

HOUSE BILL No. 6043

November 27, 2012, Introduced by Rep. Heise and referred to the Committee on Judiciary.

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.

1 (ii) Deprive a person of the right to a fair trial or impartial
2 administrative adjudication.

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

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

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

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

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

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

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

27 (f) Trade secrets or commercial or financial information

1 voluntarily provided to an agency for use in developing
2 governmental policy if **ALL OF THE FOLLOWING APPLY:**

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

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

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

14 (g) Information or records subject to the attorney-client
15 privilege.

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

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

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

26 (i) An agreement is entered into.

27 (ii) Three years have elapsed since the making of the

1 appraisal, unless litigation relative to the acquisition has not
2 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 interest
7 in nondisclosure.

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

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

27 (n) Records of law enforcement communication codes, or plans

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

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

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

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

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

26 (s) Unless the public interest in disclosure outweighs the
27 public interest in nondisclosure in the particular instance, public

1 records of a law enforcement agency, the release of which would do
2 any of the following:

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

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

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

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

13 (v) Disclose operational instructions for law enforcement
14 officers or agents.

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

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

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

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

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

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

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

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

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

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

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

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

19 (x) Except as otherwise provided in this subdivision, an
20 application for the position of president of an institution of
21 higher education established under section 4, 5, or 6 of article
22 VIII of the state constitution of 1963, materials submitted with
23 such an application, letters of recommendation or references
24 concerning an applicant, and records or information relating to the
25 process of searching for and selecting an individual for a position
26 described in this subdivision, if the records or information could
27 be used to identify a candidate for the position. However, after 1

1 or more individuals have been identified as finalists for a
2 position described in this subdivision, this subdivision does not
3 apply to a public record described in this subdivision, except a
4 letter of recommendation or reference, to the extent that the
5 public record relates to an individual identified as a finalist for
6 the position.

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

20 (Z) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION, AND
21 UNLESS THE PUBLIC INTEREST IN DISCLOSURE UNDER THIS ACT OUTWEIGHS
22 THE PUBLIC INTEREST IN NONDISCLOSURE IN A PARTICULAR INSTANCE,
23 AUDIO RECORDINGS OF EMERGENCY TELEPHONE CALLS MADE TO A 9-1-1
24 SYSTEM UNDER THE EMERGENCY 9-1-1 SERVICE ENABLING ACT, 1986 PA 32,
25 MCL 484.1101 TO 484.1717. THIS SUBDIVISION DOES NOT APPLY TO
26 WRITTEN RECORDS, TRANSCRIPTS, OR OTHER WRITTEN REPORTS RELATING TO
27 THE EMERGENCY TELEPHONE CALL. THIS SUBDIVISION DOES NOT APPLY TO

1 AUDIO RECORDINGS UNDER 1 OR MORE OF THE FOLLOWING CIRCUMSTANCES:

2 (i) THE CALLER WHOSE VOICE IS ON THE AUDIO RECORDING, OR, IF
3 THE CALLER IS DECEASED OR INCAPACITATED, THE LEGAL REPRESENTATIVE
4 OF THE CALLER, REQUESTS A COPY OF THE AUDIO RECORDING. A REQUEST
5 UNDER THIS SUBPARAGRAPH SHALL BE ACCOMPANIED BY A SIGNED AFFIDAVIT
6 ATTESTING TO ALL OF THE FOLLOWING:

7 (A) THE AFFIANT IS THE CALLER OR, IF THE CALLER IS DECEASED OR
8 INCAPACITATED, THE LEGAL REPRESENTATIVE OF THE CALLER.

9 (B) THE AUDIO RECORDING IS RELEVANT TO AN INVESTIGATION OF A
10 LEGAL MATTER ARISING FROM THE CIRCUMSTANCES LEADING UP TO THE
11 EMERGENCY TELEPHONE CALL.

12 (ii) THE REQUEST FOR DISCLOSURE IS FROM A LAW ENFORCEMENT
13 AGENCY CONDUCTING AN INVESTIGATION RELATED TO THE EMERGENCY
14 TELEPHONE CALL.

15 (iii) A COURT ORDERS THE RELEASE OF THE AUDIO RECORDING.

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

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

10 (3) This act does not authorize the withholding of information
11 otherwise required by law to be made available to the public or to
12 a party in a contested case under the administrative procedures act
13 of 1969, 1969 PA 306, MCL 24.201 to 24.328.

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