

**SUBSTITUTE FOR  
HOUSE BILL NO. 5924**

A bill to amend 1976 PA 442, entitled  
"Freedom of information act,"  
by amending sections 3 and 13 (MCL 15.233 and 15.243), section 3 as  
amended by 2018 PA 523 and section 13 as amended by 2021 PA 33.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 3. (1) Except as expressly provided in section 13, upon  
2       providing a public body's FOIA coordinator with a written request  
3       that describes a public record sufficiently to enable the public  
4       body to find the public record, a person has a right to inspect,  
5       copy, or receive copies of the requested public record of the  
6       public body. A request from a person, other than an individual who  
7       qualifies as indigent under section 4(2)(a), must include the  
8       requesting person's complete name, address, and contact



1 information, and, if the request is made by a person other than an  
2 individual, the complete name, address, and contact information of  
3 the person's agent who is an individual. An address must be written  
4 in compliance with United States Postal Service addressing  
5 standards. Contact information must include a valid telephone  
6 number or ~~electronic mail~~ **email** address. A person has a right to  
7 subscribe to future issuances of public records that are created,  
8 issued, or disseminated on a regular basis. A subscription is valid  
9 for up to 6 months, at the request of the subscriber, and is  
10 renewable. An employee of a public body who receives a request for  
11 a public record shall promptly forward that request to the freedom  
12 of information act coordinator.

13 (2) A freedom of information act coordinator shall keep a copy  
14 of all written requests for public records on file for no less than  
15 1 year.

16 (3) A public body shall furnish a requesting person a  
17 reasonable opportunity for inspection and examination of its public  
18 records, and shall furnish reasonable facilities for making  
19 memoranda or abstracts from its public records during the usual  
20 business hours. A public body may make reasonable rules necessary  
21 to protect its public records and to prevent excessive and  
22 unreasonable interference with the discharge of its functions. A  
23 public body shall protect public records from loss, unauthorized  
24 alteration, mutilation, or destruction. **A public record in the**  
25 **possession of a public body's outside legal counsel must be**  
26 **considered as remaining in the public body's custody for purposes**  
27 **of this act, and the public body remains responsible for the**  
28 **disclosure of that public record under this act except to the**  
29 **extent that the public body chooses to assert 1 or more exemptions**



1 under section 13. This act does not apply directly to the public  
2 body's outside legal counsel in the situation described in this  
3 subsection.

4 (4) This act does not require a public body to make a  
5 compilation, summary, or report of information, except as required  
6 in section 11.

7 (5) This act does not require a public body to create a new  
8 public record, except as required in section 11, and to the extent  
9 required by this act for the furnishing of copies, or edited copies  
10 pursuant to section 14(1), of an already existing public record.

11 (6) The custodian of a public record shall, upon written  
12 request, furnish a requesting person a certified copy of a public  
13 record.

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

16 (a) Information of a personal nature if public disclosure of  
17 the information would constitute a clearly unwarranted invasion of  
18 an individual's privacy.

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

22 (i) Interfere with law enforcement proceedings.

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

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

26 (iv) Disclose the identity of a confidential source, or if the  
27 record is compiled by a law enforcement agency in the course of a  
28 criminal investigation, disclose confidential information furnished  
29 only by a confidential source.



1 (v) Disclose law enforcement investigative techniques or  
2 procedures.

3 (vi) Endanger the life or physical safety of law enforcement  
4 personnel.

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

11 (d) Records or information specifically described and exempted  
12 from disclosure by statute.

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

20 (f) Trade secrets or commercial or financial information  
21 voluntarily provided to an agency for use in developing  
22 governmental policy if:

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

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

28 (iii) A description of the information is recorded by the public  
29 body within a reasonable time after it has been submitted,



1 maintained in a central place within the public body, and made  
2 available to a person upon request. This subdivision does not apply  
3 to information submitted as required by law or as a condition of  
4 receiving a governmental contract, license, or other benefit.

5 (g) Information or records subject to the attorney-client  
6 privilege.

7 (h) Information or records subject to the physician-patient  
8 privilege, the psychologist-patient privilege, the minister,  
9 priest, or Christian Science practitioner privilege, or other  
10 privilege recognized by statute or court rule.

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

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

17 (i) An agreement is entered into.

18 (ii) Three years have elapsed since the making of the  
19 appraisal, unless litigation relative to the acquisition has not  
20 yet terminated.

21 (k) Test questions and answers, scoring keys, and other  
22 examination instruments or data used to administer a license,  
23 public employment, or academic examination, unless the public  
24 interest in disclosure under this act outweighs the public interest  
25 in nondisclosure.

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



1 (m) Communications and notes within a public body or between  
2 public bodies of an advisory nature to the extent that they cover  
3 other than purely factual materials and are preliminary to a final  
4 agency determination of policy or action. This exemption does not  
5 apply unless the public body shows that in the particular instance  
6 the public interest in encouraging frank communication between  
7 officials and employees of public bodies clearly outweighs the  
8 public interest in disclosure. This exemption does not constitute  
9 an exemption under state law for purposes of section 8(h) of the  
10 open meetings act, 1976 PA 267, MCL 15.268. As used in this  
11 subdivision, "determination of policy or action" includes a  
12 determination relating to collective bargaining, unless the public  
13 record is otherwise required to be made available under 1947 PA  
14 336, MCL 423.201 to 423.217.

