

SENATE BILL NO. 232

March 11, 2021, Introduced by Senators MOSS and MCBROOM and referred to the Committee on Oversight.

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~~**-part** 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.

6 (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.

(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~~**-part** outweighs the public interest in nondisclosure.

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

(e) A public record or information described in this section that is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable. **For purposes of this subdivision, "public body"**

1 **includes a public body as defined in part 2.**

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

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

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

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

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

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

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

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

28 (i) An agreement is entered into.

29 (ii) Three years have elapsed since the making of the

1 appraisal, unless litigation relative to the acquisition has not
2 yet terminated.

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

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

12 (m) Communications and notes within a public body or between
13 public bodies of an advisory nature to the extent that they cover
14 other than purely factual materials and are preliminary to a final
15 agency determination of policy or action. ~~This~~ **As to the executive**
16 **office of the governor or lieutenant governor, this exemption does**
17 **not apply if in the particular instance the public interest in**
18 **disclosure clearly outweighs the public interest in encouraging**
19 **frank communications. As to all other public bodies, this** exemption
20 does not apply unless the public body shows that in the particular
21 instance the public interest in encouraging frank communication
22 between officials and employees of public bodies clearly outweighs
23 the public interest in disclosure. This exemption does not
24 constitute an exemption under state law for purposes of section
25 8(h) of the open meetings act, 1976 PA 267, MCL 15.268. As used in
26 this subdivision, "determination of policy or action" includes a
27 determination relating to collective bargaining, unless the public
28 record is otherwise required to be made available under 1947 PA
29 336, MCL 423.201 to 423.217.

1 (n) Records of law enforcement communication codes, or plans
2 for deployment of law enforcement personnel, that if disclosed
3 would prejudice a public body's ability to protect the public
4 safety unless the public interest in disclosure under this ~~act~~**part**
5 outweighs the public interest in nondisclosure in the particular
6 instance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (i) The fact that an allegation has been received and an
2 investigation is being conducted, and the date the allegation was
3 received.

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

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

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

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

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

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

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

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

(bb) Records or information in the possession of the executive office of the governor or lieutenant governor or of an employee of either of those offices that relates to any of the following:

1 (i) The appointment of an individual as a department or agency
2 director; as a member of a board, commission, or council; to fill a
3 vacancy on a court pursuant to section 23 of article VI of the
4 state constitution of 1963; or to any other position the governor
5 appoints as provided by law. After an individual has been appointed
6 to a position described in this subparagraph, the exemption does
7 not apply to records or information that relates to that individual
8 except as to a letter of recommendation or reference.

9 (ii) The decision to remove or suspend from office any public
10 official pursuant to section 10 of article V of the state
11 constitution of 1963, or to remove a judge from office pursuant to
12 section 25 of article VI of the state constitution of 1963. After
13 an individual has been removed or suspended from a position
14 described in this subparagraph, the exemption for records and
15 information under this subparagraph does not apply to a record that
16 relates to that individual.

17 (iii) The decision to grant or deny a reprieve, pardon, or
18 commutation pursuant to section 14 of article V of the state
19 constitution of 1963.

20 (iv) A budget recommendation prepared pursuant to section 18 of
21 article V of the state constitution of 1963.

22 (v) A reduction in expenditures pursuant to section 20 of
23 article V of the state constitution of 1963.

24 (vi) A message or recommendation to the legislature pursuant to
25 section 17 of article V of the state constitution of 1963.

26 (vii) The executive residence described in section 24 of
27 article V of the state constitution of 1963.

28 (cc) Information or records subject to executive privilege.

29 (dd) Records created, prepared, owned, used, in the possession

1 of, or retained by the executive office of the governor or
2 lieutenant governor or an employee of either of those offices prior
3 to January 1, 2022.

4 (ee) Communications, including any related records or
5 information, between the executive office of the governor or
6 lieutenant governor or any employee of either of those offices and
7 a constituent, other than a person who receives an appointment or
8 is employed by this state or a person required to be registered as
9 a lobbyist under 1978 PA 472, MCL 4.411 to 4.431. For purposes of
10 this subdivision, "constituent" means an individual who resides in
11 this state and who contacts the executive office of the governor or
12 lieutenant governor for assistance in personally obtaining
13 government services, to express a personal opinion, or for redress
14 of personal grievances.

15 (ff) Records or information that if disclosed could materially
16 compromise or diminish the security of the governor or lieutenant
17 governor.

18 (gg) The cellular telephone number of the governor or
19 lieutenant governor or an employee of the executive office of the
20 governor or lieutenant governor.

21 (2) A public body shall exempt from disclosure information
22 that, if released, would prevent the public body from complying
23 with 20 USC 1232g, commonly referred to as the family educational
24 rights and privacy act of 1974. A public body that is a local or
25 intermediate school district or a public school academy shall
26 exempt from disclosure directory information, as defined by 20 USC
27 1232g, commonly referred to as the family educational rights and
28 privacy act of 1974, requested for the purpose of surveys,
29 marketing, or solicitation, unless that public body determines that

the use is consistent with the educational mission of the public body and beneficial to the affected students. A public body that is a local or intermediate school district or a public school academy may take steps to ensure that directory information disclosed under this subsection ~~shall-is~~ not be used, rented, or sold for the purpose of surveys, marketing, or solicitation. Before disclosing the directory information, a public body that is a local or intermediate school district or a public school academy may require the requester to execute an affidavit stating that directory information provided under this subsection ~~shall-will~~ not be used, rented, or sold for the purpose of surveys, marketing, or solicitation.

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

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

Enacting section 1. This amendatory act takes effect January 1, 2022.

Enacting section 2. This amendatory act does not take effect

1 unless Senate Bill No. 234 of the 101st Legislature is enacted into
2 law.