it can be disclosed without directly  
22 or indirectly indicating the identity of the person outside  
23 of government making it or enabling others to ascertain the  
24 identity of that person.

25 c. Information contained in the communication is a public  
26 record to the extent that it indicates the date, time, specific  
27 location, and immediate facts and circumstances surrounding  
28 the occurrence of a crime or other illegal act, except to  
29 the extent that its disclosure would plainly and seriously  
30 jeopardize a continuing investigation or pose a clear and  
31 present danger to the safety of any person. In any action  
32 challenging the failure of the lawful custodian to disclose  
33 any particular information of the kind enumerated in this  
34 paragraph, the burden of proof is on the lawful custodian  
35 to demonstrate that the disclosure of that information would

1 jeopardize such an investigation or would pose such a clear  
2 and present danger.

5287  
3 Sec. 7. Section 68A.8, Code 1983, is amended by striking  
4 the section and inserting in lieu thereof the following:

5 68A.8 INJUNCTION TO RESTRAIN EXAMINATION.

6 1. The district court may grant an injunction restraining  
7 the examination, including copying, of a specific public  
8 record or a narrowly drawn class of public records. Such  
9 an injunction may be issued only if the petition supported  
10 by affidavit shows and if the court finds both of the  
11 following:

12 a. That the examination would clearly not be in the public  
13 interest.

14 b. That the examination would substantially and irreparably  
15 invade the privacy of the subject of that record and that  
16 the harm to the subject of the record from such disclosure  
17 is not outweighed by the public interest in its disclosure.

18 2. An injunction shall be subject to the rules of civil  
19 procedure except that the court in its discretion may waive  
20 bond.

21 3. In actions brought under this section the district  
22 court shall take into account the policy of this chapter that  
23 free and open examination of public records is generally in  
24 the public interest even though such examination may cause  
25 inconvenience or embarrassment to public officials or others.  
26 A court may issue an injunction restraining examination of  
27 a public record or a narrowly drawn class of such records,  
28 only if the person seeking the injunction demonstrates by  
29 clear and convincing evidence that this section authorizes  
30 its issuance. An injunction restraining the examination of  
31 a narrowly drawn class of public records may be issued only  
32 if such an injunction would be justified under this section  
33 for every member within the class of records involved if each  
34 of those members were considered separately.

35 4. Good faith, reasonable delay by a lawful custodian

1 in permitting the examination and copying of a government  
2 record is not a violation of this chapter if the purpose of  
3 the delay is any of the following:

4 a. To seek an injunction under this section.

5 b. To determine whether the lawful custodian is entitled  
6 to seek such an injunction or should seek such an injunction.

7 c. To determine whether the government record in question  
8 is a public record, or confidential record.

9 d. To determine whether a confidential record should be  
10 available for inspection and copying to the person requesting  
11 the right to do so. A reasonable delay for this purpose shall  
12 not exceed twenty calendar days and ordinarily should not  
13 exceed ten business days.

14 e. Actions for injunctions under this section may be  
15 brought by the lawful custodian of a government record, or  
16 by another government body or person who would be aggrieved  
17 or adversely affected by the examination or copying of such  
18 a record.

19 f. The rights and remedies provided by this section are  
20 in addition to any rights and remedies provided by section  
21 17A.19.

22 Sec. 8. Section 68A.9, Code 1983, is amended by adding  
23 the following new unnumbered paragraph:

24 NEW UNNUMBERED PARAGRAPH. An agency within the meaning  
25 of section 17A.2, subsection 1 shall adopt as a rule, in each  
26 situation where this section is believed applicable, its  
27 determination identifying those particular provisions of this  
28 chapter that must be waived in the circumstances to prevent  
29 the denial of federal funds, services, or information.

30 Sec. 9. NEW SECTION. 68A.10 CIVIL ENFORCEMENT.

31 1. The rights and remedies provided by this section are  
32 in addition to any rights and remedies provided by section  
33 17A.19. Any aggrieved person, any taxpayer to or citizen  
34 of the state of Iowa, or the attorney general or any county  
35 attorney, may seek judicial enforcement of the requirements

1 of this chapter in an action brought against the lawful  
2 custodian and any other persons who would be appropriate  
3 defendants under the circumstances. Suits to enforce this  
4 chapter shall be brought in the district court for the county  
5 in which the lawful custodian has its principal place of  
6 business.

7 2. Once a party seeking judicial enforcement of this  
8 chapter demonstrates to the court that the defendant is subject  
9 to the requirements of this chapter, that the records in  
10 question are government records, and that the defendant refused  
11 to make those government records available for examination  
12 and copying by the plaintiff, the burden of going forward  
13 shall be on the defendant to demonstrate compliance with the  
14 requirements of this chapter.

15 3. Upon a finding by a preponderance of the evidence that  
16 a lawful custodian has violated any provision of this chapter,  
17 a court:

18 a. Shall issue an injunction punishable by civil contempt  
19 ordering the offending lawful custodian and other appropriate  
20 persons to comply with the requirements of this chapter in  
21 the case before it and, if appropriate, may order the lawful  
22 custodian and other appropriate persons to refrain for one  
23 year from any future violations of this chapter.

