

HOUSE BILL NO. 5427

February 07, 2024, Introduced by Reps. Steele, Jaime Greene, St. Germaine, Tisdell, Martin, Borton, Kuhn, Wozniak, Kunse, Bierlein, Paquette, Bruck, BeGole, Lightner and Bollin and referred to the Committee on Government Operations.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending section 2 (MCL 15.232), as amended by 2018 PA 68.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 **(a) "Commission", unless the context clearly implies a**
3 **different meaning, means the open government commission created in**
4 **section 10c.**

5 **(b) ~~(a)~~—"Cybersecurity assessment" means an investigation**
6 **undertaken by a person, governmental body, or other entity to**
7 **identify vulnerabilities in cybersecurity plans.**

1 **(c)** ~~(b)~~—"Cybersecurity incident" includes, but is not limited
2 to, a computer network intrusion or attempted intrusion; a breach
3 of primary computer network controls; unauthorized access to
4 programs, data, or information contained in a computer system; or
5 actions by a third party that materially affect component
6 performance or, because of impact to component systems, prevent
7 normal computer system activities.

8 **(d)** ~~(e)~~—"Cybersecurity plan" includes, but is not limited to,
9 information about a person's information systems, network security,
10 encryption, network mapping, access control, passwords,
11 authentication practices, computer hardware or software, or
12 response to cybersecurity incidents.

13 **(e)** ~~(d)~~—"Cybersecurity vulnerability" means a deficiency
14 within computer hardware or software, or within a computer network
15 or information system, that could be exploited by unauthorized
16 parties for use against an individual computer user or a computer
17 network or information system.

18 **(f)** ~~(e)~~—"Field name" means the label or identification of an
19 element of a computer database that contains a specific item of
20 information, and includes but is not limited to a subject heading
21 such as a column header, data dictionary, or record layout.

22 **(g)** ~~(f)~~—"FOIA coordinator" means either of the following:

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

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

27 **(h)** ~~(g)~~—"Person" means an individual, corporation, limited
28 liability company, partnership, firm, organization, association,
29 governmental entity, or other legal entity. Person does not include

1 an individual serving a sentence of imprisonment in a state or
 2 county correctional facility in this state or any other state, or
 3 in a federal correctional facility.

4 (i) **"Produce" means to provide requested records.**

5 (j) ~~(h)~~—"Public body" means any of the following:

6 (i) A state officer, employee, agency, department, division,
 7 bureau, board, commission, council, authority, or other body in the
 8 executive branch of the state government, ~~but does not include~~
 9 **including** the governor, ~~or the~~ lieutenant governor, the executive
 10 ~~office~~**offices** of the governor ~~or and~~ lieutenant governor, ~~or and~~
 11 employees ~~thereof.~~**of those offices.**

12 (ii) ~~An~~**A senator, representative, employee,** agency, board,
 13 commission, **committee,** or council in the legislative branch of the
 14 state government. **Public body does not include the legislative**
 15 **service bureau, the senate fiscal agency, or the house fiscal**
 16 **agency.**

17 (iii) A county, city, township, village, intercounty, intercity,
 18 or regional governing body, council, school district, special
 19 district, or municipal corporation, or a board, department,
 20 commission, council, or agency thereof.

21 (iv) Any other body that is created by state or local authority
 22 or is primarily funded by or through state or local authority,
 23 **including any entity that directly or indirectly receives money**
 24 **raised as a result of a millage,** except that **public body does not**
 25 **include** the judiciary, ~~including or~~ the office of the county clerk
 26 ~~and or~~ its employees when acting in the capacity of clerk to the
 27 circuit court. ~~, is not included in the definition of public body.~~

28 (k) ~~(i)~~—"Public record" means a writing prepared, owned, used,
 29 in the possession of, or retained by a public body in the

1 performance of an official function, ~~from the time it is created.~~
 2 **whether in the possession, custody, or control of the public body**
 3 **or any official, employee, or other agent of the public body, and**
 4 **without regard to its location.** Public record does not include
 5 computer software **but does include any record sent or retained by a**
 6 **public body's electronic information technology system or any**
 7 **device that is owned by the public body or is funded in whole or in**
 8 **part by the public body.** Public record does not include notes taken
 9 **or made by a member of a public body, including notes taken or made**
 10 **during a meeting of the public body, if the notes are for that**
 11 **member's personal use, are not circulated among other members, are**
 12 **not used in the creation of any meeting minutes, and are retained**
 13 **or destroyed at that member's sole discretion.** This act separates
 14 public records into the following 2 classes:

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

16 (ii) All public records that are not exempt from disclosure
 17 under section 13 and that are subject to disclosure under this act.

18 (l) **"Request" means a written request by a requestor to inspect**
 19 **a public record or to obtain a copy of a public record.**

20 (m) ~~(j)~~—"Software" means a set of statements or instructions
 21 that when incorporated in a machine usable medium is capable of
 22 causing a machine or device having information processing
 23 capabilities to indicate, perform, or achieve a particular
 24 function, task, or result. Software does not include computer-
 25 stored information or data, or a field name if disclosure of that
 26 field name does not violate a software license.

27 (n) ~~(k)~~—"Unusual circumstances" means any 1 or a combination
 28 of the following, but only to the extent necessary for the proper
 29 processing of a request:

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

4 (ii) The need to collect the requested public records from
 5 numerous field offices, facilities, or other establishments ~~which~~
 6 **that** are located apart from the particular office receiving or
 7 processing the request.

8 (o) ~~(l)~~—"Writing" means handwriting, typewriting, printing,
 9 photostating, photographing, photocopying, and every other means of
 10 recording, and includes letters, words, pictures, sounds, or
 11 symbols, or combinations thereof, and papers, maps, magnetic or
 12 paper tapes, photographic films or prints, microfilm, microfiche,
 13 magnetic or punched cards, discs, drums, hard drives, solid state
 14 storage components, **hybrid drives, cloud storage, quantum networks**
 15 **and computing systems**, or other means of recording or retaining
 16 meaningful content.

17 (p) ~~(m)~~—"Written request" means a writing that asks for
 18 information, and includes a writing transmitted by facsimile,
 19 ~~electronic mail, email~~, or other electronic means.

20 Enacting section 1. This amendatory act does not take effect
 21 unless all of the following bills of the 102nd Legislature are
 22 enacted into law:

23 (a) Senate Bill No. ____ or House Bill No. 5426 (request no.
 24 05111'23).

25 (b) Senate Bill No. ____ or House Bill No. 5422 (request no.
 26 05112'23).

27 (c) Senate Bill No. ____ or House Bill No. 5425 (request no.
 28 05113'23).

29 (d) Senate Bill No. ____ or House Bill No. 5424 (request no.

1 05114'23).

2 (e) Senate Bill No. _____ or House Bill No. 5423 (request no.

3 05115'23).