

**SUBSTITUTE FOR
HOUSE BILL NO. 4007**

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending section 13 (MCL 15.243), as amended by 2018 PA 68.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 13. (1) A public body may exempt from disclosure as a
2 public record under this act any of the following:

3 (a) Information of a personal nature if public disclosure of
4 the information would constitute a clearly unwarranted invasion of
5 an individual's privacy.

6 (b) Investigating records compiled for law enforcement
7 purposes, but only to the extent that disclosure as a public record
8 would do any of the following:

9 (i) Interfere with law enforcement proceedings.

10 (ii) Deprive a person of the right to a fair trial or

1 impartial administrative adjudication.

2 (iii) Constitute an unwarranted invasion of personal privacy.

3 (iv) Disclose the identity of a confidential source, or if the
4 record is compiled by a law enforcement agency in the course of a
5 criminal investigation, disclose confidential information furnished
6 only by a confidential source.

7 (v) Disclose law enforcement investigative techniques or
8 procedures.

9 (vi) Endanger the life or physical safety of law enforcement
10 personnel.

11 (c) A public record that if disclosed would prejudice a public
12 body's ability to maintain the physical security of custodial or
13 penal institutions occupied by persons arrested or convicted of a
14 crime or admitted because of a mental disability, unless the public
15 interest in disclosure under this act outweighs the public interest
16 in nondisclosure.

17 (d) Records or information specifically described and exempted
18 from disclosure by statute.

19 (e) A public record or information described in this section
20 that is furnished by the public body originally compiling,
21 preparing, or receiving the record or information to a public
22 officer or public body in connection with the performance of the
23 duties of that public officer or public body, if the considerations
24 originally giving rise to the exempt nature of the public record
25 remain applicable. **FOR PURPOSES OF THIS SUBDIVISION, "PUBLIC BODY"**
26 **INCLUDES A PUBLIC BODY AS DEFINED IN PART 2.**

27 (f) Trade secrets or commercial or financial information

1 voluntarily provided to an agency for use in developing
2 governmental policy if:

3 (i) The information is submitted upon a promise of
4 confidentiality by the public body.

5 (ii) The promise of confidentiality is authorized by the chief
6 administrative officer of the public body or by an elected official
7 at the time the promise is made.

8 (iii) A description of the information is recorded by the
9 public body within a reasonable time after it has been submitted,
10 maintained in a central place within the public body, and made
11 available to a person upon request. This subdivision does not apply
12 to information submitted as required by law or as a condition of
13 receiving a governmental contract, license, or other benefit.

14 (g) Information or records subject to the attorney-client
15 privilege.

16 (h) Information or records subject to the physician-patient
17 privilege, the psychologist-patient privilege, the minister,
18 priest, or Christian Science practitioner privilege, or other
19 privilege recognized by statute or court rule.

20 (i) A bid or proposal by a person to enter into a contract or
21 agreement, until the time for the public opening of bids or
22 proposals, or if a public opening is not to be conducted, until the
23 deadline for submission of bids or proposals has expired.

24 (j) Appraisals of real property to be acquired by the public
25 body until either of the following occurs:

26 (i) An agreement is entered into.

27 (ii) Three years have elapsed since the making of the

1 appraisal, unless litigation relative to the acquisition has not
2 yet terminated.

3 (k) Test questions and answers, scoring keys, and other
4 examination instruments or data used to administer a license,
5 public employment, or academic examination, unless the public
6 interest in disclosure under this act outweighs the public interest
7 in nondisclosure.

8 (l) Medical, counseling, or psychological facts or evaluations
9 concerning an individual if the individual's identity would be
10 revealed by a disclosure of those facts or evaluation, including
11 protected health information, as defined in 45 CFR 160.103.

12 (m) Communications and notes within a public body or between
13 public bodies of an advisory nature to the extent that they cover
14 other than purely factual materials and are preliminary to a final
15 agency determination of policy or action. ~~This~~ **AS TO THE EXECUTIVE**
16 **OFFICE OF THE GOVERNOR OR LIEUTENANT GOVERNOR, THIS EXEMPTION DOES**
17 **NOT APPLY IF IN THE PARTICULAR INSTANCE THE PUBLIC INTEREST IN**
18 **DISCLOSURE CLEARLY OUTWEIGHS THE PUBLIC INTEREST IN ENCOURAGING**
19 **FRANK COMMUNICATIONS. AS TO ALL OTHER PUBLIC BODIES, THIS** exemption
20 does not apply unless the public body shows that in the particular
21 instance the public interest in encouraging frank communication
22 between officials and employees of public bodies clearly outweighs
23 the public interest in disclosure. This exemption does not
24 constitute an exemption under state law for purposes of section
25 8(h) of the open meetings act, 1976 PA 267, MCL 15.268. As used in
26 this subdivision, "determination of policy or action" includes a
27 determination relating to collective bargaining, unless the public

1 record is otherwise required to be made available under 1947 PA
2 336, MCL 423.201 to 423.217.