24 b. Shall assess the defendants who participated in its  
25 violation damages in the amount of not more than five hundred  
26 dollars nor less than one hundred dollars. These damages  
27 shall be paid by the court imposing it to the state of Iowa  
28 if the body in question is a state government body, or to  
29 the local government involved if the body in question is a  
30 local government body. A defendant found to have violated  
31 this chapter shall not be assessed such damages if that person  
32 proves that the person either voted against the action  
33 violating this chapter, refused to participate in the action  
34 violating this chapter, or engaged in reasonable efforts under  
35 the circumstances to resist or prevent the action in violation

1 of this chapter; had good reason to believe and in good faith  
2 believed facts which, if true, would have indicated compliance  
3 with the requirements of this chapter; or reasonably relied  
4 upon a decision of a court or an opinion of the attorney  
5 general or the attorney for the government body.

6 c. Shall order the payment of all costs and reasonable  
7 attorneys fees to any plaintiff successfully establishing  
8 a violation of this chapter in the action brought under this  
9 section. The costs and fees shall be paid by the particular  
10 persons who were assessed damages under paragraph "b" of this  
11 subsection. If no such persons exist because they have a  
12 lawful defense under that paragraph to the imposition of such  
13 damages, the costs and fees shall be paid to the successful  
14 plaintiff from the budget of the offending government body  
15 or its parent.

16 d. Shall issue an order removing a lawful custodian from  
17 office if that person has engaged in two prior violations  
18 of this chapter for which damages were assessed against the  
19 person during the person's term.

20 4. Ignorance of the legal requirements of this chapter  
21 is not a defense to an enforcement proceeding brought under  
22 this section. A lawful custodian or its designee in doubt  
23 about the legality of allowing the examination or copying  
24 or refusing to allow the examination or copying of a government  
25 record is authorized to bring suit at the expense of that  
26 government body in the district court of the county of the  
27 lawful custodian's principal place of business, or to seek  
28 an opinion of the attorney general or the attorney for the  
29 lawful custodian, to ascertain the legality of any such action.

30 5. Judicial enforcement under this section does not  
31 preclude a criminal prosecution under section 68A.6 or any  
32 other applicable criminal provision.

33 Sec. 10. NEW SECTION. 68A.11 FAIR INFORMATION. This  
34 section may be cited as the "Iowa fair information practices  
35 Act." It is the intent of this section to require that the

1 information policies of state agencies are clearly defined  
2 and subject to public review and comment.

3 1. Each state agency as defined in chapter 17A shall adopt  
4 rules which provide the following:

5 a. The nature and extent of the personally identifiable  
6 information collected by the agency, the legal authority for  
7 the collection of that information and a description of the  
8 means of storage.

9 b. A description of which of its records are public  
10 records, which are confidential records and which are partially  
11 public and partially confidential records and the legal  
12 authority for the confidentiality of the records. The  
13 description shall indicate whether the records contain  
14 personally identifiable information.

15 c. The procedure for providing the public with access  
16 to public records.

17 d. The procedures for allowing a person to review a govern-  
18 ment record about that person and have additions, dissents  
19 or objections entered in that record unless the review is  
20 prohibited by statute.

21 e. The procedures by which the subject of a confidential  
22 record may have a copy of that record released to a named  
23 third party.

24 f. The procedures by which the agency shall notify per-  
25 sons supplying information requested by the agency of the  
26 use that will be made of the information, which persons outside  
27 of the agency might routinely be provided this information,  
28 which parts of the information requested are required and  
29 which are optional and the consequences of failing to provide  
30 the information requested.

31 g. Whether a data processing system matches, collates  
32 or permits the comparison of personally identifiable  
33 information in one record system with personally identifiable  
34 information in another record system.

35 2. A state agency shall not use any personally identifiable

1 information after July 1, 1988 unless it is in a record system  
2 described by the rules required by this section.

3 Sec. 11. NEW SECTION. 68A.12 POLITICAL SUBDIVISIONS.

4 A political subdivision or public body which is not a state  
5 agency as defined in chapter 17A is not required to adopt  
6 policies to implement section 68A.11. However, if a public  
7 body chooses to adopt policies to implement section 68A.11  
8 the policies must be adopted by the elected governing body  
9 of the political subdivision of which the public body is a  
10 part. The elected governing body must give reasonable notice,  
11 make the proposed policy available for public inspection and  
12 allow full opportunity for the public to comment before  
13 adopting the policy. If the public body is established pur-  
14 suant to an agreement under chapter 28E, the policy must be  
15 adopted by a majority of the public agencies party to the  
16 agreement. These policies shall be kept in the office of  
17 the county recorder if adopted by the board of supervisors,  
18 the city clerk if adopted by a city, and the chief  
19 administrative officer of the public body if adopted by some  
20 other elected governing body.

21 Sec. 12. The legislative council shall establish an interim  
22 study committee to review the recommendations of the report  
23 of the governor's committee on the Iowa public records law  
24 during the 1984 legislative interim.

25 EXPLANATION

26 This bill revises the chapter on public records.

27 Section 1 of the bill defines the lawful custodian of a  
28 public record. Section 2 revises the right of persons to  
29 have access to public records. Sections 3 and 4 change a  
30 reference to "citizens" to "persons". Section 5 revises who  
31 can authorize release of confidential records and two existing  
32 classifications of confidential records. Section 6 adds two  
33 classifications of confidential records. Section 7 revises  
34 the procedure for injunctions to restrain examination. Section  
35 8 requires state agencies to adopt certain rules regarding

1 conditions of federal funds. Section 9 establishes a procedure  
2 for civil enforcement of the chapter in addition to the  
3 existing criminal enforcement. Section 10 requires state  
4 agencies to adopt rules on the status of their records and  
5 procedures for access and section 11 authorizes political  
6 subdivisions to do the same. Section 12 provides for a  
7 legislative study committee on government records.

