

REPRINT

SENATE SUBSTITUTE FOR

HOUSE BILL NO. 4874

(As passed the Senate April 17, 2002)

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending section 13 (MCL 15.243), as amended by 2002 PA 130.

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
5 of an individual's privacy.

6 (b) Investigating records compiled for law enforcement pur-
7 poses, 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.

HB4874, As Passed House, May 21, 2002

House Bill No. 4874

2

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

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

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

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

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

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

19 (e) A public record or information described in this section
20 that is furnished by the public body originally compiling, pre-
21 paring, or receiving the record or information to a public offi-
22 cer or public body in connection with the performance of the
23 duties of that public officer or public body, if the considera-
24 tions originally giving rise to the exempt nature of the public
25 record remain applicable.

HB4874, As Passed House, May 21, 2002

House Bill No. 4874

3

1 (f) Trade secrets or commercial or financial information
2 voluntarily provided to an agency for use in developing
3 governmental policy if:

4 (i) The information is submitted upon a promise of confiden-
5 tiality by the public body.

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

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

16 (g) Information or records subject to the attorney-client
17 privilege.

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

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

26 (j) Appraisals of real property to be acquired by the public
27 body until EITHER OF THE FOLLOWING OCCURS:

HB4874, As Passed House, May 21, 2002

House Bill No. 4874

4

1 (i) ~~an~~ AN agreement is entered into. ~~or~~

2 (ii) ~~3~~ THREE years have elapsed since the making of the
3 appraisal, unless litigation relative to the acquisition has not
4 yet terminated.

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

10 (l) Medical, counseling, or psychological facts or evalu-
11 ations concerning an individual if the individual's identity
12 would be revealed by a disclosure of those facts or evaluation.

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

HB4874, As Passed House, May 21, 2002

House Bill No. 4874

5

1 (n) Records of law enforcement communication codes, or plans
2 for deployment of law enforcement personnel, that if disclosed
3 would prejudice a public body's ability to protect the public
4 safety unless the public interest in disclosure under this act
5 outweighs the public interest in nondisclosure in the particular
6 instance.

7 (o) Information that would reveal the exact location of
8 archaeological sites. The department of history, arts, and
9 libraries may promulgate rules in accordance with the administra-
10 tive procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328,
11 to provide for the disclosure of the location of archaeological
12 sites for purposes relating to the preservation or scientific
13 examination of sites.

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

20 (q) Academic transcripts of an institution of higher educa-
21 tion established under section 5, 6, or 7 of article VIII of the
22 state constitution of 1963, if the transcript pertains to a stu-
23 dent who is delinquent in the payment of financial obligations to
24 the institution.

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

HB4874, As Passed House, May 21, 2002

House Bill No. 4874

6

1 (s) Unless the public interest in disclosure outweighs the
2 public interest in nondisclosure in the particular instance,
3 public records of a law enforcement agency, the release of which
4 would do any of the following:

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

7 (ii) Identify or provide a means of identifying a law
8 enforcement undercover officer or agent or a plain clothes offi-
9 cer as a law enforcement officer or agent.

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

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

16 (v) Disclose operational instructions for law enforcement
17 officers or agents.

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

20 (vii) Endanger the life or safety of law enforcement offi-
21 cers or agents or their families, relatives, children, parents,
22 or those who furnish information to law enforcement departments
23 or agencies.

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

26 (ix) Disclose personnel records of law enforcement
27 agencies.

HB4874, As Passed House, May 21, 2002

House Bill No. 4874

7

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

4 (t) Except as otherwise provided in this subdivision,
5 records and information pertaining to an investigation or a com-
6 pliance conference conducted by the department of consumer and
7 industry services under article 15 of the public health code,
8 1978 PA 368, MCL 333.16101 to 333.18838, before a complaint is
9 issued. This subdivision does not apply to records or informa-
10 tion pertaining to 1 or more of the following:

11 (i) The fact that an allegation has been received and an
12 investigation is being conducted, and the date the allegation was
13 received.

14 (ii) The fact that an allegation was received by the depart-
15 ment of consumer and industry services; the fact that the depart-
16 ment of consumer and industry services did not issue a complaint
17 for the allegation; and the fact that the allegation was
18 dismissed.

