

# SENATE BILL NO. 669

November 09, 2023, 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 sections 2 and 3 (MCL 15.232 and 15.233), section 2 as amended by 2018 PA 68 and section 3 as amended by 2018 PA 523.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1       Sec. 2. As used in this act:
- 2       (a) "Cybersecurity assessment" means an investigation
- 3       undertaken by a person, governmental body, or other entity to
- 4       identify vulnerabilities in cybersecurity plans.

1           (b) "Cybersecurity incident" includes, but is not limited to,  
2 a computer network intrusion or attempted intrusion; a breach of  
3 primary computer network controls; unauthorized access to programs,  
4 data, or information contained in a computer system; or actions by  
5 a third party that materially affect component performance or,  
6 because of impact to component systems, prevent normal computer  
7 system activities.

8           (c) "Cybersecurity plan" includes, but is not limited to,  
9 information about a person's information systems, network security,  
10 encryption, network mapping, access control, passwords,  
11 authentication practices, computer hardware or software, or  
12 response to cybersecurity incidents.

13           (d) "Cybersecurity vulnerability" means a deficiency within  
14 computer hardware or software, or within a computer network or  
15 information system, that could be exploited by unauthorized parties  
16 for use against an individual computer user or a computer network  
17 or information system.

18           (e) "Field name" means the label or identification of an  
19 element of a computer database that contains a specific item of  
20 information, and includes but is not limited to a subject heading  
21 such as a column header, data dictionary, or record layout.

22           (f) "FOIA coordinator" means either of the following:

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

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

27           (g) **"Legislator" means a member of the senate or the house of**  
28 **representatives of this state.**

29           (h) ~~(g)~~—"Person" means an individual, corporation, limited

1 liability company, partnership, firm, organization, association,  
 2 governmental entity, or other legal entity. Person does not include  
 3 an individual serving a sentence of imprisonment in a state or  
 4 county correctional facility in this state or any other state, or  
 5 in a federal correctional facility.

6 (i) ~~(h)~~ "Public body" means any of the following:

7 (i) A state officer, employee, agency, department, division,  
 8 bureau, board, commission, council, authority, or other body in the  
 9 executive branch of the state government. ~~, but does not include~~  
 10 ~~the governor or lieutenant governor, the executive office of the~~  
 11 ~~governor or lieutenant governor, or employees thereof.~~

12 (ii) ~~An agency, board, commission, or council in the~~  
 13 ~~legislative branch of the state government.~~ **A state officer,**  
 14 **legislator, employee, agency, department, division, bureau, board,**  
 15 **commission, committee, council, authority, or other body in the**  
 16 **legislative branch of the state government. Public body does not**  
 17 **include the legislative service bureau, the senate fiscal agency,**  
 18 **or the house fiscal agency.**

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

23 (iv) Any other body that is created by state or local authority  
 24 or is primarily funded by or through state or local authority,  
 25 except that **public body does not include** the judiciary ~~, including~~  
 26 **or** the office of the county clerk and its employees when acting in  
 27 the capacity of clerk to the circuit court. ~~, is not included in~~  
 28 ~~the definition of public body.~~ **For purposes of this subparagraph,**  
 29 **revenue earned by a body pursuant to a fee-for-service transaction**

1 with a governmental entity does not count as funds provided by or  
2 through state or local authority.

3 (j) ~~(i)~~—"Public record" means a writing prepared, owned, used,  
4 in the possession of, or retained by a public body in the  
5 performance of an official function, from the time it is created.  
6 Public record does not include computer software. **Public record**  
7 **does not include notes taken or made by a member of a public body,**  
8 **including notes taken or made during a meeting of the public body,**  
9 **if the notes are for that member's personal use, are not circulated**  
10 **among other members, are not used in the creation of any meeting**  
11 **minutes, and are retained or destroyed at that member's sole**  
12 **discretion.** This act separates public records into the following 2  
13 classes:

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

15 (ii) All public records that are not exempt from disclosure  
16 under section 13 and that are subject to disclosure under this act.

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

24 (l) ~~(k)~~—"Unusual circumstances" means any 1 or a combination of  
25 the following, but only to the extent necessary for the proper  
26 processing of a request:

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

1           (ii) The need to collect the requested public records from  
2 numerous field offices, facilities, or other establishments ~~which~~  
3 **that** are located apart from the particular office receiving or  
4 processing the request.

5           (m) ~~(l)~~—"Writing" means handwriting, typewriting, printing,  
6 photostating, photographing, photocopying, and every other means of  
7 recording, and includes letters, words, pictures, sounds, or  
8 symbols, or combinations thereof, and papers, maps, magnetic or  
9 paper tapes, photographic films or prints, microfilm, microfiche,  
10 magnetic or punched cards, discs, drums, hard drives, solid state  
11 storage components, **hybrid drives, cloud storage, quantum networks**  
12 **and computing systems**, or other means of recording or retaining  
13 meaningful content.

14           (n) ~~(m)~~—"Written request" means a writing that asks for  
15 information, and includes a writing transmitted by facsimile,  
16 ~~electronic mail, email~~, or other electronic means.

17           Sec. 3. (1) Except as expressly provided in section 13, upon  
18 providing a public body's FOIA coordinator with a written request  
19 that describes a public record sufficiently to enable the public  
20 body to find the public record, a person has a right to inspect,  
21 copy, or receive copies of the requested public record of the  
22 public body. A request from a person, other than an individual who  
23 qualifies as indigent under section 4(2)(a), must include the  
24 requesting person's complete name, address, and contact  
25 information, and, if the request is made by a person other than an  
26 individual, the complete name, address, and contact information of  
27 the person's agent who is an individual. An address must be written  
28 in compliance with United States Postal Service addressing  
29 standards. Contact information must include a valid telephone

1 number or electronic mail address. ~~A~~**Except as to the executive**  
2 **office of the governor or lieutenant governor or a state**  
3 **legislative public body as described in section 2(i) (ii)**, a person  
4 has a right to subscribe to future issuances of public records that  
5 are created, issued, or disseminated on a regular basis. A  
6 subscription is valid for up to 6 months, at the request of the  
7 subscriber, and is renewable. An employee of a public body who  
8 receives a request for a public record shall promptly forward that  
9 request to the freedom of information act coordinator.

10 (2) A freedom of information act coordinator shall keep a copy  
11 of all written requests for public records on file for no less than  
12 1 year.

13 (3) A public body shall furnish a requesting person a  
14 reasonable opportunity for inspection and examination of its public  
15 records, and shall furnish reasonable facilities for making  
16 memoranda or abstracts from its public records during the usual  
17 business hours. A public body may make reasonable rules necessary  
18 to protect its public records and to prevent excessive and  
19 unreasonable interference with the discharge of its functions. A  
20 public body shall protect public records from loss, unauthorized  
21 alteration, mutilation, or destruction.

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

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

29 (6) The custodian of a public record shall, upon written

1 request, furnish a requesting person a certified copy of a public  
2 record.

3 Enacting section 1. This amendatory act takes effect on  
4 January 1 of the first odd-numbered year that begins at least 6  
5 months after the date it is enacted into law.

6 Enacting section 2. This amendatory act does not take effect  
7 unless Senate Bill No. 670 of the 102nd Legislature is enacted into  
8 law.