8 The bill takes effect July 1 following enactment.

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SENATE FILE 2294

S-5343

- 1 Amend Senate File 2294 as follows:  
2 1. Page 3, line 9, by striking the words "or  
3 solicited by a government body" and inserting in  
4 lieu thereof the words ", rule, or procedure".  
5 2. Page 6, line 24, by striking the word  
6 "defendants" and inserting in lieu thereof the word  
7 "persons".  
8 3. Page 6, line 30, by striking the word  
9 "defendant" and inserting in lieu thereof the word  
10 "person".  
11 4. Page 7, line 16, by striking the words  
12 "lawful custodian" and inserting in lieu thereof  
the word "person".

S-5343 FILED & ADOPTED BY ARTHUR A. SMALL, JR.  
MARCH 12, 1984 (p. 772)

SENATE FILE 2294

S-5345

- 1 Amend Senate File 2294 as follows:  
2 1. Page 1, by striking lines 3 through 16 and  
3 inserting in lieu thereof the following:  
4 "NEW UNNUMBERED PARAGRAPH. As used in this chapter  
5 "lawful custodian" means a person who is delegated  
6 the responsibility of compiling or preserving the  
7 records in question and includes the chief executive  
8 of an agency of government, or the chief executive's  
9 designee."

S-5345 FILED & ADOPTED BY TOM MANN, JR.  
MARCH 12, 1984 (p. 772)

SENATE FILE 2294

S-5346

- 1 Amend Senate File 2294 as follows:  
2 1. Page 2, by inserting after line 32 the  
A 3 following:  
4 "Sec. . . . Section 68A.7, Code Supplement 1983,  
5 is amended by adding the following new subsection:"  
6 2. Page 3, by inserting before line 8 the  
7 following:  
8 "NEW SUBSECTION. If the records pursuant to section  
9 144.43 are under sixty-five years old, the records  
10 may only be inspected by a person and certified copies  
B 11 may only be released to a person who has a verifiable  
12 direct and tangible interest in the record, and who  
13 has paid a reasonable fee for certification.  
14 Direct and tangible interest is shown if the person  
15 interested in the records is the registrant, a member  
16 of the registrant's immediate family, the registrant's  
17 legal representative, or if a person needs the  
18 information for the determination or protection of  
19 a person's personal or property interests. A person  
20 conducting family research shall substantiate a line  
21 of direct lineal consanguinity to demonstrate the  
22 existence of a direct and tangible interest."

S-5346 FILED BY JULIA B. GENTLEMAN  
MARCH 12, 1984  
DIVISION A - ADOPTED (p. 772)  
DIVISION B - LOST

SENATE FILE 2294

S-5341

1 Amend Senate File 2294 as follows:

- 2 1. Page 3, line 9, by striking the words "or  
3 solicited by a government body".  
4 2. Page 6, line 24, by striking the word "defen-  
5 dants" and inserting in lieu thereof the word "per-  
6 sons".  
7 3. Page 6, line 30, by striking the word "def-  
8 endant" and inserting in lieu thereof the word "per-  
9 son".  
10 4. Page 7, line 16, by striking the words "law-  
11 ful custodian" and inserting in lieu thereof the word  
12 "person".

S-5341 FILED  
MARCH 12, 1984  
RULED OUT OF ORDER

BY ARTHUR A. SMALL, JR.



1 Section 1. Section 68A.1, Code 1983, is amended by adding  
2 the following new unnumbered paragraph:

3 NEW UNNUMBERED PARAGRAPH. As used in this chapter "lawful  
4 custodian" means a person who is delegated the responsibility  
5 of compiling or preserving the records in question and includes  
6 the chief executive of an agency of government, or the chief  
7 executive's designee.

8 Sec. 2. Section 68A.2, Code 1983, is amended by striking  
9 the section and inserting in lieu thereof the following:

10 68A.2 RIGHT TO EXAMINE PUBLIC RECORDS.

11 1. Every person shall have the right to examine and copy  
12 public records and to publish or otherwise disseminate public  
13 records or the information contained therein. The right to  
14 copy public records shall include the right to make photographs  
15 or photographic copies while the records are in the possession  
16 of the custodian of the records. All rights under this section  
17 are in addition to the right to obtain certified copies of  
18 records under section 622.46.

19 2. A government body shall not prevent the examination  
20 or copying of a public record by contracting with a  
21 nongovernment body to perform any of its duties or functions.

22 Sec. 3. Section 68A.4, Code 1983, is amended to read as  
23 follows:

24 68A.4 HOURS WHEN AVAILABLE. The rights of citizens persons  
25 under this chapter may be exercised at any time during the  
26 customary office hours of the lawful custodian of the records.  
27 However, if the lawful custodian does not have customary  
28 office hours of at least thirty hours per week, such right  
29 may be exercised at any time from nine o'clock a.m. to noon  
30 and from one o'clock p.m. to four o'clock p.m. Monday through  
31 Friday, excluding legal holidays, unless the citizen person  
32 exercising such right and the lawful custodian agree on a  
33 different time.

