



**House
Legislative
Analysis
Section**

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**FOIA: ALLOW EXEMPTION OF
SCHOOL DIRECTORIES**

**House Bill 4874 (Substitute H-1)
First Analysis (7-10-01)**

**Sponsor: Rep. Tony Stamas
Committee: Civil Law and the Judiciary**

THE APPARENT PROBLEM:

The state Freedom of Information Act (FOIA) generally requires that information held by public bodies be made public upon request (sometimes called a “FOIA request”), with certain listed exceptions. Public Act 88 of 2000 (see BACKGROUND INFORMATION) requires public bodies to exempt from disclosure information that, if released, would prevent them from complying with the federal Family Educational Rights and Privacy Act. The same school district that prompted Public Act 88 of 2000 reportedly also was sued when it denied a request last year for student names going back 15 years by a private business entity that wanted to sell the names to a company that organizes class reunions. The court ruled that, under the Freedom of Information Act, the school district had to turn over the student names (including some in the form of copies of pages of past school yearbooks), despite the fact that this information was requested purely for private, commercial purposes.

Legislation has been introduced to give school districts the discretion to decide when and whether to release student directory information.

THE CONTENT OF THE BILL:

The bill would amend the Freedom of Information Act (FOIA) to allow schools to exempt from disclosure under the act school student directory information. More specifically, the bill would allow a “public body” (in this case, a school district) to exempt from disclosure directory information as defined in the federal Family Educational Rights and Privacy Act [20 USC 1232g(a)(5)(A)]. The bill would not authorize directory information to be withheld if a request for directory information were made by a “recognized” news organization for the purpose of gathering or preparing news for broadcast or publication. Nor would the bill authorize the withholding of directory information regarding a student who was employed at an institution of higher education if requested by a collective bargaining

organization seeking to organize or service a collective bargaining unit. The bill would specifically require collective bargaining organization or units that obtained directory information under the bill to use the information only for collective bargaining purposes and prohibit them from selling the directory information to another person.

MCL 15.243

BACKGROUND INFORMATION:

The federal definition of student “directory information.” The description of what is included in “directory information” (“related to a student”) under the federal Family Educational Rights and Privacy Act is as follows: “the student’s name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.”

This description is found in Part 4 of Subchapter III of Chapter 31 (“General Provisions Concerning Education”) of Title 20 (Education) of the U.S. Code, section 1232g (titled “Family educational and privacy rights”).

Public Act 88 of 2000. According to the Senate Fiscal Agency analysis of Senate Bill 588 (subsequently enacted as Public Act 88 of 2000), the federal Family Rights and Privacy Act (FERPA) is a federal law designed to protect the privacy of a student’s educational records. In general, schools must have written permission from a parent or an eligible student before releasing information from a student’s record. Under Michigan’s Freedom of Information Act (FOIA), however, a public body was permitted [prior to the enactment of Public Act 88], but not required, to exempt from disclosure

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information that, if released, would prevent it from complying with the federal law. As a result, a public body, such as a school district, could release information in compliance with the [state] FOIA but in violation of the federal law. Apparently this occurred in 1996 and 1997 when Midland Public School officials, in response to FOIA requests, released information about a student's confession to violating athletic rules by drinking alcohol during an athletic season, a basketball coach's notes about two players' attitudes, and coaches' notes about the ability of a player to meet certain financial obligations. In another instance, school officials released certain academic records of a student, including report cards and test scores. Despite parents' complaints, school officials reportedly continued releasing [federally]-protected documents in response to FOIA requests. As a result, several students filed complaints with the U.S. Department of Education. The department concluded in August 1997 that Midland school officials violated FERPA with the release of this information. Subsequently, the school district agreed in a settlement to update its policies on the release of information, appoint a FERPA officer to monitor the district's compliance with the [federal] law, and notify parents and students of their rights under FERPA. To prevent similar situations from occurring in other school districts, legislation was introduced – and subsequently enacted – to amend the state FOIA to require public bodies (including school districts) to exempt from disclosure information that is protected under the federal Family Educational Rights and Privacy Act. More specifically, Public Act 88 of 2000 amended the state Freedom of Information Act to require public bodies to exempt from disclosure information that, if released, would prevent the public body from complying with FERPA.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Schools compile student directories, both for the use of students and their families, and for purposes of recognizing student achievement, not to further private business interests. The Midland school case seems a particularly egregious misuse of the disclosure provisions of the Freedom of Information Act, which speaks of how “[t]he people shall be informed [regarding the affairs of government and the official acts of those who represent them as public

officials and public employees] so that they [the people] may fully participate in the democratic process.” Requiring schools to release the names of students under a FOIA request so that the requesting party can sell, for a profit, these names to another private business entity seems to be a perversion of the very intent of the act. Last session's legislation clarified that student directory information protected under the federal Family Educational Rights and Privacy Act may *not* be released under the state Freedom of Information Act. The bill would protect students from having information in student directories be released under FOIA requests for purely commercial purposes by *allowing*, not requiring, schools to exempt this information from disclosure under FOIA unless requested by legitimate news organizations for news purposes or, for students employed by institutions of higher education, requested by collective bargaining organizations for collective bargaining purposes. While student directories should be used to celebrate student accomplishments, they should not be used for commercial intrusions on student privacy.

Response:

The bill would specifically prohibit collective bargaining organizations or units that obtained student directory information under the bill from selling the information (“to another person”), but does not include a similar prohibition against the sale of such information as obtained under the act by news organizations. Why not?

POSITIONS:

The Department of Education supports the bill. (7-2-01)

The Midland Public Schools supports the bill. (6-28-01)

The Michigan Education Association indicated support for the bill. (6-12-01)

The Michigan Association of Broadcasters indicated support for the bill. (6-28-01)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.