

HOUSE BILL NO. 4291

February 23, 2021, Introduced by Reps. Tyrone Carter, O'Neal, Steenland, Wozniak, Brabec, Liberati, Scott, Hope, LaGrand, Anthony, Cavanagh, Morse, Bolden, Pohutsky, Hood, Hammoud, Sowerby, Ellison, Rabhi, Aiyash, Young, Lasinski, Brenda Carter, Stone, Coleman, Whitsett, Peterson and Yancey and referred to the Committee on Government Operations.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending section 13 (MCL 15.243), as amended by 2018 PA 68.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 (a) Information of a personal nature if public disclosure of
4 the information would constitute a clearly unwarranted invasion of
5 an individual's privacy. **For the purpose of the exemption under**

1 this subdivision, the release of law enforcement disciplinary
2 records is not an unwarranted invasion of an individual's privacy.

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

6 (i) Interfere with law enforcement proceedings.

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

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

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

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

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

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

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

26 (e) A public record or information described in this section
27 that is furnished by the public body originally compiling,
28 preparing, or receiving the record or information to a public
29 officer or public body in connection with the performance of the

1 duties of that public officer or public body, if the considerations
2 originally giving rise to the exempt nature of the public record
3 remain applicable.

4 (f) Trade secrets or commercial or financial information
5 voluntarily provided to an agency for use in developing
6 governmental policy if:

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

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

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

18 (g) Information or records subject to the attorney-client
19 privilege.

20 (h) Information or records subject to the physician-patient
21 privilege, the psychologist-patient privilege, the minister,
22 priest, or Christian Science practitioner privilege, or other
23 privilege recognized by statute or court rule.

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

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

1 (i) An agreement is entered into.

2 (ii) Three years have elapsed since the making of the
3 appraisal, unless litigation relative to the acquisition has not
4 yet terminated.

5 (k) Test questions and answers, scoring keys, and other
6 examination instruments or data used to administer a license,
7 public employment, or academic examination, unless the public
8 interest in disclosure under this act outweighs the public interest
9 in nondisclosure.

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

14 (m) Communications and notes within a public body or between
15 public bodies of an advisory nature to the extent that they cover
16 other than purely factual materials and are preliminary to a final
17 agency determination of policy or action. This exemption does not
18 apply unless the public body shows that in the particular instance
19 the public interest in encouraging frank communication between
20 officials and employees of public bodies clearly outweighs the
21 public interest in disclosure. This exemption does not constitute
22 an exemption under state law for purposes of section 8(h) of the
23 open meetings act, 1976 PA 267, MCL 15.268. As used in this
24 subdivision, "determination of policy or action" includes a
25 determination relating to collective bargaining, unless the public
26 record is otherwise required to be made available under 1947 PA
27 336, MCL 423.201 to 423.217.

28 (n) Records of law enforcement communication codes, or plans
29 for deployment of law enforcement personnel, that if disclosed

1 would prejudice a public body's ability to protect the public
 2 safety unless the public interest in disclosure under this act
 3 outweighs the public interest in nondisclosure in the particular
 4 instance.

5 (o) Information that would reveal the exact location of
 6 archaeological sites. The department of natural resources may
 7 promulgate rules in accordance with the administrative procedures
 8 act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to provide for the
 9 disclosure of the location of archaeological sites for purposes
 10 relating to the preservation or scientific examination of sites.

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

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

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

24 (s) ~~Unless~~ **Only if** the public interest in ~~disclosure~~
 25 **nondisclosure** outweighs the public interest in ~~nondisclosure~~
 26 **disclosure** in the particular instance, public records of a law
 27 enforcement agency, the release of which would do any of the
 28 following:

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

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

(iii) Disclose the **Social Security number**, personal or **electronic mail** address, or telephone or **cellular phone** number of active or retired law enforcement officers or agents or a special skill that they may have.

(iv) Disclose the name, **Social Security number**, personal or **electronic mail** address, or telephone or **cellular phone** numbers of family members, relatives, children, or parents of active or retired law enforcement officers or agents.

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

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

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

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

(ix) Disclose ~~personnel records of law enforcement agencies.~~ **records of either of the following:**

(A) **The medical history of a law enforcement officer or agent.**

(B) **The use of an employee assistance program, mental health service, or substance abuse assistance service by a law enforcement officer or agent, unless the use of the program or service is mandated by a disciplinary proceeding the records of which are not exempt under this section.**

(x) Identify or provide a means of identifying residences that

1 law enforcement agencies are requested to check in the absence of
2 their owners or tenants.

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

9 (i) The fact that an allegation has been received and an
10 investigation is being conducted, and the date the allegation was
11 received.

12 (ii) The fact that an allegation was received by the
13 department; the fact that the department did not issue a complaint
14 for the allegation; and the fact that the allegation was dismissed.