34 Sec. 4. Section 68A.5, Code 1983, is amended to read as  
35 follows:

1     68A.5 ENFORCEMENT OF RIGHTS. The provisions of this  
 2 chapter and all rights of ~~citizens~~ persons under this chapter  
 3 may be enforced by mandamus or injunction, whether or not  
 4 any other remedy is also available. In the alternative,  
 5 rights under this chapter also may be enforced by an action  
 6 for judicial review according to the provisions of the Iowa  
 7 administrative procedure Act, if the records involved are  
 8 records of an "agency" as defined in that Act.

9     Sec. 5. Section 68A.7, unnumbered paragraph one, and  
 10 subsections 1 and 2, Code Supplement 1983, are amended to  
 11 read as follows:

12     The following public records shall be kept confidential,  
 13 unless otherwise ordered by a court, by the lawful custodian  
 14 of the records, or by another person duly authorized to release  
 15 such information by statute or agency rule:

16     1. Personal information in records regarding a student,  
 17 prospective student, or former student ~~of-the~~ maintained,  
 18 created, collected or assembled by or for a school corporation  
 19 or educational institution maintaining such records.

20     2. Hospital records, and medical records, and professional  
 21 counselor records of the condition, diagnosis, care, or  
 22 treatment of a patient or former patient or a counselee or  
 23 former counselee, including outpatient.

\* 24     Sec. 6. Section 68A.7, Code Supplement 1983, is amended  
 25 by adding the following new subsection:

26     NEW SUBSECTION. 18. Communications not required by law,  
 27 rule, or procedure that are made to a government body or to  
 28 any of its employees by identified persons outside of  
 29 government, to the extent that the government body receiving  
 30 those communications from such persons outside of government  
 31 could reasonably believe that those persons would be  
 32 discouraged from making them to that government body if they  
 33 were available for general public examination. Notwithstanding  
 34 this provision:

35     a. The communication is a public record to the extent

1 that the person outside of government making that communication  
2 consents to its treatment as a public record.

3 b. Information contained in the communication is a public  
4 record to the extent that it can be disclosed without directly  
5 or indirectly indicating the identity of the person outside  
6 of government making it or enabling others to ascertain the  
7 identity of that person.

8 c. Information contained in the communication is a public  
9 record to the extent that it indicates the date, time, specific  
10 location, and immediate facts and circumstances surrounding  
11 the occurrence of a crime or other illegal act, except to  
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13 jeopardize a continuing investigation or pose a clear and  
14 present danger to the safety of any person. In any action  
15 challenging the failure of the lawful custodian to disclose  
16 any particular information of the kind enumerated in this  
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18 to demonstrate that the disclosure of that information would  
19 jeopardize such an investigation or would pose such a clear  
20 and present danger.

21 Sec. 7. Section 68A.8, Code 1983, is amended by striking  
22 the section and inserting in lieu thereof the following:

23 68A.8 INJUNCTION TO RESTRAIN EXAMINATION.

24 1. The district court may grant an injunction restraining  
25 the examination, including copying, of a specific public  
26 record or a narrowly drawn class of public records. A hearing  
27 shall be held on a request for injunction upon reasonable  
28 notice as determined by the court to persons requesting access  
29 to the record which is the subject of the request for  
30 injunction. It shall be the duty of the lawful custodian  
31 and any other person seeking an injunction to ensure compliance  
32 with the notice requirement. Such an injunction may be issued  
33 only if the petition supported by affidavit shows and if the  
34 court finds both of the following:

35 a. That the examination would clearly not be in the public

1 interest.

2 b. That the examination would substantially and irreparably  
3 injure any person or persons.

4 2. An injunction shall be subject to the rules of civil  
5 procedure except that the court in its discretion may waive  
6 bond.

7 3. In actions brought under this section the district  
8 court shall take into account the policy of this chapter that  
9 free and open examination of public records is generally in  
10 the public interest even though such examination may cause  
11 inconvenience or embarrassment to public officials or others.  
12 A court may issue an injunction restraining examination of  
13 a public record or a narrowly drawn class of such records,  
14 only if the person seeking the injunction demonstrates by  
15 clear and convincing evidence that this section authorizes  
16 its issuance. An injunction restraining the examination of  
17 a narrowly drawn class of public records may be issued only  
18 if such an injunction would be justified under this section  
19 for every member within the class of records involved if each  
20 of those members were considered separately.

21 4. Good faith, reasonable delay by a lawful custodian  
22 in permitting the examination and copying of a government  
23 record is not a violation of this chapter if the purpose of  
24 the delay is any of the following:

25 a. To seek an injunction under this section.

26 b. To determine whether the lawful custodian is entitled  
27 to seek such an injunction or should seek such an injunction.

28 c. To determine whether the government record in question  
29 is a public record, or confidential record.

30 d. To determine whether a confidential record should be  
31 available for inspection and copying to the person requesting  
32 the right to do so. A reasonable delay for this purpose shall  
33 not exceed twenty calendar days and ordinarily should not  
34 exceed ten business days.

35 e. Actions for injunctions under this section may be

1 brought by the lawful custodian of a government record, or  
2 by another government body or person who would be aggrieved  
3 or adversely affected by the examination or copying of such  
4 a record.

5 f. The rights and remedies provided by this section are  
6 in addition to any rights and remedies provided by section  
7 17A.19.

8 Sec. 8. Section 68A.9, Code 1983, is amended by adding  
9 the following new unnumbered paragraph:

10 NEW UNNUMBERED PARAGRAPH. An agency within the meaning  
11 of section 17A.2, subsection 1 shall adopt as a rule, in each  
12 situation where this section is believed applicable, its  
13 determination identifying those particular provisions of this  
14 chapter that must be waived in the circumstances to prevent  
15 the denial of federal funds, services, or information.

