

HOUSE BILL No. 4007

January 9, 2019, Introduced by Reps. Rendon, Guerra, Glenn, Hauck, Lasinski, Schroeder, Berman, Allor and Filler and referred to the Committee on Government Operations.

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
11 impartial administrative adjudication.

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

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

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

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

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

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

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

26 (f) Trade secrets or commercial or financial information
27 voluntarily provided to an agency for use in developing

1 governmental policy if:

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

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

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

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

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

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

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

25 (i) An agreement is entered into.

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

1 yet terminated.

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

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

11 (m) Communications and notes within a public body or between
12 public bodies of an advisory nature to the extent that they cover
13 other than purely factual materials and are preliminary to a final
14 agency determination of policy or action. This exemption does not
15 apply unless the public body shows that in the particular instance
16 the public interest in encouraging frank communication between
17 officials and employees of public bodies clearly outweighs the
18 public interest in disclosure. This exemption does not constitute
19 an exemption under state law for purposes of section 8(h) of the
20 open meetings act, 1976 PA 267, MCL 15.268. As used in this
21 subdivision, "determination of policy or action" includes a
22 determination relating to collective bargaining, unless the public
23 record is otherwise required to be made available under 1947 PA
24 336, MCL 423.201 to 423.217.

25 (n) Records of law enforcement communication codes, or plans
26 for deployment of law enforcement personnel, that if disclosed
27 would prejudice a public body's ability to protect the public

1 safety unless the public interest in disclosure under this act
2 outweighs the public interest in nondisclosure in the particular
3 instance.

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

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

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

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

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

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

1 (ii) Identify or provide a means of identifying a law
2 enforcement undercover officer or agent or a plain clothes officer
3 as a law enforcement officer or agent.

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

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

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

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

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

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

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

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

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

1 or information pertaining to 1 or more of the following:

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

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

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

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

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

16 (x) Except as otherwise provided in this subdivision, an
17 application for the position of president of an institution of
18 higher education established under section 4, 5, or 6 of article
19 VIII of the state constitution of 1963, materials submitted with
20 such an application, letters of recommendation or references
21 concerning an applicant, and records or information relating to the
22 process of searching for and selecting an individual for a position
23 described in this subdivision, if the records or information could
24 be used to identify a candidate for the position. However, after 1
25 or more individuals have been identified as finalists for a
26 position described in this subdivision, this subdivision does not
27 apply to a public record described in this subdivision, except a

1 letter of recommendation or reference, to the extent that the
2 public record relates to an individual identified as a finalist for
3 the position.

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

20 (z) Information that would identify or provide a means of
21 identifying a person that may, as a result of disclosure of the
22 information, become a victim of a cybersecurity incident or that
23 would disclose a person's cybersecurity plans or cybersecurity-
24 related practices, procedures, methods, results, organizational
25 information system infrastructure, hardware, or software.

26 (aa) Research data on road and attendant infrastructure
27 collected, measured, recorded, processed, or disseminated by a

1 public agency or private entity, or information about software or
2 hardware created or used by the private entity for such purposes.

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

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

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

22 (iii) THE DECISION TO GRANT OR DENY A REPRIEVE, PARDON, OR
23 COMMUTATION PURSUANT TO SECTION 14 OF ARTICLE V OF THE STATE
24 CONSTITUTION OF 1963.

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

27 (v) A REDUCTION IN EXPENDITURES PURSUANT TO SECTION 20 OF

1 **ARTICLE V OF THE STATE CONSTITUTION OF 1963.**

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

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

25 (3) This act does not authorize the withholding of information
26 otherwise required by law to be made available to the public or to
27 a party in a contested case under the administrative procedures act

1 of 1969, 1969 PA 306, MCL 24.201 to 24.328.

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

12 Enacting section 1. This amendatory act takes effect January
13 1, 2020.

14 Enacting section 2. This amendatory act does not take effect
15 unless Senate Bill No. ____ or House Bill No. 4011 (request no.
16 00015'19 *) of the 100th Legislature is enacted into law.