
THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2. As used in this act:

(A) "CRITICAL ENERGY INFRASTRUCTURE INFORMATION" MEANS SPECIFIC ENGINEERING, VULNERABILITY, OR DETAILED DESIGN INFORMATION ABOUT PROPOSED OR EXISTING CRITICAL ENERGY INFRASTRUCTURE THAT HAS ALL OF THE FOLLOWING CHARACTERISTICS:

(i) RELATES DETAILS ABOUT THE PRODUCTION, GENERATION, TRANSPORTATION, TRANSMISSION, OR DISTRIBUTION OF FUEL OR ENERGY.

(ii) COULD BE USEFUL TO A PERSON IN PLANNING AN ATTACK ON CRITICAL ENERGY INFRASTRUCTURE.

(iii) PROVIDES MORE THAN THE GENERAL LOCATION OF THE CRITICAL
INFRASTRUCTURE.

(B) "CRITICAL ENERGY INFRASTRUCTURE" MEANS EXISTING AND PROPOSED SYSTEMS AND ASSETS, WHETHER PHYSICAL OR VIRTUAL, RELATING TO CRUDE OIL, PETROLEUM, ELECTRICITY, OR NATURAL GAS, THE INCAPACITY OR DESTRUCTION OF WHICH WOULD NEGATIVELY AFFECT PUBLIC SECURITY, ECONOMIC SECURITY, HEALTH, SAFETY, OR ANY COMBINATION OF THOSE MATTERS.

(C) "CYBERSECURITY ASSESSMENT" MEANS AN INVESTIGATION UNDERTAKEN BY A PERSON, GOVERNMENTAL BODY, OR OTHER ENTITY TO IDENTIFY VULNERABILITIES IN CYBERSECURITY PLANS.

(D) "CYBERSECURITY INCIDENT" INCLUDES, BUT IS NOT LIMITED TO, A COMPUTER NETWORK INTRUSION; A BREACH OF PRIMARY COMPUTER NETWORK CONTROLS; UNAUTHORIZED ACCESS TO PROGRAMS, DATA, OR INFORMATION CONTAINED IN A COMPUTER SYSTEM; OR ACTIONS BY A THIRD PARTY THAT MATERIALLY AFFECT COMPONENT PERFORMANCE OR, BECAUSE OF IMPACT TO COMPONENT SYSTEMS, PREVENT NORMAL COMPUTER SYSTEM ACTIVITIES.

(E) "CYBERSECURITY PLAN" INCLUDES, BUT IS NOT LIMITED TO, INFORMATION ABOUT A PERSON'S, GOVERNMENTAL BODY'S, OR OTHER ENTITY'S NETWORK SECURITY, ENCRYPTION, NETWORK MAPPING, ACCESS CONTROL, PASSWORDS, AUTHENTICATION PRACTICES, COMPUTER HARDWARE OR SOFTWARE, OR RESPONSE TO CYBERSECURITY INCIDENTS.

(F) "CYBERSECURITY THREAT" MEANS INFORMATION ABOUT COMPUTER SYSTEM VULNERABILITIES OR PLANNED EXPLOITATION OF COMPUTER SYSTEMS BY UNAUTHORIZED PARTIES.

(G) (a) "Field name" means the label or identification of an element of a computer database that contains a specific item of information, and includes but is not limited to a subject
heading such as a column header, data dictionary, or record layout.

(H) (b) "FOIA coordinator" means either of the following:

(i) An individual who is a public body.

(ii) An individual designated by a public body in accordance with section 6 to accept and process requests for public records under this act.

(I) (c) "Person" means an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.

(J) (d) "Public body" means any of the following:

(i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof.

(ii) An agency, board, commission, or council in the legislative branch of the state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.

(iv) Any other body which, THAT is created by state or local authority or which is primarily funded by or through state or local authority.
The EXCEPT THAT THE judiciary, including the office of the county clerk and ITS employees thereof when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.

"Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. Public record does not include computer software. This act separates public records into the following 2 classes:

1. Those that are exempt from disclosure under section 13.
2. All public records that are not exempt from disclosure under section 13 and which are subject to disclosure under this act.

"Software" means a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result. Software does not include computer-stored information or data, or a field name if disclosure of that field name does not violate a software license.

"Unusual circumstances" means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

1. The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.
2. The need to collect the requested public records from
numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

(N) (h) "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

(O) (i) "Written request" means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.