16 Sec. 9. NEW SECTION. 68A.10 CIVIL ENFORCEMENT.

17 1. The rights and remedies provided by this section are  
18 in addition to any rights and remedies provided by section  
19 17A.19. Any aggrieved person, any taxpayer to or citizen  
20 of the state of Iowa, or the attorney general or any county  
21 attorney, may seek judicial enforcement of the requirements  
22 of this chapter in an action brought against the lawful  
23 custodian and any other persons who would be appropriate  
24 defendants under the circumstances. Suits to enforce this  
25 chapter shall be brought in the district court for the county  
26 in which the lawful custodian has its principal place of  
27 business.

28 2. Once a party seeking judicial enforcement of this  
29 chapter demonstrates to the court that the defendant is subject  
30 to the requirements of this chapter, that the records in  
31 question are government records, and that the defendant refused  
32 to make those government records available for examination  
33 and copying by the plaintiff, the burden of going forward  
34 shall be on the defendant to demonstrate compliance with the  
35 requirements of this chapter.

1 3. Upon a finding by a preponderance of the evidence that  
2 a lawful custodian has violated any provision of this chapter,  
3 a court:

4 a. Shall issue an injunction punishable by civil contempt  
5 ordering the offending lawful custodian and other appropriate  
6 persons to comply with the requirements of this chapter in  
7 the case before it and, if appropriate, may order the lawful  
8 custodian and other appropriate persons to refrain for one  
9 year from any future violations of this chapter.

10 b. Shall assess the persons who participated in its  
11 violation damages in the amount of not more than five hundred  
12 dollars nor less than one hundred dollars. These damages  
13 shall be paid by the court imposing it to the state of Iowa  
14 if the body in question is a state government body, or to  
15 the local government involved if the body in question is a  
16 local government body. A person found to have violated this  
17 chapter shall not be assessed such damages if that person  
18 proves that the person either voted against the action  
19 violating this chapter, refused to participate in the action  
20 violating this chapter, or engaged in reasonable efforts under  
21 the circumstances to resist or prevent the action in violation  
22 of this chapter; had good reason to believe and in good faith  
23 believed facts which, if true, would have indicated compliance  
24 with the requirements of this chapter; or reasonably relied  
25 upon a decision of a court or an opinion of the attorney  
26 general or the attorney for the government body.

27 c. Shall order the payment of all costs and reasonable  
28 attorneys fees, including appellate attorneys fees, to any  
29 plaintiff successfully establishing a violation of this chapter  
30 in the action brought under this section. The costs and fees  
31 shall be paid by the particular persons who were assessed  
32 damages under paragraph "b" of this subsection. If no such  
33 persons exist because they have a lawful defense under that  
34 paragraph to the imposition of such damages, the costs and  
35 fees shall be paid to the successful plaintiff from the budget

1 of the offending government body or its parent.

2 d. Shall issue an order removing a person from office  
3 if that person has engaged in two prior violations of this  
4 chapter for which damages were assessed against the person  
5 during the person's term.

6 4. Ignorance of the legal requirements of this chapter  
7 is not a defense to an enforcement proceeding brought under  
8 this section. A lawful custodian or its designee in doubt  
9 about the legality of allowing the examination or copying  
10 or refusing to allow the examination or copying of a government  
11 record is authorized to bring suit at the expense of that  
12 government body in the district court of the county of the  
13 lawful custodian's principal place of business, or to seek  
14 an opinion of the attorney general or the attorney for the  
15 lawful custodian, to ascertain the legality of any such action.

16 5. Judicial enforcement under this section does not  
17 preclude a criminal prosecution under section 68A.6 or any  
18 other applicable criminal provision.

19 Sec. 10. NEW SECTION. 68A.11 FAIR INFORMATION. This  
20 section may be cited as the "Iowa fair information practices  
21 Act." It is the intent of this section to require that the  
22 information policies of state agencies are clearly defined  
23 and subject to public review and comment.

24 1. Each state agency as defined in chapter 17A shall adopt  
25 rules which provide the following:

26 a. The nature and extent of the personally identifiable  
27 information collected by the agency, the legal authority for  
28 the collection of that information and a description of the  
29 means of storage.

30 b. A description of which of its records are public  
31 records, which are confidential records and which are partially  
32 public and partially confidential records and the legal  
33 authority for the confidentiality of the records. The  
34 description shall indicate whether the records contain  
35 personally identifiable information.

1 c. The procedure for providing the public with access  
2 to public records.

3 d. The procedures for allowing a person to review a govern-  
4 ment record about that person and have additions, dissents  
5 or objections entered in that record unless the review is  
6 prohibited by statute.

7 e. The procedures by which the subject of a confidential  
8 record may have a copy of that record released to a named  
9 third party.

10 f. The procedures by which the agency shall notify per-  
11 sons supplying information requested by the agency of the  
12 use that will be made of the information, which persons outside  
13 of the agency might routinely be provided this information,  
14 which parts of the information requested are required and  
15 which are optional and the consequences of failing to provide  
16 the information requested.

17 g. Whether a data processing system matches, collates  
18 or permits the comparison of personally identifiable  
19 information in one record system with personally identifiable  
20 information in another record system.

21 2. A state agency shall not use any personally identifiable  
22 information after July 1, 1988 unless it is in a record system  
23 described by the rules required by this section.