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

21 (o) Information that would reveal the exact location of  
22 archaeological sites. The department of natural resources may  
23 promulgate rules in accordance with the administrative procedures  
24 act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to provide for the  
25 disclosure of the location of archaeological sites for purposes  
26 relating to the preservation or scientific examination of sites.

27 (p) Testing data developed by a public body in determining  
28 whether bidders' products meet the specifications for purchase of  
29 those products by the public body, if disclosure of the data would



1 reveal that only 1 bidder has met the specifications. This  
2 subdivision does not apply after 1 year has elapsed from the time  
3 the public body completes the testing.

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

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

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

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

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

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

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

25 (v) Disclose operational instructions for law enforcement  
26 officers or agents.

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

29 (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 a  
4 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  
28 Security number of an individual.

29 (x) Except as otherwise provided in this subdivision, an





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

15 (y) Records or information of measures designed to protect the  
16 security or safety of persons or property, or the confidentiality,  
17 integrity, or availability of information systems, whether public  
18 or private, including, but not limited to, building, public works,  
19 and public water supply designs to the extent that those designs  
20 relate to the ongoing security measures of a public body,  
21 capabilities and plans for responding to a violation of the  
22 Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan  
23 penal code, 1931 PA 328, MCL 750.543a to 750.543z, emergency  
24 response plans, risk planning documents, threat assessments,  
25 domestic preparedness strategies, and cybersecurity plans,  
26 assessments, or vulnerabilities, unless disclosure would not impair  
27 a public body's ability to protect the security or safety of  
28 persons or property or unless the public interest in disclosure  
29 outweighs the public interest in nondisclosure in the particular



1 instance. This subdivision does not apply to a public record  
2 described in this subdivision to the extent that the public record  
3 identifies a working group, including the names and contact  
4 information of its members. As used in this subdivision:

5 (i) "Contact information" does not include an individual's  
6 personal cell or telephone number or home address.

7 (ii) "Working group" means a group of 2 or more people,  
8 including, but not limited to, members, employees, contractors,  
9 advisors, consultants, or vendors of a public body, assembled by  
10 the public body to assist the public body in deliberating toward or  
11 rendering a decision on a public policy.

12 (z) Information that would identify or provide a means of  
13 identifying a person that may, as a result of disclosure of the  
14 information, become a victim of a cybersecurity incident or that  
15 would disclose a person's cybersecurity plans or cybersecurity-  
16 related practices, procedures, methods, results, organizational  
17 information system infrastructure, hardware, or software.

18 (aa) Research data on road and attendant infrastructure  
19 collected, measured, recorded, processed, or disseminated by a  
20 public agency or private entity, or information about software or  
21 hardware created or used by the private entity for such purposes.

22 (bb) Records or information that would reveal the specific  
23 location or GPS coordinates of game, including, but not limited to,  
24 records or information of the specific location or GPS coordinates  
25 of game obtained by the department of natural resources during any  
26 restoration, management, or research project conducted under  
27 section 40501 of the natural resources and environmental protection  
28 act, 1994 PA 451, MCL 324.40501, or in connection with the  
29 expenditure of money under section 43553 of the natural resources



1 and environmental protection act, 1994 PA 451, MCL 324.43553. As  
2 used in this subdivision, "game" means that term as defined in  
3 section 40103 of the natural resources and environmental protection  
4 act, 1994 PA 451, MCL 324.40103.

5 (2) A public body shall exempt from disclosure information  
6 that, if released, would prevent the public body from complying  
7 with 20 USC 1232g, commonly referred to as the family educational  
8 rights and privacy act of 1974. A public body that is a local or  
9 intermediate school district or a public school academy shall  
10 exempt from disclosure directory information, as defined by 20 USC  
11 1232g, commonly referred to as the family educational rights and  
12 privacy act of 1974, requested for the purpose of surveys,  
13 marketing, or solicitation, unless that public body determines that  
14 the use is consistent with the educational mission of the public  
15 body and beneficial to the affected students. A public body that is  
16 a local or intermediate school district or a public school academy  
17 may take steps to ensure that directory information disclosed under  
18 this subsection is not used, rented, or sold for the purpose of  
19 surveys, marketing, or solicitation. Before disclosing the  
20 directory information, a public body that is a local or  
21 intermediate school district or a public school academy may require  
22 the ~~requester~~**requestor** to execute an affidavit stating that  
23 directory information provided under this subsection will not be  
24 used, rented, or sold for the purpose of surveys, marketing, or  
25 solicitation.

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



1           (4) Except as otherwise exempt under subsection (1), this act  
2 does not authorize the withholding of a public record in the  
3 possession of the executive office of the governor or lieutenant  
4 governor, or an employee of either executive office, if the public  
5 record is transferred to the executive office of the governor or  
6 lieutenant governor, or an employee of either executive office,  
7 after a request for the public record has been received by a state  
8 officer, employee, agency, department, division, bureau, board,  
9 commission, council, authority, or other body in the executive  
10 branch of government that is subject to this act.