

HOUSE BILL No. 4973

September 19, 2017, Introduced by Rep. Iden and referred to the Committee on Communications and Technology.

A bill to amend 1976 PA 442, entitled "Freedom of information act," by amending sections 2 and 13 (MCL 15.232 and 15.243), section 2 as amended by 1996 PA 553 and section 13 as amended by 2006 PA 482.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 **(A) "CYBERSECURITY ASSESSMENT" MEANS AN INVESTIGATION**
3 **UNDERTAKEN BY A PERSON, GOVERNMENTAL BODY, OR OTHER ENTITY TO**
4 **IDENTIFY VULNERABILITIES IN CYBERSECURITY PLANS.**

5 **(B) "CYBERSECURITY INCIDENT" INCLUDES, BUT IS NOT LIMITED TO,**
6 **A COMPUTER NETWORK INTRUSION OR ATTEMPTED INTRUSION; A BREACH OF**
7 **PRIMARY COMPUTER NETWORK CONTROLS; UNAUTHORIZED ACCESS TO PROGRAMS,**
8 **DATA, OR INFORMATION CONTAINED IN A COMPUTER SYSTEM; OR ACTIONS BY**
9 **A THIRD PARTY THAT MATERIALLY AFFECT COMPONENT PERFORMANCE OR,**

1 BECAUSE OF IMPACT TO COMPONENT SYSTEMS, PREVENT NORMAL COMPUTER
2 SYSTEM ACTIVITIES.

3 (C) "CYBERSECURITY PLAN" INCLUDES, BUT IS NOT LIMITED TO,
4 INFORMATION ABOUT A PERSON'S INFORMATION SYSTEMS, NETWORK SECURITY,
5 ENCRYPTION, NETWORK MAPPING, ACCESS CONTROL, PASSWORDS,
6 AUTHENTICATION PRACTICES, COMPUTER HARDWARE OR SOFTWARE, OR
7 RESPONSE TO CYBERSECURITY INCIDENTS.

8 (D) "CYBERSECURITY VULNERABILITY" MEANS A DEFICIENCY WITHIN
9 COMPUTER HARDWARE OR SOFTWARE, OR WITHIN A COMPUTER NETWORK OR
10 INFORMATION SYSTEM, THAT COULD BE EXPLOITED BY UNAUTHORIZED PARTIES
11 FOR USE AGAINST AN INDIVIDUAL COMPUTER USER OR A COMPUTER NETWORK
12 OR INFORMATION SYSTEM.

13 (E) ~~(a)~~ "Field name" means the label or identification of an
14 element of a computer ~~data base~~ **DATABASE** that contains a specific
15 item of information, and includes but is not limited to a subject
16 heading such as a column header, data dictionary, or record layout.

17 (F) ~~(b)~~ "FOIA coordinator" means either of the following:

18 (i) An individual who is a public body.

19 (ii) An individual designated by a public body in accordance
20 with section 6 to accept and process requests for public records
21 under this act.

22 (G) ~~(c)~~ "Person" means an individual, corporation, limited
23 liability company, partnership, firm, organization, association,
24 governmental entity, or other legal entity. Person does not include
25 an individual serving a sentence of imprisonment in a state or
26 county correctional facility in this state or any other state, or
27 in a federal correctional facility.

1 **(H)** ~~(d)~~—"Public body" means any of the following:

2 (i) A state officer, employee, agency, department, division,
3 bureau, board, commission, council, authority, or other body in the
4 executive branch of the state government, but does not include the
5 governor or lieutenant governor, the executive office of the
6 governor or lieutenant governor, or employees thereof.

7 (ii) An agency, board, commission, or council in the
8 legislative branch of the state government.

9 (iii) A county, city, township, village, intercounty,
10 intercity, or regional governing body, council, school district,
11 special district, or municipal corporation, or a board, department,
12 commission, council, or agency thereof.

13 (iv) Any other body ~~which~~**THAT** is created by state or local
14 authority or ~~which~~ is primarily funded by or through state or local
15 authority, -

16 ~~(v) The~~**EXCEPT THAT THE** judiciary, including the office of the
17 county clerk and **ITS** employees ~~thereof~~ when acting in the capacity
18 of clerk to the circuit court, is not included in the definition of
19 public body.

20 **(I)** ~~(e)~~—"Public record" means a writing prepared, owned, used,
21 in the possession of, or retained by a public body in the
22 performance of an official function, from the time it is created.
23 Public record does not include computer software. This act
24 separates public records into the following 2 classes:

25 (i) Those that are exempt from disclosure under section 13.