24 Sec. 11. NEW SECTION. 68A.12 POLITICAL SUBDIVISIONS.

25 A political subdivision or public body which is not a state  
26 agency as defined in chapter 17A is not required to adopt  
27 policies to implement section 68A.11. However, if a public  
28 body chooses to adopt policies to implement section 68A.11  
29 the policies must be adopted by the elected governing body  
30 of the political subdivision of which the public body is a  
31 part. The elected governing body must give reasonable notice,  
32 make the proposed policy available for public inspection and  
33 allow full opportunity for the public to comment before  
34 adopting the policy. If the public body is established pur-  
35 suant to an agreement under chapter 28E, the policy must be

1 adopted by a majority of the public agencies party to the  
2 agreement. These policies shall be kept in the office of  
3 the county auditor if adopted by the board of supervisors,  
4 the city clerk if adopted by a city, and the chief  
5 administrative officer of the public body if adopted by some  
6 other elected governing body.

7 Sec. 12. The legislative council shall establish an interim  
8 study committee to review the recommendations of the report  
9 of the governor's committee on the Iowa public records law  
10 during the 1984 legislative interim.

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H-5810

1 Amend Senate File 2294 as amended, passed and  
2 reprinted by the Senate as follows:

3 1. Page 1, by striking lines 2 through 7 and  
4 inserting in lieu thereof the following: "the  
5 following new unnumbered paragraphs:

6 NEW UNNUMBERED PARAGRAPH. The term "government  
7 body" means this state, or any county, city, township,  
8 school corporation, political subdivision, tax  
9 supported district or other entity of this state,  
10 or any branch, department, board, bureau, commission,  
11 council, committee, official or officer, of any of  
12 the foregoing or any employee delegated the  
13 responsibility for implementing the requirements of  
14 this chapter.

15 NEW UNNUMBERED PARAGRAPH. The term "lawful  
16 custodian" means the government body currently in  
17 physical possession of the public record. The  
18 custodian of a public record in the physical possession  
19 of persons outside a government body is the government  
20 body owning that record. Each government body shall  
21 delegate to particular officials or employees of that  
22 government body the responsibility for implementing  
23 the requirements of this chapter and shall publicly  
24 announce the particular officials or employees to  
25 whom responsibility for implementing the requirements  
26 of this chapter has been delegated. "Lawful custodian"  
27 does not mean an automated data processing unit of  
28 a public body if the data processing unit holds the  
29 records solely as the agent of another public body,  
30 nor does it mean a unit which holds the records of  
31 other public bodies solely for storage."

32 2. Page 2, by striking line 15 and inserting in  
33 lieu thereof the words "such information:".

H-5810 FILED MARCH 23, 1984 BY COMMITTEE ON STATE GOVERNMENT

*Adopted 3/28 (f. 1382)*

HOUSE AMENDMENT TO SENATE FILE 2294

5706

1 Amend Senate File 2294 as amended, passed and  
2 reprinted by the Senate as follows:

3 1. Page 1, by striking lines 2 through 7 and  
4 inserting in lieu thereof the following: "the  
5 following new unnumbered paragraphs:  
6 NEW UNNUMBERED PARAGRAPH. The term "government  
7 body" means this state, or any county, city, township,  
8 school corporation, political subdivision, tax  
9 supported district or other entity of this state,  
10 or any branch, department, board, bureau, commission,  
11 council, committee, official or officer, of any of  
12 the foregoing or any employee delegated the  
13 responsibility for implementing the requirements of  
14 this chapter.

15 NEW UNNUMBERED PARAGRAPH. The term "lawful  
16 custodian" means the government body currently in  
17 physical possession of the public record. The  
18 custodian of a public record in the physical possession  
19 of persons outside a government body is the government  
20 body owning that record. Each government body shall  
21 delegate to particular officials or employees of that  
22 government body the responsibility for implementing  
23 the requirements of this chapter and shall publicly  
24 announce the particular officials or employees to  
25 whom responsibility for implementing the requirements  
26 of this chapter has been delegated. "Lawful custodian"  
27 does not mean an automated data processing unit of  
28 a public body if the data processing unit holds the  
29 records solely as the agent of another public body,  
30 nor does it mean a unit which holds the records of  
31 other public bodies solely for storage."

32 2. Page 2, by striking line 15 and inserting in  
33 lieu thereof the words "such information:".

S-5706 FILED  
MARCH 30, 1984

RECEIVED FROM THE HOUSE

*Senate concurred 4/2 (p. 1223)*

SENATE FILE 2294

AN ACT

RELATING TO THE EXAMINATION OF GOVERNMENT RECORDS BY PROVIDING FOR THE PROCEDURES FOR THEIR EXAMINATION, FOR ENFORCEMENT OF THOSE PROCEDURES, FOR THE AVAILABILITY OF CERTAIN RECORDS, AND FOR THE DUTIES OF THE LAWFUL CUSTODIANS AND PROVIDING FOR CIVIL DAMAGES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 68A.1, Code 1983, is amended by adding the following new unnumbered paragraphs:

NEW UNNUMBERED PARAGRAPH. The term "government body" means this state, or any county, city, township, school corporation, political subdivision, tax supported district or other entity of this state, or any branch, department, board, bureau, commission, council, committee, official or officer, of any of the foregoing or any employee delegated the responsibility for implementing the requirements of this chapter.

