

# HOUSE BILL No. 4874

June 5, 2001, Introduced by Reps. Stamas, Hart, Bernero, Birkholz, Vander Veen, Plakas, Cameron Brown, Bovin, George, Spade and DeWeese and referred to the Committee on Civil Law and the Judiciary.

A bill to amend 1976 PA 442, entitled  
"Freedom of information act,"  
by amending section 13 (MCL 15.243), as amended by 2000 PA 88.

**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:

3       (a) Information of a personal nature where the public dis-  
4 closure of the information would constitute a clearly unwarranted  
5 invasion 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.

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.

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 (i) an agreement is entered into; or (ii) 3 years have

1 elapsed since the making of the appraisal, unless litigation  
2 relative to the acquisition has not yet terminated.

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

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

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

25 (n) Records of law enforcement communication codes, or plans  
26 for deployment of law enforcement personnel, that if disclosed  
27 would prejudice a public body's ability to protect the public

1 safety unless the public interest in disclosure under this act  
2 outweighs the public interest in nondisclosure in the particular  
3 instance.

4 (o) Information that would reveal the exact location of  
5 archaeological sites. The secretary of state may promulgate  
6 rules in accordance with the administrative procedures act of  
7 1969, 1969 PA 306, MCL 24.201 to 24.328, to provide for the dis-  
8 closure of the location of archaeological sites for purposes  
9 relating to the preservation or scientific examination of sites.

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

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

21 (r) Records of ~~any~~ A campaign committee including ~~any~~ A  
22 committee that receives money from a state campaign fund.

23 (s) Unless the public interest in disclosure outweighs the  
24 public interest in nondisclosure in the particular instance,  
25 public records of a law enforcement agency, the release of which  
26 would do any of the following:

1 (i) Identify or provide a means of identifying an informer.

2 (ii) Identify or provide a means of identifying a law  
3 enforcement undercover officer or agent or a plain clothes offi-  
4 cer as a law enforcement officer or agent.

5 (iii) Disclose the personal address or telephone number of  
6 law enforcement officers or agents or ~~any~~ special skills that  
7 they may have.

8 (iv) Disclose the name, address, or telephone numbers of  
9 family members, relatives, children, or parents of law enforce-  
10 ment officers or agents.

11 (v) Disclose operational instructions for law enforcement  
12 officers or agents.

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

15 (vii) Endanger the life or safety of law enforcement offi-  
16 cers or agents or their families, relatives, children, parents,  
17 or those who furnish information to law enforcement departments  
18 or agencies.

19 (viii) Identify or provide a means of identifying a person  
20 as a law enforcement officer, agent, or informer.

21 (ix) Disclose personnel records of law enforcement  
22 agencies.

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

26 (t) Except as otherwise provided in this subdivision,  
27 records and information pertaining to an investigation or a

1 compliance conference conducted by the department of consumer and  
2 industry services under article 15 of the public health code,  
3 1978 PA 368, MCL 333.16101 to 333.18838, before a complaint is  
4 issued. This subdivision does not apply to records and informa-  
5 tion pertaining to 1 or more of the following:

6 (i) The fact that an allegation has been received and an  
7 investigation is being conducted, and the date the allegation was  
8 received.

9 (ii) The fact that an allegation was received by the depart-  
10 ment of consumer and industry services; the fact that the depart-  
11 ment of consumer and industry services did not issue a complaint  
12 for the allegation; and the fact that the allegation was  
13 dismissed.

14 (u) Records of a public body's security measures, including  
15 security plans, security codes and combinations, passwords,  
16 passes, keys, and security procedures, to the extent that the  
17 records relate to the ongoing security of the public body.

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

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

22 (x) Except as otherwise provided in this subdivision, an  
23 application for the position of president of an institution of  
24 higher education established under section 4, 5, or 6 of article  
25 VIII of the state constitution of 1963, materials submitted with  
26 such an application, letters of recommendation or references  
27 concerning an applicant, and records or information relating to

1 the process of searching for and selecting an individual for a  
2 position described in this subdivision, if the records or infor-  
3 mation could be used to identify a candidate for the position.  
4 However, after 1 or more individuals have been identified as  
5 finalists for a position described in this subdivision, this sub-  
6 division does not apply to a public record described in this sub-  
7 division, except a letter of recommendation or reference, to the  
8 extent that the public record relates to an individual identified  
9 as a finalist for the position.

10 (2) A public body shall exempt from disclosure information  
11 that, if released, would prevent the public body from complying  
12 with section 444 of subpart 4 of part C of the general education  
13 provisions act, title IV of Public Law 90-247, 20 U.S.C. 1232g,  
14 commonly referred to as the family educational rights and privacy  
15 act of 1974. A PUBLIC BODY MAY EXEMPT FROM DISCLOSURE DIRECTORY  
16 INFORMATION, AS DEFINED IN SECTION 444 OF SUBPART 4 OF PART C OF  
17 THE GENERAL EDUCATION PROVISIONS ACT, TITLE IV OF PUBLIC  
18 LAW 90-247, 20 U.S.C. 1232g, COMMONLY REFERRED TO AS THE FAMILY  
19 EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974.

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

24 (4) Except as otherwise exempt under subsection (1), this  
25 act does not authorize the withholding of a public record in the  
26 possession of the executive office of the governor or lieutenant  
27 governor, or an employee of either executive office, if the



1 public record is transferred to the executive office of the  
2 governor or lieutenant governor, or an employee of either execu-  
3 tive office, after a request for the public record has been  
4 received by a state officer, employee, agency, department, divi-  
5 sion, bureau, board, commission, council, authority, or other  
6 body in the executive branch of government that is subject to  
7 this act.