3 (n) Records of law enforcement communication codes, or plans
4 for deployment of law enforcement personnel, that if disclosed
5 would prejudice a public body's ability to protect the public
6 safety unless the public interest in disclosure under this act
7 outweighs the public interest in nondisclosure in the particular
8 instance.

9 (o) Information that would reveal the exact location of
10 archaeological sites. The department of natural resources may
11 promulgate rules in accordance with the administrative procedures
12 act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to provide for the
13 disclosure of the location of archaeological sites for purposes
14 relating to the preservation or scientific examination of sites.

15 (p) Testing data developed by a public body in determining
16 whether bidders' products meet the specifications for purchase of
17 those products by the public body, if disclosure of the data would
18 reveal that only 1 bidder has met the specifications. This
19 subdivision does not apply after 1 year has elapsed from the time
20 the public body completes the testing.

21 (q) Academic transcripts of an institution of higher education
22 established under section 5, 6, or 7 of article VIII of the state
23 constitution of 1963, if the transcript pertains to a student who
24 is delinquent in the payment of financial obligations to the
25 institution.

26 (r) Records of a campaign committee including a committee that
27 receives money from a state campaign fund.

1 (s) Unless the public interest in disclosure outweighs the
2 public interest in nondisclosure in the particular instance, public
3 records of a law enforcement agency, the release of which would do
4 any of the following:

5 (i) Identify or provide a means of identifying an informant.

6 (ii) Identify or provide a means of identifying a law
7 enforcement undercover officer or agent or a plain clothes officer
8 as a law enforcement officer or agent.

9 (iii) Disclose the personal address or telephone number of
10 active or retired law enforcement officers or agents or a special
11 skill that they may have.

12 (iv) Disclose the name, address, or telephone numbers of
13 family members, relatives, children, or parents of active or
14 retired law enforcement officers or agents.

15 (v) Disclose operational instructions for law enforcement
16 officers or agents.

17 (vi) Reveal the contents of staff manuals provided for law
18 enforcement officers or agents.

19 (vii) Endanger the life or safety of law enforcement officers
20 or agents or their families, relatives, children, parents, or those
21 who furnish information to law enforcement departments or agencies.

22 (viii) Identify or provide a means of identifying a person as
23 a law enforcement officer, agent, or informant.

24 (ix) Disclose personnel records of law enforcement agencies.

25 (x) Identify or provide a means of identifying residences that
26 law enforcement agencies are requested to check in the absence of
27 their owners or tenants.

1 (t) Except as otherwise provided in this subdivision, records
2 and information pertaining to an investigation or a compliance
3 conference conducted by the department under article 15 of the
4 public health code, 1978 PA 368, MCL 333.16101 to 333.18838, before
5 a complaint is issued. This subdivision does not apply to records
6 or information pertaining to 1 or more of the following:

7 (i) The fact that an allegation has been received and an
8 investigation is being conducted, and the date the allegation was
9 received.

10 (ii) The fact that an allegation was received by the
11 department; the fact that the department did not issue a complaint
12 for the allegation; and the fact that the allegation was dismissed.

13 (u) Records of a public body's security measures, including
14 security plans, security codes and combinations, passwords, passes,
15 keys, and security procedures, to the extent that the records
16 relate to the ongoing security of the public body.

17 (v) Records or information relating to a civil action in which
18 the requesting party and the public body are parties.

19 (w) Information or records that would disclose the ~~social~~
20 ~~security~~ **SOCIAL SECURITY** number of an individual.

21 (x) Except as otherwise provided in this subdivision, an
22 application for the position of president of an institution of
23 higher education established under section 4, 5, or 6 of article
24 VIII of the state constitution of 1963, materials submitted with
25 such an application, letters of recommendation or references
26 concerning an applicant, and records or information relating to the
27 process of searching for and selecting an individual for a position

1 described in this subdivision, if the records or information could
2 be used to identify a candidate for the position. However, after 1
3 or more individuals have been identified as finalists for a
4 position described in this subdivision, this subdivision does not
5 apply to a public record described in this subdivision, except a
6 letter of recommendation or reference, to the extent that the
7 public record relates to an individual identified as a finalist for
8 the position.