26 (ii) All public records that are not exempt from disclosure
27 under section 13 and ~~which~~**THAT** are subject to disclosure under

1 this act.

2 **(J)** ~~(f)~~—"Software" means a set of statements or instructions
3 that when incorporated in a machine usable medium is capable of
4 causing a machine or device having information processing
5 capabilities to indicate, perform, or achieve a particular
6 function, task, or result. Software does not include computer-
7 stored information or data, or a field name if disclosure of that
8 field name does not violate a software license.

9 **(K)** ~~(g)~~—"Unusual circumstances" means any 1 or a combination
10 of the following, but only to the extent necessary for the proper
11 processing of a request:

12 (i) The need to search for, collect, or appropriately examine
13 or review a voluminous amount of separate and distinct public
14 records pursuant to a single request.

15 (ii) The need to collect the requested public records from
16 numerous field offices, facilities, or other establishments which
17 are located apart from the particular office receiving or
18 processing the request.

19 **(L)** ~~(h)~~—"Writing" means handwriting, typewriting, printing,
20 photostating, photographing, photocopying, and every other means of
21 recording, and includes letters, words, pictures, sounds, or
22 symbols, or combinations thereof, and papers, maps, magnetic or
23 paper tapes, photographic films or prints, microfilm, microfiche,
24 magnetic or punched cards, discs, drums, **HARD DRIVES, SOLID STATE**
25 **STORAGE COMPONENTS**, or other means of recording or retaining
26 meaningful content.

27 **(M)** ~~(i)~~—"Written request" means a writing that asks for

1 information, and includes a writing transmitted by facsimile,
2 electronic mail, or other electronic means.

3 Sec. 13. (1) A public body may exempt from disclosure as a
4 public record under this act any of the following:

5 (a) Information of a personal nature if public disclosure of
6 the information would constitute a clearly unwarranted invasion of
7 an individual's privacy.

8 (b) Investigating records compiled for law enforcement
9 purposes, but only to the extent that disclosure as a public record
10 would do any of the following:

11 (i) Interfere with law enforcement proceedings.

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

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

15 (iv) Disclose the identity of a confidential source, or if the
16 record is compiled by a law enforcement agency in the course of a
17 criminal investigation, disclose confidential information furnished
18 only by a confidential source.

19 (v) Disclose law enforcement investigative techniques or
20 procedures.

21 (vi) Endanger the life or physical safety of law enforcement
22 personnel.

23 (c) A public record that if disclosed would prejudice a public
24 body's ability to maintain the physical security of custodial or
25 penal institutions occupied by persons arrested or convicted of a
26 crime or admitted because of a mental disability, unless the public
27 interest in disclosure under this act outweighs the public interest

1 in nondisclosure.

2 (d) Records or information specifically described and exempted
3 from disclosure by statute.

4 (e) A public record or information described in this section
5 that is furnished by the public body originally compiling,
6 preparing, or receiving the record or information to a public
7 officer or public body in connection with the performance of the
8 duties of that public officer or public body, if the considerations
9 originally giving rise to the exempt nature of the public record
10 remain applicable.

11 (f) Trade secrets or commercial or financial information
12 voluntarily provided to an agency for use in developing
13 governmental policy if:

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

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

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

25 (g) Information or records subject to the attorney-client
26 privilege.

27 (h) Information or records subject to the physician-patient

1 privilege, the psychologist-patient privilege, the minister,
2 priest, or Christian Science practitioner privilege, or other
3 privilege recognized by statute or court rule.

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

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

10 (i) An agreement is entered into.

11 (ii) Three years have elapsed since the making of the
12 appraisal, unless litigation relative to the acquisition has not
13 yet terminated.

14 (k) Test questions and answers, scoring keys, and other
15 examination instruments or data used to administer a license,
16 public employment, or academic examination, unless the public
17 interest in disclosure under this act outweighs the public interest
18 in nondisclosure.

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

23 (m) Communications and notes within a public body or between
24 public bodies of an advisory nature to the extent that they cover
25 other than purely factual materials and are preliminary to a final
26 agency determination of policy or action. This exemption does not
27 apply unless the public body shows that in the particular instance

1 the public interest in encouraging frank communication between
2 officials and employees of public bodies clearly outweighs the
3 public interest in disclosure. This exemption does not constitute
4 an exemption under state law for purposes of section 8(h) of the
5 open meetings act, 1976 PA 267, MCL 15.268. As used in this
6 subdivision, "determination of policy or action" includes a
7 determination relating to collective bargaining, unless the public
8 record is otherwise required to be made available under 1947 PA
9 336, MCL 423.201 to 423.217.