NEW UNNUMBERED PARAGRAPH. The term "lawful custodian" means the government body currently in physical possession of the public record. The custodian of a public record in the physical possession of persons outside a government body is the government body owning that record. Each government body shall delegate to particular officials or employees of that government body the responsibility for implementing the requirements of this chapter and shall publicly announce the particular officials or employees to whom responsibility for implementing the requirements of this chapter has been delegated. "Lawful custodian" does not mean an automated data processing unit of a public body if the data processing unit holds the records solely as the agent of another public body, nor does it mean a unit which holds the records of other public bodies solely for storage.

Sec. 2. Section 68A.2, Code 1983, is amended by striking the section and inserting in lieu thereof the following:

68A.2 RIGHT TO EXAMINE PUBLIC RECORDS.

1. Every person shall have the right to examine and copy public records and to publish or otherwise disseminate public records or the information contained therein. The right to copy public records shall include the right to make photographs or photographic copies while the records are in the possession of the custodian of the records. All rights under this section are in addition to the right to obtain certified copies of records under section 622.46.

2. A government body shall not prevent the examination or copying of a public record by contracting with a nongovernment body to perform any of its duties or functions.

Sec. 3. Section 68A.4, Code 1983, is amended to read as follows:

68A.4 HOURS WHEN AVAILABLE. The rights of ~~citizens~~ persons under this chapter may be exercised at any time during the customary office hours of the lawful custodian of the records. However, if the lawful custodian does not have customary office hours of at least thirty hours per week, such right may be exercised at any time from nine o'clock a.m. to noon and from one o'clock p.m. to four o'clock p.m. Monday through Friday, excluding legal holidays, unless the ~~citizen~~ person exercising such right and the lawful custodian agree on a different time.

Sec. 4. Section 68A.5, Code 1983, is amended to read as follows:

68A.5 ENFORCEMENT OF RIGHTS. The provisions of this chapter and all rights of ~~citizens~~ persons under this chapter may be enforced by mandamus or injunction, whether or not any other remedy is also available. In the alternative, rights under this chapter also may be enforced by an action for judicial review according to the provisions of the Iowa administrative procedure Act, if the records involved are records of an "agency" as defined in that Act.

Sec. 5. Section 68A.7, unnumbered paragraph one, and subsections 1 and 2, Code Supplement 1983, are amended to read as follows:

The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

1. Personal information in records regarding a student, prospective student, or former student ~~of the maintained,~~ created, collected or assembled by or for a school corporation or educational institution maintaining such records.

2. Hospital records, ~~and~~ medical records, and professional counselor records of the condition, diagnosis, care, or treatment of a patient or former patient or a counselee or former counselee, including outpatient.

Sec. 6. Section 68A.7, Code Supplement 1983, is amended by adding the following new subsection:

**NEW SUBSECTION.** 18. Communications not required by law, rule, or procedure that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination. Notwithstanding this provision:

a. The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.

b. Information contained in the communication is a public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.

c. Information contained in the communication is a public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person. In any action challenging the failure of the lawful custodian to disclose any particular information of the kind enumerated in this paragraph, the burden of proof is on the lawful custodian to demonstrate that the disclosure of that information would jeopardize such an investigation or would pose such a clear and present danger.

Sec. 7. Section 68A.8, Code 1983, is amended by striking the section and inserting in lieu thereof the following:

**68A.8 INJUNCTION TO RESTRAIN EXAMINATION.**

1. The district court may grant an injunction restraining the examination, including copying, of a specific public record or a narrowly drawn class of public records. A hearing shall be held on a request for injunction upon reasonable notice as determined by the court to persons requesting access to the record which is the subject of the request for injunction. It shall be the duty of the lawful custodian and any other person seeking an injunction to ensure compliance with the notice requirement. Such an injunction may be issued only if the petition supported by affidavit shows and if the court finds both of the following:

- a. That the examination would clearly not be in the public interest.
- b. That the examination would substantially and irreparably injure any person or persons.

2. An injunction shall be subject to the rules of civil procedure except that the court in its discretion may waive bond.

3. In actions brought under this section the district court shall take into account the policy of this chapter that free and open examination of public records is generally in the public interest even though such examination may cause inconvenience or embarrassment to public officials or others. A court may issue an injunction restraining examination of a public record or a narrowly drawn class of such records, only if the person seeking the injunction demonstrates by clear and convincing evidence that this section authorizes its issuance. An injunction restraining the examination of a narrowly drawn class of public records may be issued only if such an injunction would be justified under this section for every member within the class of records involved if each of those members were considered separately.

4. Good faith, reasonable delay by a lawful custodian in permitting the examination and copying of a government record is not a violation of this chapter if the purpose of the delay is any of the following:

- a. To seek an injunction under this section.
- b. To determine whether the lawful custodian is entitled to seek such an injunction or should seek such an injunction.
- c. To determine whether the government record in question is a public record, or confidential record.
- d. To determine whether a confidential record should be available for inspection and copying to the person requesting the right to do so. A reasonable delay for this purpose shall not exceed twenty calendar days and ordinarily should not exceed ten business days.
- e. Actions for injunctions under this section may be brought by the lawful custodian of a government record, or by another government body or person who would be aggrieved or adversely affected by the examination or copying of such a record.
- f. The rights and remedies provided by this section are in addition to any rights and remedies provided by section 17A.19.

Sec. 8. Section 68A.9, Code 1983, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. An agency within the meaning of section 17A.2, subsection 1 shall adopt as a rule, in each situation where this section is believed applicable, its determination identifying those particular provisions of this chapter that must be waived in the circumstances to prevent the denial of federal funds, services, or information.