9 (y) Records or information of measures designed to protect the
10 security or safety of persons or property, or the confidentiality,
11 integrity, or availability of information systems, whether public
12 or private, including, but not limited to, building, public works,
13 and public water supply designs to the extent that those designs
14 relate to the ongoing security measures of a public body,
15 capabilities and plans for responding to a violation of the
16 Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan
17 penal code, 1931 PA 328, MCL 750.543a to 750.543z, emergency
18 response plans, risk planning documents, threat assessments,
19 domestic preparedness strategies, and cybersecurity plans,
20 assessments, or vulnerabilities, unless disclosure would not impair
21 a public body's ability to protect the security or safety of
22 persons or property or unless the public interest in disclosure
23 outweighs the public interest in nondisclosure in the particular
24 instance.

25 (z) Information that would identify or provide a means of
26 identifying a person that may, as a result of disclosure of the
27 information, become a victim of a cybersecurity incident or that

1 would disclose a person's cybersecurity plans or cybersecurity-
2 related practices, procedures, methods, results, organizational
3 information system infrastructure, hardware, or software.

4 (aa) Research data on road and attendant infrastructure
5 collected, measured, recorded, processed, or disseminated by a
6 public agency or private entity, or information about software or
7 hardware created or used by the private entity for such purposes.

8 (BB) RECORDS OR INFORMATION IN THE POSSESSION OF THE EXECUTIVE
9 OFFICE OF THE GOVERNOR OR LIEUTENANT GOVERNOR OR OF AN EMPLOYEE OF
10 EITHER OF THOSE OFFICES THAT RELATES TO ANY OF THE FOLLOWING:

11 (i) THE APPOINTMENT OF AN INDIVIDUAL AS A DEPARTMENT OR AGENCY
12 DIRECTOR; AS A MEMBER OF A BOARD, COMMISSION, OR COUNCIL; TO FILL A
13 VACANCY ON A COURT PURSUANT TO SECTION 23 OF ARTICLE VI OF THE
14 STATE CONSTITUTION OF 1963; OR TO ANY OTHER POSITION THE GOVERNOR
15 APPOINTS AS PROVIDED BY LAW. AFTER AN INDIVIDUAL HAS BEEN APPOINTED
16 TO A POSITION DESCRIBED IN THIS SUBPARAGRAPH, THE EXEMPTION DOES
17 NOT APPLY TO RECORDS OR INFORMATION THAT RELATES TO THAT INDIVIDUAL
18 EXCEPT AS TO A LETTER OF RECOMMENDATION OR REFERENCE.

19 (ii) THE DECISION TO REMOVE OR SUSPEND FROM OFFICE ANY PUBLIC
20 OFFICIAL PURSUANT TO SECTION 10 OF ARTICLE V OF THE STATE
21 CONSTITUTION OF 1963, OR TO REMOVE A JUDGE FROM OFFICE PURSUANT TO
22 SECTION 25 OF ARTICLE VI OF THE STATE CONSTITUTION OF 1963. AFTER
23 AN INDIVIDUAL HAS BEEN REMOVED OR SUSPENDED FROM A POSITION
24 DESCRIBED IN THIS SUBPARAGRAPH, THE EXEMPTION FOR RECORDS AND
25 INFORMATION UNDER THIS SUBPARAGRAPH DOES NOT APPLY TO A RECORD THAT
26 RELATES TO THAT INDIVIDUAL.

27 (iii) THE DECISION TO GRANT OR DENY A REPRIEVE, PARDON, OR

1 COMMUTATION PURSUANT TO SECTION 14 OF ARTICLE V OF THE STATE
2 CONSTITUTION OF 1963.

3 (iv) A BUDGET RECOMMENDATION PREPARED PURSUANT TO SECTION 18
4 OF ARTICLE V OF THE STATE CONSTITUTION OF 1963.

5 (v) A REDUCTION IN EXPENDITURES PURSUANT TO SECTION 20 OF
6 ARTICLE V OF THE STATE CONSTITUTION OF 1963.

7 (vi) A MESSAGE OR RECOMMENDATION TO THE LEGISLATURE PURSUANT
8 TO SECTION 17 OF ARTICLE V OF THE STATE CONSTITUTION OF 1963.

9 (vii) THE EXECUTIVE RESIDENCE DESCRIBED IN SECTION 24 OF
10 ARTICLE V OF THE STATE CONSTITUTION OF 1963.