15 (u) Records of a public body's security measures, including
16 security plans, security codes and combinations, passwords, passes,
17 keys, and security procedures, to the extent that the records
18 relate to the ongoing security of the public body.

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

21 (w) Information or records that would disclose the ~~social~~
22 ~~security~~ **Social Security** number of an individual.

23 (x) Except as otherwise provided in this subdivision, an
24 application for the position of president of an institution of
25 higher education established under section 4, 5, or 6 of article
26 VIII of the state constitution of 1963, materials submitted with
27 such an application, letters of recommendation or references
28 concerning an applicant, and records or information relating to the
29 process of searching for and selecting an individual for a position

1 described in this subdivision, if the records or information could
2 be used to identify a candidate for the position. However, after 1
3 or more individuals have been identified as finalists for a
4 position described in this subdivision, this subdivision does not
5 apply to a public record described in this subdivision, except a
6 letter of recommendation or reference, to the extent that the
7 public record relates to an individual identified as a finalist for
8 the position.

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

25 (z) Information that would identify or provide a means of
26 identifying a person that may, as a result of disclosure of the
27 information, become a victim of a cybersecurity incident or that
28 would disclose a person's cybersecurity plans or cybersecurity-
29 related practices, procedures, methods, results, organizational

1 information system infrastructure, hardware, or software.

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

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

27 (3) This act does not authorize the withholding of information
28 otherwise required by law to be made available to the public or to
29 a party in a contested case under the administrative procedures act

1 of 1969, 1969 PA 306, MCL 24.201 to 24.328.

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

12 (5) As used in this section:

13 (a) "Disciplinary proceeding" means the commencement of any
14 investigation and any subsequent hearing or other proceeding
15 conducted by the Michigan commission on law enforcement standards
16 or any state or local law enforcement agency, department,
17 independent review board, or other entity tasked with evaluating
18 any complaint, allegation, or charge against a law enforcement
19 officer or agent.

20 (b) "Law enforcement agency" means a public body that employs
21 1 or more law enforcement officers or agents.

22 (c) "Law enforcement disciplinary records" means all records
23 created in furtherance of a disciplinary proceeding conducted by
24 the Michigan commission on law enforcement standards or any state
25 or local law enforcement agency, department, independent review
26 board, or other entity tasked with evaluating any complaint,
27 allegation, or charge against a law enforcement officer or agent,
28 other than a complaint, allegation, or charge of a technical
29 infraction, including, but not limited to, all of the following

1 records and information:

2 (i) Records of any complaint, allegation, or charge against a
3 law enforcement officer or agent.

4 (ii) The name of any law enforcement officer or agent against
5 whom a complaint, allegation, or charge has been made.

6 (iii) All records, documents, and files, in whatever form,
7 related to the investigation, adjudication, or disposition of any
8 complaint, allegation, or charge against a law enforcement officer
9 or agent.

10 (iv) The transcript of any disciplinary proceeding, including
11 any exhibits introduced at the proceeding, regarding any complaint,
12 allegation, or charge against a law enforcement officer or agent.

13 (v) Any finding by the Michigan commission on law enforcement
14 standards or any state or local law enforcement agency, department,
15 independent review board, or other entity tasked with evaluating
16 any complaint, allegation, or charge against a law enforcement
17 officer or agent during a disciplinary proceeding.

18 (vi) Any final written opinion or memorandum supporting the
19 disposition and disciplinary action imposed, or the decision not to
20 impose disciplinary action, on a law enforcement officer or agent
21 against whom a complaint, allegation, or charge has been made,
22 including all of the following:

23 (A) All factual findings.

24 (B) Any analysis of alleged misconduct.

25 (C) A description of the disciplinary action imposed on the
26 law enforcement officer or agent, if any, and the data supporting
27 the disciplinary action taken or the decision not to take
28 disciplinary action.

29 (d) "Law enforcement officer or agent" includes a police

1 officer employed by a municipality, county, or this state, an
2 employee of a sheriff's office who performs law enforcement duties,
3 a correctional officer, or any employee who provides public safety
4 or investigative services for the department of corrections, a
5 state correctional facility, a county jail, or a juvenile detention
6 facility.

7 (e) "Technical infraction" means a minor rule violation by a
8 law enforcement officer or agent, solely related to the enforcement
9 of administrative departmental rules, that meets all of the
10 following:

11 (i) Did not involve interaction with members of the public.

12 (ii) Was unrelated to the investigative, enforcement, training,
13 supervision, or reporting responsibilities of the law enforcement
14 officer or agent.

15 (iii) Did not involve deception, misrepresentation, dishonesty,
16 or intemperate behavior by the law enforcement officer or agent.