

# HOUSE BILL NO. 4856

May 18, 2021, Introduced by Reps. Bolden, Cambensy, Hood, Kuppa, Bezotte, O'Neal, Thanedar, Brenda Carter, Rogers, Cynthia Johnson, Pohutsky, Tyrone Carter, Peterson, Liberati, Damoose, Stone, Ellison, Glenn, Puri, Aiyash, Sabo, Yaroach, Manoogian, Farrington, Brixie, Anthony, LaGrand, Calley, Young, Rendon, Scott and Jones and referred to the Committee on Judiciary.

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.

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

(i) Interfere with law enforcement proceedings.

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

(iii) Constitute an unwarranted invasion of personal privacy.

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

(v) Disclose law enforcement investigative techniques or procedures.

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

**(vii) Disclose the identity of a party who, as described in subdivision (bb), proceeds anonymously in a civil action in which the party alleges that he or she was the victim of sexual misconduct. For the purpose of securing his or her anonymity, that party or his or her designee may provide written notification of the civil action and his or her wish to remain anonymous to any law enforcement agency that has investigating records subject to this subparagraph, and the law enforcement agency shall retain a copy of that notification in its files with those investigating records.**

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

1 in nondisclosure.

2 (d) Records or information specifically described and exempted  
3 from disclosure by statute.

4 (e) A public record or information described in this section  
5 that is furnished by the public body originally compiling,  
6 preparing, or receiving the record or information to a public  
7 officer or public body in connection with the performance of the  
8 duties of that public officer or public body, if the considerations  
9 originally giving rise to the exempt nature of the public record  
10 remain applicable.

11 (f) Trade secrets or commercial or financial information  
12 voluntarily provided to an agency for use in developing  
13 governmental policy if:

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

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

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

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

27 (h) Information or records subject to the physician-patient  
28 privilege, the psychologist-patient privilege, the minister,  
29 priest, or Christian Science practitioner privilege, or other

1 privilege recognized by statute or court rule.

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

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

8 (i) An agreement is entered into.

9 (ii) Three years have elapsed since the making of the  
10 appraisal, unless litigation relative to the acquisition has not  
11 yet terminated.

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

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

21 (m) 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 final  
24 agency determination of policy or action. This exemption does not  
25 apply unless the public body shows that in the particular instance  
26 the public interest in encouraging frank communication between  
27 officials and employees of public bodies clearly outweighs the  
28 public interest in disclosure. This exemption does not constitute  
29 an exemption under state law for purposes of section 8(h) of the

1 open meetings act, 1976 PA 267, MCL 15.268. As used in this  
2 subdivision, "determination of policy or action" includes a  
3 determination relating to collective bargaining, unless the public  
4 record is otherwise required to be made available under 1947 PA  
5 336, MCL 423.201 to 423.217.

6 (n) Records of law enforcement communication codes, or plans  
7 for deployment of law enforcement personnel, that if disclosed  
8 would prejudice a public body's ability to protect the public  
9 safety unless the public interest in disclosure under this act  
10 outweighs the public interest in nondisclosure in the particular  
11 instance.

12 (o) Information that would reveal the exact location of  
13 archaeological sites. The department of natural resources may  
14 promulgate rules in accordance with the administrative procedures  
15 act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to provide for the  
16 disclosure of the location of archaeological sites for purposes  
17 relating to the preservation or scientific examination of sites.

18 (p) Testing data developed by a public body in determining  
19 whether bidders' products meet the specifications for purchase of  
20 those products by the public body, if disclosure of the data would  
21 reveal that only 1 bidder has met the specifications. This  
22 subdivision does not apply after 1 year has elapsed from the time  
23 the public body completes the testing.

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

29 (r) Records of a campaign committee including a committee that

1 receives money from a state campaign fund.

2 (s) Unless the public interest in disclosure outweighs the  
3 public interest in nondisclosure in the particular instance, public  
4 records of a law enforcement agency, the release of which would do  
5 any of the following:

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

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

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

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

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

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

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

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

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

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

29 (t) Except as otherwise provided in this subdivision, records

1 and information pertaining to an investigation or a compliance  
2 conference conducted by the department under article 15 of the  
3 public health code, 1978 PA 368, MCL 333.16101 to 333.18838, before  
4 a complaint is issued. This subdivision does not apply to records  
5 or information pertaining to 1 or more of the following:

6 (i) The fact that an allegation has been received and an  
7 investigation is being conducted, and the date the allegation was  
8 received.

9 (ii) The fact that an allegation was received by the  
10 department; the fact that the department did not issue a complaint  
11 for the allegation; and the fact that the allegation was dismissed.

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

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

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

20 (x) Except as otherwise provided in this subdivision, an  
21 application for the position of president of an institution of  
22 higher education established under section 4, 5, or 6 of article  
23 VIII of the state constitution of 1963, materials submitted with  
24 such an application, letters of recommendation or references  
25 concerning an applicant, and records or information relating to the  
26 process of searching for and selecting an individual for a position  
27 described in this subdivision, if the records or information could  
28 be used to identify a candidate for the position. However, after 1  
29 or more individuals have been identified as finalists for a

1 position described in this subdivision, this subdivision does not  
2 apply to a public record described in this subdivision, except a  
3 letter of recommendation or reference, to the extent that the  
4 public record relates to an individual identified as a finalist for  
5 the position.

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

22 (z) Information that would identify or provide a means of  
23 identifying a person that may, as a result of disclosure of the  
24 information, become a victim of a cybersecurity incident or that  
25 would disclose a person's cybersecurity plans or cybersecurity-  
26 related practices, procedures, methods, results, organizational  
27 information system infrastructure, hardware, or software.

28 (aa) Research data on road and attendant infrastructure  
29 collected, measured, recorded, processed, or disseminated by a



1 public agency or private entity, or information about software or  
2 hardware created or used by the private entity for such purposes.

3       **(bb) Information that would reveal the identity of a party who**  
4 **proceeds anonymously in a civil action in which the party alleges**  
5 **that he or she was the victim of sexual misconduct. As used in this**  
6 **subdivision, "sexual misconduct" means the conduct described in**  
7 **section 90, 136, 145a, 145b, 145c, 520b, 520c, 520d, 520e, or 520g**  
8 **of the Michigan penal code, 1931 PA 328, MCL 750.90, 750.136,**  
9 **750.145a, 750.145b, 750.145c, 750.520b, 750.520c, 750.520d,**  
10 **750.520e, and 750.520g, regardless of whether the conduct resulted**  
11 **in a criminal conviction.**

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

1 information provided under this subsection ~~shall~~**will** not be used,  
2 rented, or sold for the purpose of surveys, marketing, or  
3 solicitation.

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

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