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

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

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

(i) Interfere with law enforcement proceedings.

(ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.

(iii) Constitute an unwarranted invasion of personal privacy.

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

(v) Disclose law enforcement investigative techniques or
procedures.

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

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

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

(e) A public record or information described in this section
that is furnished by the public body originally compiling,
preparing, or receiving the record or information to a public
officer or public body in connection with the performance of the
duties of that public officer or public body, if the considerations
originally giving rise to the exempt nature of the public record
remain applicable.

(f) Trade secrets or commercial or financial information
voluntarily provided to an agency for use in developing
governmental policy if:

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

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

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

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

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

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

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

(i) An agreement is entered into.

(ii) Three years have elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.

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

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

(m) Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of section 8(h) of the open meetings act, 1976 PA 267, MCL 15.268. As used in this subdivision, "determination of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under 1947 PA 336, MCL 423.201 to 423.217.

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

(o) Information that would reveal the exact location of
archaeological sites. The department of history, arts, and
libraries-NATURAL RESOURCES may promulgate rules in accordance with
the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
to 24.328, to provide for the disclosure of the location of
archaeological sites for purposes relating to the preservation or
scientific examination of sites.

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

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

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

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

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

(ii) Identify or provide a means of identifying a law
enforcement undercover officer or agent or a plain clothes officer
as a law enforcement officer or agent.
(iii) Disclose the personal address or telephone number of active or retired law enforcement officers or agents or a special skill that they may have.

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

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

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

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

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

(ix) Disclose personnel records of law enforcement agencies.

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

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

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

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

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

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

  (w) Information or records that would disclose the social security number of an individual.

  (x) Except as otherwise provided in this subdivision, an application for the position of president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, materials submitted with such an application, letters of recommendation or references concerning an applicant, and records or information relating to the process of searching for and selecting an individual for a position described in this subdivision, if the records or information could be used to identify a candidate for the position. However, after 1 or more individuals have been identified as finalists for a position described in this subdivision, this subdivision does not apply to a public record described in this subdivision, except a letter of recommendation or reference, to the extent that the public record relates to an individual identified as a finalist for the position.
(y) Records or information of measures designed to protect the security or safety of persons or property, whether public or private, including, but not limited to, building, public works, and public water supply designs to the extent that those designs relate to the ongoing security measures of a public body, capabilities and plans for responding to a violation of the Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.543a to 750.543z, emergency response plans, risk planning documents, threat assessments, and domestic preparedness strategies, CYBERSECURITY PLANS, CYBERSECURITY ASSESSMENTS, AND CYBERSECURITY THREATS, unless disclosure would not impair a public body's ability to protect the security or safety of persons or property or unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance.

(Z) INFORMATION THAT WOULD IDENTIFY OR PROVIDE A MEANS OF IDENTIFYING A PERSON THAT MAY, AS A RESULT OF DISCLOSURE OF THE INFORMATION, BECOME A VICTIM OF A CYBERSECURITY INCIDENT OR THAT WOULD DISCLOSE A PERSON'S CYBERSECURITY PLANS OR CYBERSECURITY-RELATED PRACTICES, PROCEDURES, METHODS, RESULTS, ORGANIZATIONAL STRUCTURE, HARDWARE, OR SOFTWARE.

(AA) A RECORD, A DOCUMENT, OR INFORMATION THAT DISCLOSES CRITICAL ENERGY INFRASTRUCTURE INFORMATION.

(2) A public body shall exempt from disclosure information that, if released, would prevent the public body from complying with 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974. A public body that is a local or intermediate school district or a public school academy shall
exempt from disclosure directory information, as defined by 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974, requested for the purpose of surveys, marketing, or solicitation, unless that public body determines that the use is consistent with the educational mission of the public body and beneficial to the affected students. A public body that is a local or intermediate school district or a public school academy may take steps to ensure that directory information disclosed under this subsection shall not be used, rented, or sold for the purpose of surveys, marketing, or solicitation. Before disclosing the directory information, a public body that is a local or intermediate school district or a public school academy may require the requester to execute an affidavit stating that directory information provided under this subsection shall not be used, rented, or sold for the purpose of surveys, marketing, or solicitation.

(3) This act does not authorize the withholding of information otherwise required by law to be made available to the public or to a party in a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

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

Enacting section 1. This amendatory act takes effect 90 days
after the date it is enacted into law.