10 (n) Records of law enforcement communication codes, or plans
11 for deployment of law enforcement personnel, that if disclosed
12 would prejudice a public body's ability to protect the public
13 safety unless the public interest in disclosure under this act
14 outweighs the public interest in nondisclosure in the particular
15 instance.

16 (o) Information that would reveal the exact location of
17 archaeological sites. The department of ~~history, arts, and~~
18 ~~libraries~~ **NATURAL RESOURCES** may promulgate rules in accordance with
19 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
20 to 24.328, to provide for the disclosure of the location of
21 archaeological sites for purposes relating to the preservation or
22 scientific examination of sites.

23 (p) Testing data developed by a public body in determining
24 whether bidders' products meet the specifications for purchase of
25 those products by the public body, if disclosure of the data would
26 reveal that only 1 bidder has met the specifications. This
27 subdivision does not apply after 1 year has elapsed from the time

1 the public body completes the testing.

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

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

9 (s) Unless the public interest in disclosure outweighs the
10 public interest in nondisclosure in the particular instance, public
11 records of a law enforcement agency, the release of which would do
12 any of the following:

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

14 (ii) Identify or provide a means of identifying a law
15 enforcement undercover officer or agent or a plain clothes officer
16 as a law enforcement officer or agent.

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

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

23 (v) Disclose operational instructions for law enforcement
24 officers or agents.

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

27 (vii) Endanger the life or safety of law enforcement officers

1 or agents or their families, relatives, children, parents, or those
2 who furnish information to law enforcement departments or agencies.

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

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

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

9 (t) Except as otherwise provided in this subdivision, records
10 and information pertaining to an investigation or a compliance
11 conference conducted by the department under article 15 of the
12 public health code, 1978 PA 368, MCL 333.16101 to 333.18838, before
13 a complaint is issued. This subdivision does not apply to records
14 or information pertaining to 1 or more of the following:

15 (i) The fact that an allegation has been received and an
16 investigation is being conducted, and the date the allegation was
17 received.

18 (ii) The fact that an allegation was received by the
19 department; the fact that the department did not issue a complaint
20 for the allegation; and the fact that the allegation was dismissed.

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

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

27 (w) Information or records that would disclose the social

1 security number of an individual.

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

17 (y) Records or information of measures designed to protect the
18 security or safety of persons or property, **OR THE CONFIDENTIALITY,**
19 **INTEGRITY, OR AVAILABILITY OF INFORMATION SYSTEMS,** whether public
20 or private, including, but not limited to, building, public works,
21 and public water supply designs to the extent that those designs
22 relate to the ongoing security measures of a public body,
23 capabilities and plans for responding to a violation of the
24 Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan
25 penal code, 1931 PA 328, MCL 750.543a to 750.543z, emergency
26 response plans, risk planning documents, threat assessments, ~~and~~
27 domestic preparedness strategies, **AND CYBERSECURITY PLANS,**

1 **ASSESSMENTS, OR VULNERABILITIES**, unless disclosure would not impair
2 a public body's ability to protect the security or safety of
3 persons or property or unless the public interest in disclosure
4 outweighs the public interest in nondisclosure in the particular
5 instance. **THIS SUBDIVISION DOES NOT APPLY TO INFORMATION SUBMITTED**
6 **AS REQUIRED BY LAW OR AS A CONDITION TO RECEIVING A GOVERNMENTAL**
7 **CONTRACT, LICENSE, OR OTHER BENEFIT.**

8 (Z) **INFORMATION THAT WOULD IDENTIFY OR PROVIDE A MEANS OF**
9 **IDENTIFYING A PERSON THAT MAY, AS A RESULT OF DISCLOSURE OF THE**
10 **INFORMATION, BECOME A VICTIM OF A CYBERSECURITY INCIDENT OR THAT**
11 **WOULD DISCLOSE A PERSON'S CYBERSECURITY PLANS OR CYBERSECURITY-**
12 **RELATED PRACTICES, PROCEDURES, METHODS, RESULTS, ORGANIZATIONAL**
13 **INFORMATION SYSTEM INFRASTRUCTURE, HARDWARE, OR SOFTWARE. THIS**
14 **SUBDIVISION DOES NOT APPLY TO INFORMATION SUBMITTED AS REQUIRED BY**
15 **LAW OR AS A CONDITION TO RECEIVING A GOVERNMENTAL CONTRACT,**
16 **LICENSE, OR OTHER BENEFIT.**

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

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

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

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

25 Enacting section 1. This amendatory act takes effect 90 days
26 after the date it is enacted into law.