11 (CC) INFORMATION OR RECORDS SUBJECT TO EXECUTIVE PRIVILEGE.

12 (DD) RECORDS CREATED, PREPARED, OWNED, USED, IN THE POSSESSION
13 OF, OR RETAINED BY THE EXECUTIVE OFFICE OF THE GOVERNOR OR
14 LIEUTENANT GOVERNOR OR AN EMPLOYEE OF EITHER OF THOSE OFFICES PRIOR
15 TO JANUARY 1, 2020.

16 (EE) COMMUNICATIONS, INCLUDING ANY RELATED RECORDS OR
17 INFORMATION, BETWEEN THE EXECUTIVE OFFICE OF THE GOVERNOR OR
18 LIEUTENANT GOVERNOR OR ANY EMPLOYEE OF EITHER OF THOSE OFFICES AND
19 A CONSTITUENT, OTHER THAN A PERSON WHO RECEIVES AN APPOINTMENT OR
20 IS EMPLOYED BY THIS STATE OR A PERSON REQUIRED TO BE REGISTERED AS
21 A LOBBYIST UNDER 1978 PA 472, MCL 4.411 TO 4.431. FOR PURPOSES OF
22 THIS SUBDIVISION, "CONSTITUENT" MEANS AN INDIVIDUAL WHO RESIDES IN
23 THIS STATE AND WHO CONTACTS THE EXECUTIVE OFFICE OF THE GOVERNOR OR
24 LIEUTENANT GOVERNOR FOR ASSISTANCE IN PERSONALLY OBTAINING
25 GOVERNMENT SERVICES, TO EXPRESS A PERSONAL OPINION, OR FOR REDRESS
26 OF PERSONAL GRIEVANCES.

27 (FF) RECORDS OR INFORMATION THAT IF DISCLOSED COULD MATERIALLY

1 COMPROMISE OR DIMINISH THE SECURITY OF THE GOVERNOR OR LIEUTENANT
2 GOVERNOR.

3 (GG) THE CELL PHONE NUMBER OF THE GOVERNOR OR LIEUTENANT
4 GOVERNOR OR AN EMPLOYEE OF THE EXECUTIVE OFFICE OF THE GOVERNOR OR
5 LIEUTENANT GOVERNOR.

6 (2) A public body shall exempt from disclosure information
7 that, if released, would prevent the public body from complying
8 with 20 USC 1232g, commonly referred to as the family educational
9 rights and privacy act of 1974. A public body that is a local or
10 intermediate school district or a public school academy shall
11 exempt from disclosure directory information, as defined by 20 USC
12 1232g, commonly referred to as the family educational rights and
13 privacy act of 1974, requested for the purpose of surveys,
14 marketing, or solicitation, unless that public body determines that
15 the use is consistent with the educational mission of the public
16 body and beneficial to the affected students. A public body that is
17 a local or intermediate school district or a public school academy
18 may take steps to ensure that directory information disclosed under
19 this subsection ~~shall~~**IS** not be used, rented, or sold for the
20 purpose of surveys, marketing, or solicitation. Before disclosing
21 the directory information, a public body that is a local or
22 intermediate school district or a public school academy may require
23 the requester to execute an affidavit stating that directory
24 information provided under this subsection ~~shall~~**WILL** not be used,
25 rented, or sold for the purpose of surveys, marketing, or
26 solicitation.

27 (3) This act does not authorize the withholding of information

1 otherwise required by law to be made available to the public or to
2 a party in a contested case under the administrative procedures act
3 of 1969, 1969 PA 306, MCL 24.201 to 24.328.

4 ~~—— (4) Except as otherwise exempt under subsection (1), this act~~
5 ~~does not authorize the withholding of a public record in the~~
6 ~~possession of the executive office of the governor or lieutenant~~
7 ~~governor, or an employee of either executive office, if the public~~
8 ~~record is transferred to the executive office of the governor or~~
9 ~~lieutenant governor, or an employee of either executive office,~~
10 ~~after a request for the public record has been received by a state~~
11 ~~officer, employee, agency, department, division, bureau, board,~~
12 ~~commission, council, authority, or other body in the executive~~
13 ~~branch of government that is subject to this act.~~

14 Enacting section 1. This amendatory act takes effect January
15 1, 2020.

16 Enacting section 2. This amendatory act does not take effect
17 unless House Bill No. 4011 of the 100th Legislature is enacted into
18 law.