

HOUSE BILL NO. 5924

March 16, 2022, Introduced by Reps. Fink, Steven Johnson and Borton and referred to the Committee on Oversight.

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,

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

17 (2) A freedom of information act coordinator shall keep a copy
18 of all written requests for public records on file for no less than
19 1 year.

20 (3) A public body shall furnish a requesting person a
21 reasonable opportunity for inspection and examination of its public
22 records, and shall furnish reasonable facilities for making
23 memoranda or abstracts from its public records during the usual
24 business hours. A public body may make reasonable rules necessary
25 to protect its public records and to prevent excessive and
26 unreasonable interference with the discharge of its functions. A
27 public body shall protect public records from loss, unauthorized
28 alteration, mutilation, or destruction. **A public record in the**
29 **possession of a public body's outside legal counsel must be**

1 considered as remaining in the public body's custody for purposes
2 of this act and is subject to disclosure under this act, except to
3 the extent that the public body chooses to assert 1 or more
4 exemptions under section 13.

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

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

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

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

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

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

23 (i) Interfere with law enforcement proceedings.

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

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

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

1 only by a confidential source.

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

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

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

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

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

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

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

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

29 (iii) A description of the information is recorded by the public

body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision does not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.

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

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

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

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

(i) An agreement is entered into.

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

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

(l) Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation, including

1 protected health information, as defined in 45 CFR 160.103.

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

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

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

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

1 those products by the public body, if disclosure of the data would
2 reveal that only 1 bidder has met the specifications. This
3 subdivision does not apply after 1 year has elapsed from the time
4 the public body completes the testing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (i) The fact that an allegation has been received and an
17 investigation is being conducted, and the date the allegation was
18 received.

19 (ii) The fact that an allegation was received by the
20 department; the fact that the department did not issue a complaint
21 for the allegation; and the fact that the allegation was dismissed.

22 (u) Records of a public body's security measures, including
23 security plans, security codes and combinations, passwords, passes,
24 keys, and security procedures, to the extent that the records
25 relate to the ongoing security of the public body.

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

28 (w) Information or records that would disclose the Social
29 Security number of an individual.

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

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

1 outweighs the public interest in nondisclosure in the particular
2 instance. **This subdivision does not apply to a public record**
3 **described in this subdivision to the extent that the public record**
4 **identifies a working group, including the names and contact**
5 **information of its members. As used in this subdivision, "working**
6 **group" means a group of 2 or more people, including, but not**
7 **limited to, members, employees, contractors, advisors, consultants,**
8 **or vendors of a public body, assembled by the public body to assist**
9 **the public body in deliberating toward or rendering a decision on a**
10 **public policy.**

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

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

21 (bb) Records or information that would reveal the specific
22 location or GPS coordinates of game, including, but not limited to,
23 records or information of the specific location or GPS coordinates
24 of game obtained by the department of natural resources during any
25 restoration, management, or research project conducted under
26 section 40501 of the natural resources and environmental protection
27 act, 1994 PA 451, MCL 324.40501, or in connection with the
28 expenditure of money under section 43553 of the natural resources
29 and environmental protection act, 1994 PA 451, MCL 324.43553. As

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

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

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

29 (4) Except as otherwise exempt under subsection (1), this act

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