



# SENATE BILL No. 212

February 1, 1995, Introduced by Senators SCHWARZ,  
HOFFMAN, STEIL, KOIVISTO and SHUGARS and referred  
to the Committee on Government Operations.

A bill to amend section 13 of Act No. 442 of the Public Acts  
of 1976, entitled  
"Freedom of information act,"  
as amended by Act No. 82 of the Public Acts of 1993, being sec-  
tion 15.243 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 13 of Act No. 442 of the Public Acts of  
2 1976, as amended by Act No. 82 of the Public Acts of 1993, being  
3 section 15.243 of the Michigan Compiled Laws, is amended to read  
4 as follows:

5 Sec. 13. (1) A public body may exempt from disclosure as a  
6 public record under this act:

7 (a) Information of a personal nature where the public  
8 disclosure of the information would constitute a clearly  
9 unwarranted invasion of an individual's privacy.

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

4 (i) Interfere with law enforcement proceedings.

5 (ii) Deprive a person of the right to a fair trial or impar-  
6 tial administrative adjudication.

7 (iii) Constitute an unwarranted invasion of personal  
8 privacy.

9 (iv) Disclose the identity of a confidential source, or if  
10 the record is compiled by a criminal law enforcement agency in  
11 the course of a criminal investigation, disclose confidential  
12 information furnished only by a confidential source.

13 (v) Disclose law enforcement investigative techniques or  
14 procedures.

15 (vi) Endanger the life or physical safety of law enforcement  
16 personnel.

17 (c) A public record that if disclosed would prejudice a  
18 public body's ability to maintain the physical security of custo-  
19 dial or penal institutions occupied by persons arrested or con-  
20 victed of a crime or admitted because of a mental disability,  
21 unless the public interest in disclosure under this act outweighs  
22 the public interest in nondisclosure.

23 (d) Records or information specifically described and  
24 exempted from disclosure by statute.

25 (e) Information the release of which would prevent the  
26 public body from complying with section 438 of subpart 2 of part  
27 C of the general education provisions act, title IV of Public Law

1 90-247, 20 U.S.C. 1232g, commonly referred to as the family  
2 educational rights and privacy act of 1974.

3 (f) A public record or information described in this section  
4 that is furnished by the public body originally compiling, pre-  
5 paring, or receiving the record or information to a public offi-  
6 cer or public body in connection with the performance of the  
7 duties of that public officer or public body, if the considera-  
8 tions originally giving rise to the exempt nature of the public  
9 record remain applicable.

10 (g) Trade secrets or commercial or financial information  
11 voluntarily provided to an agency for use in developing govern-  
12 mental policy if:

13 (i) The information is submitted upon a promise of confiden-  
14 tiality by the public body.

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

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

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

1 (i) Information or records subject to the physician-patient  
2 privilege, the psychologist-patient privilege, the minister,  
3 priest, or Christian science practitioner privilege, or other  
4 privilege recognized by statute or court rule.

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

9 (k) Appraisals of real property to be acquired by the public  
10 body until (i) an agreement is entered into; or (ii) 3 years has  
11 elapsed since the making of the appraisal, unless litigation rel-  
12 ative to the acquisition has not yet terminated.

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

18 (m) Medical, counseling, or psychological facts or evalu-  
19 ations concerning an individual if the individual's identity  
20 would be revealed by a disclosure of those facts or evaluation.

21 (n) Communications and notes within a public body or between  
22 public bodies of an advisory nature to the extent that they cover  
23 other than purely factual materials and are preliminary to a  
24 final agency determination of policy or action. This exemption  
25 does not apply unless the public body shows that in the particu-  
26 lar instance the public interest in encouraging frank  
27 communications between officials and employees of public bodies

1 clearly outweighs the public interest in disclosure. This  
2 exemption does not constitute an exemption under state law for  
3 purposes of section 8(h) of the open meetings act, Act No. 267 of  
4 the Public Acts of 1976, being section 15.268 of the Michigan  
5 Compiled Laws. As used in this subdivision, "determination of  
6 policy or action" includes a determination relating to collective  
7 bargaining, unless the public record is otherwise required to be  
8 made available under Act No. 336 of the Public Acts of 1947, ~~as~~  
9 ~~amended,~~ being sections 423.201 to ~~423.216~~ 423.217 of the  
10 Michigan Compiled Laws.

