

HOUSE BILL No. 5948

September 25, 2012, Introduced by Rep. Price and referred to the Committee on Oversight, Reform, and Ethics.

A bill to amend 1976 PA 442, entitled "Freedom of information act," by amending section 13 (MCL 15.243), as amended by 2006 PA 482.

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.

6 (b) Investigating records compiled for law enforcement
7 purposes, 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 impartial
11 administrative adjudication.

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

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

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

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

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

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

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

25 (f) Trade secrets or commercial or financial information
26 voluntarily provided to an agency for use in developing
27 governmental policy if:

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

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

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

12 (g) Information or records subject to the attorney-client
13 privilege.

14 (h) Information or records subject to the physician-patient
15 privilege, the psychologist-patient privilege, the minister,
16 priest, or Christian Science practitioner privilege, or other
17 privilege recognized by statute or court rule.

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

22 (j) Appraisals of real property to be acquired by the public
23 body until either of the following occurs:

24 (i) An agreement is entered into.

25 (ii) Three years have elapsed since the making of the
26 appraisal, unless litigation relative to the acquisition has not
27 yet terminated.

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

6 (l) Medical, counseling, or psychological facts or evaluations
7 concerning an individual if the individual's identity would be
8 revealed by a disclosure of those facts or evaluation, including
9 protected health information, as defined in 45 CFR 160.103.

10 (m) Communications and notes **OF AN ADVISORY NATURE** within a
11 public body or between public bodies ~~of an advisory nature~~ to the
12 extent that ~~they~~ **THE COMMUNICATIONS OR NOTES** cover other than
13 purely factual materials and are preliminary to a final agency
14 determination of policy or action. This exemption does not apply
15 unless the public body shows that in the particular instance the
16 public interest in encouraging frank communication between
17 officials and employees of public bodies clearly outweighs the
18 public interest in disclosure. This exemption does not constitute
19 an exemption under state law for purposes of section 8(h) of the
20 open meetings act, 1976 PA 267, MCL 15.268. As used in this
21 subdivision, "determination of policy or action" includes a
22 determination relating to collective bargaining, unless the public
23 record is otherwise required to be made available under 1947 PA
24 336, 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 department of ~~history, arts, and~~
6 ~~libraries~~ **NATURAL RESOURCES** may promulgate rules ~~in accordance with~~
7 **PURSUANT TO** the administrative procedures act of 1969, 1969 PA 306,
8 MCL 24.201 to 24.328, to provide for the disclosure of the location
9 of archaeological sites for purposes relating to the preservation
10 or scientific examination of sites.

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

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

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

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

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

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

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

8 (iv) Disclose the name, address, or telephone numbers of family
9 members, relatives, children, or parents of active or retired law
10 enforcement 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 officers
16 or agents or their families, relatives, children, parents, or those
17 who furnish information to law enforcement departments or agencies.

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

20 (ix) Disclose personnel records of law enforcement agencies.

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

24 (t) Except as otherwise provided in this subdivision, records
25 and information pertaining to an investigation or a compliance
26 conference conducted by the department under article 15 of the
27 public health code, 1978 PA 368, MCL 333.16101 to 333.18838, before

1 a complaint is issued. This subdivision does not apply to records
2 or information pertaining to 1 or more of the following:

3 (i) The fact that an allegation has been received and an
4 investigation is being conducted, and the date the allegation was
5 received.

6 (ii) The fact that an allegation was received by the
7 department; the fact that the department did not issue a complaint
8 for the allegation; and the fact that the allegation was dismissed.

9 (u) Records of a public body's security measures, including
10 security plans, security codes and combinations, passwords, passes,
11 keys, and security procedures, to the extent that the records
12 relate to the ongoing security of the public body.

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

15 (w) Information or records that would disclose the social
16 security number of an individual.

17 (x) Except as otherwise provided in this subdivision, an
18 application for the position of president of an institution of
19 higher education established under section 4, 5, or 6 of article
20 VIII of the state constitution of 1963, materials submitted with
21 such an application, letters of recommendation or references
22 concerning an applicant, and records or information relating to the
23 process of searching for and selecting an individual for a position
24 described in this subdivision, if the records or information could
25 be used to identify a candidate for the position. However, after 1
26 or more individuals have been identified as finalists for a
27 position described in this subdivision, this subdivision does not

1 apply to a public record described in this subdivision, except a
2 letter of recommendation or reference, to the extent that the
3 public record relates to an individual identified as a finalist for
4 the position.

5 (y) Records or information of measures designed to protect the
6 security or safety of persons or property, whether public or
7 private, including, but not limited to, building, public works, and
8 public water supply designs to the extent that those designs relate
9 to the ongoing security measures of a public body, capabilities and
10 plans for responding to a violation of the Michigan anti-terrorism
11 act, chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL
12 750.543a to 750.543z, emergency response plans, risk planning
13 documents, threat assessments, and domestic preparedness
14 strategies, unless disclosure would not impair a public body's
15 ability to protect the security or safety of persons or property or
16 unless the public interest in disclosure outweighs the public
17 interest in nondisclosure in the particular instance.

18 (2) A public body shall exempt from disclosure information
19 that, if released, would prevent the public body from complying
20 with 20 USC 1232g, commonly referred to as the family educational
21 rights and privacy act of 1974. A public body that is a local or
22 intermediate school district or a public school academy shall
23 exempt from disclosure directory information, as defined by 20 USC
24 1232g, commonly referred to as the family educational rights and
25 privacy act of 1974, requested for the purpose of surveys,
26 marketing, or solicitation, unless that public body determines that
27 the use is consistent with the educational mission of the public

1 body and beneficial to the affected students. A public body that is
2 a local or intermediate school district or a public school academy
3 may take steps to ensure that directory information disclosed under
4 this subsection shall not be used, rented, or sold for the purpose
5 of surveys, marketing, or solicitation. Before disclosing the
6 directory information, a public body that is a local or
7 intermediate school district or a public school academy may require
8 the requester to execute an affidavit stating that directory
9 information provided under this subsection shall not be used,
10 rented, or sold for the purpose of surveys, marketing, or
11 solicitation.

12 **(3) A PUBLIC BODY SHALL EXEMPT FROM DISCLOSURE RECORDS OR**
13 **INFORMATION RELATED TO ENVIRONMENTAL, BUILDING, OR OTHER PERMITS**
14 **FOR THE CONSTRUCTION OF A SPECIFIC SINGLE-FAMILY OR TWO-FAMILY**
15 **DWELLING.**

16 **(4)** ~~(3)~~—This act does not authorize the withholding of
17 information otherwise required by law to be made available to the
18 public or to a party in a contested case under the administrative
19 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

20 **(5)** ~~(4)~~—Except as otherwise exempt under subsection (1), this
21 act does not authorize the withholding of a public record in the
22 possession of the executive office of the governor or lieutenant
23 governor, or an employee of either executive office, if the public
24 record is transferred to the executive office of the governor or
25 lieutenant governor, or an employee of either executive office,
26 after a request for the public record has been received by a state
27 officer, employee, agency, department, division, bureau, board,

1 commission, council, authority, or other body in the executive
2 branch of government that is subject to this act.