

HOUSE BILL No. 4540

May 5, 2015, Introduced by Reps. Heise, Callton, LaFontaine, Lyons, Maturen, Sheppard, Bumstead, Muxlow, Leutheuser, Rendon, Outman and McBroom and referred to the Committee on Oversight and Ethics.

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) "CRITICAL ENERGY INFRASTRUCTURE INFORMATION" MEANS
3 SPECIFIC ENGINEERING, VULNERABILITY, OR DETAILED DESIGN INFORMATION
4 ABOUT PROPOSED OR EXISTING CRITICAL ENERGY INFRASTRUCTURE THAT HAS
5 ALL OF THE FOLLOWING CHARACTERISTICS:

6 (i) RELATES DETAILS ABOUT THE PRODUCTION, GENERATION,
7 TRANSPORTATION, TRANSMISSION, OR DISTRIBUTION OF FUEL OR ENERGY.

8 (ii) COULD BE USEFUL TO A PERSON IN PLANNING AN ATTACK ON
9 CRITICAL ENERGY INFRASTRUCTURE.

10 (iii) PROVIDES MORE THAN THE GENERAL LOCATION OF THE CRITICAL

1 INFRASTRUCTURE.

2 (B) "CRITICAL ENERGY INFRASTRUCTURE" MEANS EXISTING AND
3 PROPOSED SYSTEMS AND ASSETS, WHETHER PHYSICAL OR VIRTUAL, RELATING
4 TO CRUDE OIL, PETROLEUM, ELECTRICITY, OR NATURAL GAS, THE
5 INCAPACITY OR DESTRUCTION OF WHICH WOULD NEGATIVELY AFFECT PUBLIC
6 SECURITY, ECONOMIC SECURITY, HEALTH, SAFETY, OR ANY COMBINATION OF
7 THOSE MATTERS.

8 (C) "CYBERSECURITY ASSESSMENT" MEANS AN INVESTIGATION
9 UNDERTAKEN BY A PERSON, GOVERNMENTAL BODY, OR OTHER ENTITY TO
10 IDENTIFY VULNERABILITIES IN CYBERSECURITY PLANS.

11 (D) "CYBERSECURITY INCIDENT" INCLUDES, BUT IS NOT LIMITED TO,
12 A COMPUTER NETWORK INTRUSION; A BREACH OF PRIMARY COMPUTER NETWORK
13 CONTROLS; UNAUTHORIZED ACCESS TO PROGRAMS, DATA, OR INFORMATION
14 CONTAINED IN A COMPUTER SYSTEM; OR ACTIONS BY A THIRD PARTY THAT
15 MATERIALLY AFFECT COMPONENT PERFORMANCE OR, BECAUSE OF IMPACT TO
16 COMPONENT SYSTEMS, PREVENT NORMAL COMPUTER SYSTEM ACTIVITIES.

17 (E) "CYBERSECURITY PLAN" INCLUDES, BUT IS NOT LIMITED TO,
18 INFORMATION ABOUT A PERSON'S, GOVERNMENTAL BODY'S, OR OTHER
19 ENTITY'S NETWORK SECURITY, ENCRYPTION, NETWORK MAPPING, ACCESS
20 CONTROL, PASSWORDS, AUTHENTICATION PRACTICES, COMPUTER HARDWARE OR
21 SOFTWARE, OR RESPONSE TO CYBERSECURITY INCIDENTS.

22 (F) "CYBERSECURITY THREAT" MEANS INFORMATION ABOUT COMPUTER
23 SYSTEM VULNERABILITIES OR PLANNED EXPLOITATION OF COMPUTER SYSTEMS
24 BY UNAUTHORIZED PARTIES.

25 (G) ~~(a)~~ "Field name" means the label or identification of an
26 element of a computer ~~data base~~ **DATABASE** that contains a specific
27 item of information, and includes but is not limited to a subject

1 heading such as a column header, data dictionary, or record layout.

2 (H) ~~(b)~~—"FOIA coordinator" means either of the following:

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

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

7 (I) ~~(e)~~—"Person" means an individual, corporation, limited
8 liability company, partnership, firm, organization, association,
9 governmental entity, or other legal entity. Person does not include
10 an individual serving a sentence of imprisonment in a state or
11 county correctional facility in this state or any other state, or
12 in a federal correctional facility.

13 (J) ~~(d)~~—"Public body" means any of the following:

14 (i) A state officer, employee, agency, department, division,
15 bureau, board, commission, council, authority, or other body in the
16 executive branch of the state government, but does not include the
17 governor or lieutenant governor, the executive office of the
18 governor or lieutenant governor, or employees thereof.

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

21 (iii) A county, city, township, village, intercounty,
22 intercity, or regional governing body, council, school district,
23 special district, or municipal corporation, or a board, department,
24 commission, council, or agency thereof.

25 (iv) Any other body ~~which~~ **THAT** is created by state or local
26 authority or ~~which~~ is primarily funded by or through state or local
27 authority, -

1 ~~—(v) The~~ **EXCEPT THAT THE** judiciary, including the office of the
2 county clerk and **ITS** employees ~~thereof~~ when acting in the capacity
3 of clerk to the circuit court, is not included in the definition of
4 public body.

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

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

11 (ii) All public records that are not exempt from disclosure
12 under section 13 and ~~which~~ **THAT** are subject to disclosure under
13 this act.

14 **(I)** ~~(f)~~—"Software" means a set of statements or instructions
15 that when incorporated in a machine usable medium is capable of
16 causing a machine or device having information processing
17 capabilities to indicate, perform, or achieve a particular
18 function, task, or result. Software does not include computer-
19 stored information or data, or a field name if disclosure of that
20 field name does not violate a software license.