Sec. 9. NEW SECTION. 68A.10 CIVIL ENFORCEMENT.

1. The rights and remedies provided by this section are in addition to any rights and remedies provided by section 17A.19. Any aggrieved person, any taxpayer or citizen of the state of Iowa, or the attorney general or any county attorney, may seek judicial enforcement of the requirements of this chapter in an action brought against the lawful custodian and any other persons who would be appropriate defendants under the circumstances. Suits to enforce this chapter shall be brought in the district court for the county in which the lawful custodian has its principal place of business.

2. Once a party seeking judicial enforcement of this chapter demonstrates to the court that the defendant is subject to the requirements of this chapter, that the records in question are government records, and that the defendant refused to make those government records available for examination and copying by the plaintiff, the burden of going forward shall be on the defendant to demonstrate compliance with the requirements of this chapter.

3. Upon a finding by a preponderance of the evidence that a lawful custodian has violated any provision of this chapter, a court:

- a. Shall issue an injunction punishable by civil contempt ordering the offending lawful custodian and other appropriate persons to comply with the requirements of this chapter in the case before it and, if appropriate, may order the lawful

custodian and other appropriate persons to refrain for one year from any future violations of this chapter.

b. Shall assess the persons who participated in its violation damages in the amount of not more than five hundred dollars nor less than one hundred dollars. These damages shall be paid by the court imposing it to the state of Iowa if the body in question is a state government body, or to the local government involved if the body in question is a local government body. A person found to have violated this chapter shall not be assessed such damages if that person proves that the person either voted against the action violating this chapter, refused to participate in the action violating this chapter, or engaged in reasonable efforts under the circumstances to resist or prevent the action in violation of this chapter; had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with the requirements of this chapter; or reasonably relied upon a decision of a court or an opinion of the attorney general or the attorney for the government body.

c. Shall order the payment of all costs and reasonable attorneys fees, including appellate attorneys fees, to any plaintiff successfully establishing a violation of this chapter in the action brought under this section. The costs and fees shall be paid by the particular persons who were assessed damages under paragraph "b" of this subsection. If no such persons exist because they have a lawful defense under that paragraph to the imposition of such damages, the costs and fees shall be paid to the successful plaintiff from the budget of the offending government body or its parent.

d. Shall issue an order removing a person from office if that person has engaged in two prior violations of this chapter for which damages were assessed against the person during the person's term.

4. Ignorance of the legal requirements of this chapter is not a defense to an enforcement proceeding brought under

this section. A lawful custodian or its designee in doubt about the legality of allowing the examination or copying or refusing to allow the examination or copying of a government record is authorized to bring suit at the expense of that government body in the district court of the county of the lawful custodian's principal place of business, or to seek an opinion of the attorney general or the attorney for the lawful custodian, to ascertain the legality of any such action.

5. Judicial enforcement under this section does not preclude a criminal prosecution under section 68A.6 or any other applicable criminal provision.

Sec. 10. NEW SECTION. 68A.11 FAIR INFORMATION. This section may be cited as the "Iowa fair information practices Act." It is the intent of this section to require that the information policies of state agencies are clearly defined and subject to public review and comment.

1. Each state agency as defined in chapter 17A shall adopt rules which provide the following:

a. The nature and extent of the personally identifiable information collected by the agency, the legal authority for the collection of that information and a description of the means of storage.

b. A description of which of its records are public records, which are confidential records and which are partially public and partially confidential records and the legal authority for the confidentiality of the records. The description shall indicate whether the records contain personally identifiable information.

c. The procedure for providing the public with access to public records.

d. The procedures for allowing a person to review a government record about that person and have additions, dissents or objections entered in that record unless the review is prohibited by statute.

e. The procedures by which the subject of a confidential record may have a copy of that record released to a named third party.

f. The procedures by which the agency shall notify persons supplying information requested by the agency of the use that will be made of the information, which persons outside of the agency might routinely be provided this information, which parts of the information requested are required and which are optional and the consequences of failing to provide the information requested.

g. Whether a data processing system matches, collates or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

2. A state agency shall not use any personally identifiable information after July 1, 1988 unless it is in a record system described by the rules required by this section.

Sec. 11. NEW SECTION. 68A.12 POLITICAL SUBDIVISIONS. A political subdivision or public body which is not a state agency as defined in chapter 17A is not required to adopt policies to implement section 68A.11. However, if a public body chooses to adopt policies to implement section 68A.11 the policies must be adopted by the elected governing body of the political subdivision of which the public body is a part. The elected governing body must give reasonable notice, make the proposed policy available for public inspection and allow full opportunity for the public to comment before adopting the policy. If the public body is established pursuant to an agreement under chapter 28E, the policy must be adopted by a majority of the public agencies party to the agreement. These policies shall be kept in the office of the county auditor if adopted by the board of supervisors, the city clerk if adopted by a city, and the chief administrative officer of the public body if adopted by some other elected governing body.

Sec. 12. The legislative council shall establish an interim study committee to review the recommendations of the report of the governor's committee on the Iowa public records law during the 1984 legislative interim.

\_\_\_\_\_  
ROBERT T. ANDERSON  
President of the Senate

\_\_\_\_\_  
DONALD D. AVENSON  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2294, Seventieth General Assembly.

\_\_\_\_\_  
K. MARIE THAYER  
Secretary of the Senate

Approved May 4, 1984

\_\_\_\_\_  
TERRY E. BRANSTAD  
Governor