

**SUBSTITUTE FOR
HOUSE BILL NO. 4008**

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending sections 1, 2, and 3 (MCL 15.231, 15.232, and 15.233),
section 1 as amended by 1997 PA 6, 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

PART 1

2 Sec. 1. (1) This act **may be cited as the "freedom of**
3 **information and legislative open records act", and this part** shall
4 be known and may be cited as the "freedom of information act".

5 (2) It is the public policy of this state that all persons,
6 except those persons incarcerated in state or local correctional
7 facilities, are entitled to full and complete information regarding



1 the affairs of government and the official acts of those who
2 represent them as public officials and public employees, consistent
3 with this act. The people shall be informed so that they may fully
4 participate in the democratic process.

5 Sec. 2. As used in this ~~act~~**part**:

6 (a) "Cybersecurity assessment" means an investigation
7 undertaken by a person, governmental body, or other entity to
8 identify vulnerabilities in cybersecurity plans.

9 (b) "Cybersecurity incident" includes, but is not limited to,
10 a computer network intrusion or attempted intrusion; a breach of
11 primary computer network controls; unauthorized access to programs,
12 data, or information contained in a computer system; or actions by
13 a third party that materially affect component performance or,
14 because of impact to component systems, prevent normal computer
15 system activities.

16 (c) "Cybersecurity plan" includes, but is not limited to,
17 information about a person's information systems, network security,
18 encryption, network mapping, access control, passwords,
19 authentication practices, computer hardware or software, or
20 response to cybersecurity incidents.

21 (d) "Cybersecurity vulnerability" means a deficiency within
22 computer hardware or software, or within a computer network or
23 information system, that could be exploited by unauthorized parties
24 for use against an individual computer user or a computer network
25 or information system.

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



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

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

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

6 (g) "Person" means an individual, corporation, limited
7 liability company, partnership, firm, organization, association,
8 governmental entity, or other legal entity. Person does not include
9 an individual serving a sentence of imprisonment in a state or
10 county correctional facility in this state or any other state, or
11 in a federal correctional facility.

12 (h) "Public body" means any of the following:

13 (i) A state officer, employee, agency, department, division,
14 bureau, board, commission, council, authority, or other body in the
15 executive branch of the state government. ~~but does not include~~
16 ~~the governor or lieutenant governor, the executive office of the~~
17 ~~governor or lieutenant governor, or employees thereof.~~

18 ~~(ii) An agency, board, commission, or council in the~~
19 ~~legislative branch of the state government.~~

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

24 (iii) ~~(iv)~~ Any other body that is created by state or local
25 authority or is primarily funded by or through state or local
26 authority, except that **it does not include** the judiciary, including
27 the office of the county clerk and its employees when acting in the
28 capacity of clerk to the circuit court, ~~is not included in the~~
29 ~~definition of public body.~~ **or an entity in the legislative branch of**



1 **state government.**

2 (i) "Public record" means a writing prepared, owned, used, in
3 the possession of, or retained by a public body in the performance
4 of an official function, from the time it is created. Public record
5 does not include computer software. This act separates public
6 records into the following 2 classes:

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

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

10 (j) "Software" means a set of statements or instructions that
11 when incorporated in a machine usable medium is capable of causing
12 a machine or device having information processing capabilities to
13 indicate, perform, or achieve a particular function, task, or
14 result. Software does not include computer-stored information or
15 data, or a field name if disclosure of that field name does not
16 violate a software license.

17 (k) "Unusual circumstances" means any 1 or a combination of
18 the following, but only to the extent necessary for the proper
19 processing of a request:

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

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

27 (l) "Writing" means handwriting, typewriting, printing,
28 photostating, photographing, photocopying, and every other means of
29 recording, and includes letters, words, pictures, sounds, or



1 symbols, or combinations thereof, and papers, maps, magnetic or
2 paper tapes, photographic films or prints, microfilm, microfiche,
3 magnetic or punched cards, discs, drums, hard drives, solid state
4 storage components, or other means of recording or retaining
5 meaningful content.

6 (m) "Written request" means a writing that asks for
7 information, and includes a writing transmitted by facsimile,
8 electronic mail, or other electronic means.

9 Sec. 3. (1) Except as expressly provided in section 13, upon
10 providing a public body's FOIA coordinator with a written request
11 that describes a public record sufficiently to enable the public
12 body to find the public record, a person has a right to inspect,
13 copy, or receive copies of the requested public record of the
14 public body. A request from a person, other than an individual who
15 qualifies as indigent under section 4(2)(a), must include the
16 requesting person's complete name, address, and contact
17 information, and, if the request is made by a person other than an
18 individual, the complete name, address, and contact information of
19 the person's agent who is an individual. An address must be written
20 in compliance with United States Postal Service addressing
21 standards. Contact information must include a valid telephone
22 number or electronic mail address. ~~A~~ **Except as to the executive**
23 **office of the governor or lieutenant governor,** a person has a right
24 to subscribe to future issuances of public records that are
25 created, issued, or disseminated on a regular basis. A subscription
26 is valid for up to 6 months, at the request of the subscriber, and
27 is renewable. An employee of a public body who receives a request
28 for a public record shall promptly forward that request to the
29 freedom of information act coordinator.



1 (2) A freedom of information act coordinator shall keep a copy
2 of all written requests for public records on file for no less than
3 1 year.

4 (3) A public body shall furnish a requesting person a
5 reasonable opportunity for inspection and examination of its public
6 records, and shall furnish reasonable facilities for making
7 memoranda or abstracts from its public records during the usual
8 business hours. A public body may make reasonable rules necessary
9 to protect its public records and to prevent excessive and
10 unreasonable interference with the discharge of its functions. A
11 public body shall protect public records from loss, unauthorized
12 alteration, mutilation, or destruction.

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

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

20 (6) The custodian of a public record shall, upon written
21 request, furnish a requesting person a certified copy of a public
22 record.

23 Enacting section 1. This amendatory act takes effect January
24 1, 2020.

25 Enacting section 2. This amendatory act does not take effect
26 unless Senate Bill No.____ or House Bill No.____ (request no.
27 00015'19 *) of the 100th Legislature is enacted into law.

