

**SUBSTITUTE FOR
HOUSE BILL NO. 5749**

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending section 13 (MCL 15.243), as amended by 2023 PA 64.

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. **For the purpose of the exemption under**
6 **this subdivision, the release of law enforcement disciplinary**
7 **records is not an unwarranted invasion of an individual's privacy.**

8 (b) Investigating records compiled for law enforcement
9 purposes, but only to the extent that disclosure as a public record



1 would do any of the following:

2 (i) Interfere with law enforcement proceedings.

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

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

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

10 (v) Disclose law enforcement investigative techniques or
11 procedures.

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

14 (vii) Disclose the identity of a party who, as described in
15 subdivision (cc), proceeds anonymously in a civil action in which
16 the party alleges that the party was the victim of sexual
17 misconduct. For the purpose of securing the party's anonymity, that
18 party or the party's designee may provide written notification of
19 the civil action and the party's wish to remain anonymous to any
20 law enforcement agency that has investigating records subject to
21 this subparagraph, and the law enforcement agency shall retain a
22 copy of that notification in its files with those investigating
23 records.

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



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

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

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

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

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

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

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

26 (h) Information or records subject to the physician-patient
27 privilege, the psychologist-patient privilege, the minister,
28 priest, or Christian Science practitioner privilege, or other
29 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)~~ **8(1)(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 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~~ **Only if** the public interest in ~~disclosure~~
nondisclosure outweighs the public interest in ~~nondisclosure~~
disclosure 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 **Social Security number**, personal **or email**
address, or telephone **or cellular phone** number of active or retired
law enforcement officers or agents or a special skill that they may
have.

(iv) Disclose the name, **Social Security number**, personal **or**
email address, or telephone **or cellular phone** 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.~~
records of either of the following:

(A) The medical history of a law enforcement officer or agent.



(B) The use of an employee assistance program, mental health service, or substance abuse assistance service by a law enforcement officer or agent, unless the use of the program or service is mandated by a disciplinary proceeding the records of which are not exempt under this section.

(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



1 application for the position of president of an institution of
2 higher education established under section 4, 5, or 6 of article
3 VIII of the state constitution of 1963, materials submitted with
4 such an application, letters of recommendation or references
5 concerning an applicant, and records or information relating to the
6 process of searching for and selecting an individual for a position
7 described in this subdivision, if the records or information could
8 be used to identify a candidate for the position. However, after 1
9 or more individuals have been identified as finalists for a
10 position described in this subdivision, this subdivision does not
11 apply to a public record described in this subdivision, except a
12 letter of recommendation or reference, to the extent that the
13 public record relates to an individual identified as a finalist for
14 the position.

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



1 instance.

2 (z) Information that would identify or provide a means of
3 identifying a person that may, as a result of disclosure of the
4 information, become a victim of a cybersecurity incident or that
5 would disclose a person's cybersecurity plans or cybersecurity-
6 related practices, procedures, methods, results, organizational
7 information system infrastructure, hardware, or software.

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

12 (bb) Records or information that would reveal the specific
13 location or GPS coordinates of game, including, but not limited to,
14 records or information of the specific location or GPS coordinates
15 of game obtained by the department of natural resources during any
16 restoration, management, or research project conducted under
17 section 40501 of the natural resources and environmental protection
18 act, 1994 PA 451, MCL 324.40501, or in connection with the
19 expenditure of money under section 43553 of the natural resources
20 and environmental protection act, 1994 PA 451, MCL 324.43553. As
21 used in this subdivision, "game" means that term as defined in
22 section 40103 of the natural resources and environmental protection
23 act, 1994 PA 451, MCL 324.40103.

24 (cc) Information that would reveal the identity of a party who
25 proceeds anonymously in a civil action in which the party alleges
26 that the party was the victim of sexual misconduct. As used in this
27 subdivision, "sexual misconduct" means the conduct described in
28 section 90, 136, 145a, 145b, 145c, 520b, 520c, 520d, 520e, or 520g
29 of the Michigan penal code, 1931 PA 328, MCL 750.90, 750.136,



1 750.145a, 750.145b, 750.145c, 750.520b, 750.520c, 750.520d,
2 750.520e, and 750.520g, regardless of whether the conduct resulted
3 in a criminal conviction.