11 (o) Records of law enforcement communication codes, or plans  
12 for deployment of law enforcement personnel, ~~which~~ THAT if dis-  
13 closed would prejudice a public body's ability to protect the  
14 public safety unless the public interest in disclosure under this  
15 act outweighs the public interest in nondisclosure in the partic-  
16 ular instance.

17 (p) Information ~~which~~ THAT would reveal the exact location  
18 of archaeological sites. The secretary of state may promulgate  
19 rules pursuant to the administrative procedures act of 1969, Act  
20 No. 306 of the Public Acts of 1969, ~~as amended,~~ being sections  
21 24.201 to 24.328 of the Michigan Compiled Laws, to provide for  
22 the disclosure of the location of archaeological sites for pur-  
23 poses relating to the preservation or scientific examination of  
24 sites.

25 (q) Testing data developed by a public body in determining  
26 whether bidders' products meet the specifications for purchase of  
27 those products by the public body, if disclosure of the data

1 would 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 (r) Academic transcripts of an institution of higher educa-  
5 tion established under ~~sections~~ SECTION 5, 6, or 7 of article  
6 VIII of the state constitution of 1963, ~~where~~ IF the record  
7 pertains to a student who is delinquent in the payment of finan-  
8 cial obligations to the institution.

9 (s) Records of any campaign committee including any commit-  
10 tee that receives money from a state campaign fund.

11 (t) Unless the public interest in disclosure outweighs the  
12 public interest in nondisclosure in the particular instance,  
13 public records of a police or sheriff's agency or department, the  
14 release of which would do any of the following:

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

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

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

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

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

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

3 (vii) Endanger the life or safety of law enforcement offi-  
4 cers or agents or their families, relatives, children, parents,  
5 or those who furnish information to law enforcement departments  
6 or agencies.

7 (viii) Identify or provide a means of identifying a person  
8 as a law enforcement officer, agent, or informer.

9 (ix) Disclose personnel records of law enforcement  
10 agencies.

11 (x) Identify or provide a means of identifying residences  
12 which law enforcement agencies are requested to check in the  
13 absence of their owners or tenants.

14 (u) Except as otherwise provided in this subdivision,  
15 records and information pertaining to an investigation or a com-  
16 pliance conference conducted by the department of commerce under  
17 article 15 of the public health code, Act No. 368 of the Public  
18 Acts of 1978, being sections 333.16101 to 333.18838 of the  
19 Michigan Compiled Laws, before a complaint is issued. This sub-  
20 division does not apply to records and information pertaining to  
21 any of the following:

22 (i) The fact that an allegation has been received and an  
23 investigation is being conducted, and the date the allegation was  
24 received.

25 (ii) The fact that an allegation was received by the depart-  
26 ment of commerce; the fact that the department of commerce did

1 not issue a complaint for the allegation; and the fact that the  
2 allegation was dismissed.

3 (V) AN APPLICATION FOR THE POSITION OF PRESIDENT OF AN  
4 INSTITUTION OF HIGHER EDUCATION ESTABLISHED UNDER SECTION 4, 5,  
5 OR 6 OF ARTICLE VIII OF THE STATE CONSTITUTION OF 1963, AND  
6 RECORDS OR INFORMATION RELATING TO THE PROCESS OF SEARCHING FOR  
7 AND SELECTING AN INDIVIDUAL FOR A POSITION DESCRIBED IN THIS SUB-  
8 DIVISION, IF THE RECORDS OR INFORMATION COULD BE USED TO IDENTIFY  
9 A CANDIDATE FOR THE POSITION.

10 (2) This act does not authorize the withholding of informa-  
11 tion otherwise required by law to be made available to the public  
12 or to a party in a contested case under Act No. 306 of the Public  
13 Acts of 1969. ~~, as amended.~~