21 **(M)** ~~(g)~~—"Unusual circumstances" means any 1 or a combination
22 of the following, but only to the extent necessary for the proper
23 processing of a request:

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

27 (ii) The need to collect the requested public records from

1 numerous field offices, facilities, or other establishments which
2 are located apart from the particular office receiving or
3 processing the request.

4 (N) ~~(h)~~—"Writing" means handwriting, typewriting, printing,
5 photostating, photographing, photocopying, and every other means of
6 recording, and includes letters, words, pictures, sounds, or
7 symbols, or combinations thereof, and papers, maps, magnetic or
8 paper tapes, photographic films or prints, microfilm, microfiche,
9 magnetic or punched cards, discs, drums, or other means of
10 recording or retaining meaningful content.

11 (O) ~~(i)~~—"Written request" means a writing that asks for
12 information, and includes a writing transmitted by facsimile,
13 electronic mail, or other electronic means.

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
24 impartial 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

1 criminal investigation, disclose confidential information furnished
2 only by a confidential source.

3 (v) Disclose law enforcement investigative techniques or
4 procedures.

5 (vi) Endanger the life or physical safety of law enforcement
6 personnel.

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

13 (d) Records or information specifically described and exempted
14 from disclosure by statute.

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

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

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

27 (ii) The promise of confidentiality is authorized by the chief

1 administrative officer of the public body or by an elected official
2 at the time the promise is made.

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

9 (g) Information or records subject to the attorney-client
10 privilege.

11 (h) Information or records subject to the physician-patient
12 privilege, the psychologist-patient privilege, the minister,
13 priest, or Christian Science practitioner privilege, or other
14 privilege recognized by statute or court rule.

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

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

21 (i) An agreement is entered into.

22 (ii) Three years have elapsed since the making of the
23 appraisal, unless litigation relative to the acquisition has not
24 yet terminated.

25 (k) Test questions and answers, scoring keys, and other
26 examination instruments or data used to administer a license,
27 public employment, or academic examination, unless the public

1 interest in disclosure under this act outweighs the public interest
2 in nondisclosure.

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

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

21 (n) Records of law enforcement communication codes, or plans
22 for deployment of law enforcement personnel, that if disclosed
23 would prejudice a public body's ability to protect the public
24 safety unless the public interest in disclosure under this act
25 outweighs the public interest in nondisclosure in the particular
26 instance.

27 (o) Information that would reveal the exact location of

1 archaeological sites. The department of ~~history, arts, and~~
2 ~~libraries~~ **NATURAL RESOURCES** may promulgate rules in accordance with
3 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
4 to 24.328, to provide for the disclosure of the location of
5 archaeological sites for purposes relating to the preservation or
6 scientific examination of sites.

7 (p) Testing data developed by a public body in determining
8 whether bidders' products meet the specifications for purchase of
9 those products by the public body, if disclosure of the data would
10 reveal that only 1 bidder has met the specifications. This
11 subdivision does not apply after 1 year has elapsed from the time
12 the public body completes the testing.

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

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

20 (s) Unless the public interest in disclosure outweighs the
21 public interest in nondisclosure in the particular instance, public
22 records of a law enforcement agency, the release of which would do
23 any of the following:

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

25 (ii) Identify or provide a means of identifying a law
26 enforcement undercover officer or agent or a plain clothes officer
27 as a law enforcement officer or agent.

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

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

7 (v) Disclose operational instructions for law enforcement
8 officers or agents.

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

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

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

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

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

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

26 (i) The fact that an allegation has been received and an
27 investigation is being conducted, and the date the allegation was

1 received.

2 (ii) The fact that an allegation was received by the
3 department; the fact that the department did not issue a complaint
4 for the allegation; and the fact that the allegation was dismissed.

5 (u) Records of a public body's security measures, including
6 security plans, security codes and combinations, passwords, passes,
7 keys, and security procedures, to the extent that the records
8 relate to the ongoing security of the public body.

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

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

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

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

15 **(Z) INFORMATION THAT WOULD IDENTIFY OR PROVIDE A MEANS OF**
16 **IDENTIFYING A PERSON THAT MAY, AS A RESULT OF DISCLOSURE OF THE**
17 **INFORMATION, BECOME A VICTIM OF A CYBERSECURITY INCIDENT OR THAT**
18 **WOULD DISCLOSE A PERSON'S CYBERSECURITY PLANS OR CYBERSECURITY-**
19 **RELATED PRACTICES, PROCEDURES, METHODS, RESULTS, ORGANIZATIONAL**
20 **STRUCTURE, HARDWARE, OR SOFTWARE.**

21 **(AA) A RECORD, A DOCUMENT, OR INFORMATION THAT DISCLOSES**
22 **CRITICAL ENERGY INFRASTRUCTURE INFORMATION.**

23 (2) A public body shall exempt from disclosure information
24 that, if released, would prevent the public body from complying
25 with 20 USC 1232g, commonly referred to as the family educational
26 rights and privacy act of 1974. A public body that is a local or
27 intermediate school district or a public school academy shall

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

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

21 (4) Except as otherwise exempt under subsection (1), this act
22 does not authorize the withholding of a public record in the
23 possession of the executive office of the governor or lieutenant
24 governor, or an employee of either executive office, if the public
25 record is transferred to the executive office of the governor or
26 lieutenant governor, or an employee of either executive office,
27 after a request for the public record has been received by a state

1 officer, employee, agency, department, division, bureau, board,
2 commission, council, authority, or other body in the executive
3 branch of government that is subject to this act.

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