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 is not used, rented, or sold for the purpose of
18 surveys, marketing, or solicitation. Before disclosing the
19 directory information, a public body that is a local or
20 intermediate school district or a public school academy may require
21 the requestor to execute an affidavit stating that directory
22 information provided under this subsection 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
28 of 1969, 1969 PA 306, MCL 24.201 to 24.328.

29 (4) Except as otherwise exempt under subsection (1), this act



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

10 **(5) As used in this section:**

11 **(a) "Disciplinary proceeding" means the commencement of any**
12 **investigation and any subsequent hearing or other proceeding**
13 **conducted by the Michigan commission on law enforcement standards**
14 **or any state or local law enforcement agency, department,**
15 **independent review board, or other entity tasked with evaluating**
16 **any complaint, allegation, or charge against a law enforcement**
17 **officer or agent.**

18 **(b) "Law enforcement agency" means a public body that employs**
19 **1 or more law enforcement officers or agents.**

20 **(c) "Law enforcement disciplinary records" means all records**
21 **created in furtherance of a disciplinary proceeding conducted by**
22 **the Michigan commission on law enforcement standards or any state**
23 **or local law enforcement agency, department, independent review**
24 **board, or other entity tasked with evaluating any complaint,**
25 **allegation, or charge against a law enforcement officer or agent,**
26 **other than a complaint, allegation, or charge of a technical**
27 **infraction, including, but not limited to, all of the following**
28 **records and information:**

29 **(i) Records of any complaint, allegation, or charge against a**



1 law enforcement officer or agent.

2 (ii) The name of any law enforcement officer or agent against
3 whom a complaint, allegation, or charge has been made.

4 (iii) All records, documents, and files, in whatever form,
5 related to the investigation, adjudication, or disposition of any
6 complaint, allegation, or charge against a law enforcement officer
7 or agent.

8 (iv) The transcript of any disciplinary proceeding, including
9 any exhibits introduced at the proceeding, regarding any complaint,
10 allegation, or charge against a law enforcement officer or agent.

11 (v) Any finding by the Michigan commission on law enforcement
12 standards or any state or local law enforcement agency, department,
13 independent review board, or other entity tasked with evaluating
14 any complaint, allegation, or charge against a law enforcement
15 officer or agent during a disciplinary proceeding.

16 (vi) Any final written opinion or memorandum supporting the
17 disposition and disciplinary action imposed, or the decision not to
18 impose disciplinary action, on a law enforcement officer or agent
19 against whom a complaint, allegation, or charge has been made,
20 including all of the following:

21 (A) All factual findings.

22 (B) Any analysis of alleged misconduct.

23 (C) A description of the disciplinary action imposed on the
24 law enforcement officer or agent, if any, and the data supporting
25 the disciplinary action taken or the decision not to take
26 disciplinary action.

27 (d) "Law enforcement officer or agent" includes a police
28 officer employed by a municipality, county, or this state, an
29 employee of a sheriff's office who performs law enforcement duties,



1 a correctional officer, or any employee who provides public safety
2 or investigative services for the department of corrections, a
3 state correctional facility, a county jail, or a juvenile detention
4 facility.

5 (e) "Technical infraction" means a minor rule violation by a
6 law enforcement officer or agent, solely related to the enforcement
7 of administrative departmental rules, that meets all of the
8 following:

9 (i) Did not involve interaction with members of the public.

10 (ii) Was unrelated to the investigative, enforcement, training,
11 supervision, or reporting responsibilities of the law enforcement
12 officer or agent.

13 (iii) Did not involve deception, misrepresentation, dishonesty,
14 or intemperate behavior by the law enforcement officer or agent.