

HOUSE BILL No. 4008

January 9, 2019, Introduced by Reps. Guerra, Hauck, Lasinski, Glenn, 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 sections 1 and 2 (MCL 15.231 and 15.232), section 1 as amended by 1997 PA 6 and section 2 as amended by 2018 PA 68, and by designating part 1.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

PART 1

Sec. 1. (1) This act **MAY BE CITED AS THE "FREEDOM OF INFORMATION AND LEGISLATIVE OPEN RECORDS ACT", AND THIS PART** shall be known and may be cited as the "freedom of information act".

(2) It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who

1 represent them as public officials and public employees, consistent
2 with this act. The people shall be informed so that they may fully
3 participate in the democratic process.

4 Sec. 2. As used in this act: **PART:**

5 (a) "Cybersecurity assessment" means an investigation
6 undertaken by a person, governmental body, or other entity to
7 identify vulnerabilities in cybersecurity plans.

8 (b) "Cybersecurity incident" includes, but is not limited to,
9 a computer network intrusion or attempted intrusion; a breach of
10 primary computer network controls; unauthorized access to programs,
11 data, or information contained in a computer system; or actions by
12 a third party that materially affect component performance or,
13 because of impact to component systems, prevent normal computer
14 system activities.

15 (c) "Cybersecurity plan" includes, but is not limited to,
16 information about a person's information systems, network security,
17 encryption, network mapping, access control, passwords,
18 authentication practices, computer hardware or software, or
19 response to cybersecurity incidents.

20 (d) "Cybersecurity vulnerability" means a deficiency within
21 computer hardware or software, or within a computer network or
22 information system, that could be exploited by unauthorized parties
23 for use against an individual computer user or a computer network
24 or information system.

25 (e) "Field name" means the label or identification of an
26 element of a computer database that contains a specific item of
27 information, and includes but is not limited to a subject heading

1 such as a column header, data dictionary, or record layout.

2 (f) "FOIA coordinator" means either of the following:

3 (i) An individual who is a public body.

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

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

13 (h) "Public body" means any of the following:

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

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

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

25 (iii) ~~(iv)~~—Any other body that is created by state or local
26 authority or is primarily funded by or through state or local
27 authority, except that **IT DOES NOT INCLUDE** the judiciary, including

1 the office of the county clerk and its employees when acting in the
2 capacity of clerk to the circuit court, ~~is not included in the~~
3 ~~definition of public body.~~**OR AN ENTITY IN THE LEGISLATIVE BRANCH OF**
4 **STATE GOVERNMENT.**

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

10 (i) Those that are exempt from disclosure under section 13.

11 (ii) All public records that are not exempt from disclosure
12 under section 13 and that are subject to disclosure under this act.

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

20 (k) "Unusual circumstances" means any 1 or a combination of
21 the following, but only to the extent necessary for the proper
22 processing of a request:

23 (i) The need to search for, collect, or appropriately examine
24 or review a voluminous amount of separate and distinct public
25 records pursuant to a single request.

26 (ii) The need to collect the requested public records from
27 numerous field offices, facilities, or other establishments ~~which~~

1 **THAT** are located apart from the particular office receiving or
2 processing the request.

3 (l) "Writing" means handwriting, typewriting, printing,
4 photostating, photographing, photocopying, and every other means of
5 recording, and includes letters, words, pictures, sounds, or
6 symbols, or combinations thereof, and papers, maps, magnetic or
7 paper tapes, photographic films or prints, microfilm, microfiche,
8 magnetic or punched cards, discs, drums, hard drives, solid state
9 storage components, or other means of recording or retaining
10 meaningful content.

11 (m) "Written request" means a writing that asks for
12 information, and includes a writing transmitted by facsimile,
13 electronic mail, or other electronic means.

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 Senate Bill No. ____ or House Bill No. 4011 (request no.
18 00015'19 *) of the 100th Legislature is enacted into law.