



**House
Legislative
Analysis
Section**

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**FOIA: ALLOW EXEMPTION OF
SCHOOL DIRECTORIES**

**House Bill 4874 as enrolled
Public Act 437 of 2002
Second Analysis (6-12-02)**

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

THE APPARENT PROBLEM:

The Family Educational 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 a student before releasing information from a student's record. Under FERPA, federal funds may not be made available under any applicable program to any educational agency or institution that has a policy or practice of permitting the release of educational records or personally identifiable information contained in educational records without the written consent of the students' parents, except as provided in that act. This prohibition, however, does not apply to "directory information."

Under FERPA, "directory information" relating to a student includes the student's name, address, telephone listing, date and place of birth, major field of student, participating 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. (20 USC 1232g).

In contrast, the Michigan 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. Such an exception was added to the Freedom of Information Act when the legislature enacted Public Act 88 of 2000, which requires public bodies to exempt from disclosure information that, if released, would prevent them from complying with FERPA. See *BACKGROUND INFORMATION* below.

The FERPA and FOIA restrictions became an issue when the Midland Public School District received FOIA requests for student information that was

sought for commercial purposes. The school district was sued when it denied a request for student names going back 15 years, by an individual who wanted to sell the names to a company that organizes class reunions. The Ingham County Circuit Court ruled that the FOIA exemption did not apply, because disclosing directory information would not prevent the school district from complying with FERPA, and ordered that the school district release the requested information (which was contained in commencement programs).

Some people feel that, in addition to being required to exempt FERPA-protected information from disclosure under FOIA, school districts should be allowed to exempt student directory information from disclosure. Legislation has been introduced to accomplish that end.

THE CONTENT OF THE BILL:

The bill would amend the Freedom of Information Act (FOIA) to allow schools to exempt school student directory information from disclosure under the act. The bill would take effect on August 1, 2002.

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)]), requested for the purpose of surveys, marketing, or solicitation, unless that public body determined that the use was consistent with the educational mission of the school, and beneficial to the affected students. Under the bill, a local or intermediate school district, or a public school academy, could take steps to ensure that directory information disclosed would not be used, rented, or sold for the purpose of surveys, marketing,

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or solicitation. Further, before disclosing the directory information, a school district could require the requester to execute an affidavit stating that directory information would not be used, rented, or sold for the purpose of surveys, marketing, or solicitation.

MCL 15.243

BACKGROUND INFORMATION:

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 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:

The Senate Fiscal Agency notes that the bill would have no fiscal impact on state or local government. (3-21-02)

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. Although FERPA protects certain student-related information from disclosure and FOIA requires school districts to exempt from disclosure information that, if released, would violate FERPA, that protection does *not* currently extend to student directory information. As a result of this exception, at least one school district has been ordered by a court to release student directory information to someone who sought that information purely for a commercial purpose.

In particular, the Midland Public Schools denied a FOIA request for information about current and former students by a person who sought that information in order to sell it to a business that coordinates class reunions. Midland officials evidently believed that the desired use of that information did not fall within the scope of FOIA, and school officials refused to release the information, even though the district sometimes willingly released student lists for a public purpose (such as listing the names of graduating seniors in the local newspaper). The school district was sued, and a circuit judge ruled in favor of the businessman, because the requested information fell within FERPA's definition of "directory information," which school districts can release.

Despite the outcome of this suit, school officials should be able to withhold directory information, if they determine a request is purely commercial, and outside the scope of the school's mission. This bill would protect students from having the information in their student directories released under FOIA requests, if the person seeking the information intended that it be used for the purpose of surveys, marketing, or solicitations. However, school officials

could continue to release directory information, if they determined a request was beneficial to students, and consistent with the school's educational mission.

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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.