19 (u) Records of a public body's security measures, including
20 security plans, security codes and combinations, passwords,
21 passes, keys, and security procedures, to the extent that the
22 records relate to the ongoing security of the public body.

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

25 (w) Information or records that would disclose the social
26 security number of ~~any~~ AN individual.

HB4874, As Passed House, May 21, 2002

House Bill No. 4874

8

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

16 (y) Records or information of measures designed to protect
17 the security or safety of persons or property, whether public or
18 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, capa-
21 bilities and plans for responding to a violation of the Michigan
22 anti-terrorism act, chapter LXXXIII-A of the Michigan penal code,
23 1931 PA 328, MCL ~~750.543~~ 750.543A to 750.543z, emergency
24 response plans, risk planning documents, threat assessments, and
25 domestic preparedness strategies, unless disclosure would not
26 impair a public body's ability to protect the security or safety
27 of persons or property or unless the public interest in

HB4874, As Passed House, May 21, 2002

Sub. HB 4874 (S-4) as amended May 21, 2002 9

1 disclosure outweighs the public interest in nondisclosure in the
2 particular instance.

3 (2) A public body shall exempt from disclosure information
4 that, if released, would prevent the public body from complying
5 with section 444 of subpart 4 of part C of the general education
6 provisions act, title IV of Public Law 90-247, 20 U.S.C. 1232g,
7 commonly referred to as the family educational rights and privacy
8 act of 1974. [A PUBLIC BODY THAT IS A LOCAL OR INTERMEDIATE SCHOOL
9 DISTRICT OR A PUBLIC SCHOOL ACADEMY SHALL EXEMPT FROM DISCLOSURE
10 DIRECTORY INFORMATION, AS DEFINED BY SECTION 444 OF SUBPART 4 OF PART C
11 OF THE GENERAL EDUCATION PROVISIONS ACT, TITLE IV OF PUBLIC LAW 90-247,
12 20 U.S.C. 1232g, COMMONLY REFERRED TO AS THE FAMILY EDUCATIONAL RIGHTS
13 AND PRIVACY ACT OF 1974, REQUESTED FOR THE PURPOSE OF SURVEYS, MARKETING,
OR SOLICITATION, UNLESS THAT PUBLIC BODY DETERMINES THAT THE USE IS
CONSISTENT WITH THE EDUCATIONAL MISSION OF THE PUBLIC BODY AND BENEFICIAL
TO THE AFFECTED STUDENTS. A PUBLIC BODY THAT IS A LOCAL OR INTERMEDIATE
SCHOOL DISTRICT OR A PUBLIC SCHOOL ACADEMY MAY TAKE STEPS TO ENSURE THAT
DIRECTORY INFORMATION DISCLOSED UNDER THIS SUBSECTION SHALL NOT BE USED,
RENTED, OR SOLD FOR THE PURPOSE OF SURVEYS, MARKETING, OR SOLICITATION.
BEFORE DISCLOSING THE DIRECTORY INFORMATION, A PUBLIC BODY THAT IS A
LOCAL OR INTERMEDIATE SCHOOL DISTRICT OR A PUBLIC SCHOOL ACADEMY MAY
REQUIRE THE REQUESTER TO EXECUTE AN AFFIDAVIT STATING THAT DIRECTORY
INFORMATION PROVIDED UNDER THIS SUBSECTION SHALL NOT BE USED, RENTED, OR
SOLD FOR THE PURPOSE OF SURVEYS, MARKETING, OR SOLICITATION.]

14 (3) This act does not authorize the withholding of informa-
15 tion otherwise required by law to be made available to the public
16 or to a party in a contested case under the administrative proce-
17 dures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

18 (4) Except as otherwise exempt under subsection (1), this
19 act does not authorize the withholding of a public record in the
20 possession of the executive office of the governor or lieutenant
21 governor, or an employee of either executive office, if the
22 public record is transferred to the executive office of the gov-
23 ernor or lieutenant governor, or an employee of either executive
24 office, after a request for the public record has been received
25 by a state officer, employee, agency, department, division,
26 bureau, board, commission, council, authority, or other body in
27 the executive branch of government that is subject to this act.

HB4874, As Passed House, May 21, 2002

Sub. HB 4874 (S-4) as amended May 21, 2002 10

1 Enacting section 1. This amendatory act takes effect [August] 1,
2 2002.