

HOUSE BILL NO. 4392

March 02, 2021, Introduced by Reps. Bollin, Berman, Borton, Sneller, Cherry, Ellison, Hope, Scott, Posthumus, Paquette, Liberati, Steenland, Martin, Steckloff, Outman, Howell, Rabhi, Tyrone Carter, O'Neal, Kuppa, Breen, Puri, Young, Pohutsky, Brabec, Aiyash, Morse, Manoogian, Camilleri, LaGrand, Garza, Weiss, Hood, Cambensy, Jones, Steven Johnson, Sabo, Shannon, Sowerby, Haadsma, Reilly, Brenda Carter, Brixie, Lasinski, Yaroch, Stone, Calley, Witwer, Coleman and Glenn 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 ~~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.

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

4 (i) Interfere with law enforcement proceedings.

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

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

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

12 (v) Disclose law enforcement investigative techniques or
13 procedures.

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

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

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

24 (e) A public record or information described in this section
25 that is furnished by the public body originally compiling,
26 preparing, or receiving the record or information to a public
27 officer or public body in connection with the performance of the
28 duties of that public officer or public body, if the considerations
29 originally giving rise to the exempt nature of the public record

1 remain applicable. **For purposes of this subdivision, "public body"**
2 **includes a public body as defined in part 2.**

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

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

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

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

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

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

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

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

29 (i) An agreement is entered into.

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

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

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

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

1 336, MCL 423.201 to 423.217.

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

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

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

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

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

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

1 any of the following:

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

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

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

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

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

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

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

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

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

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

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

1 or information pertaining to 1 or more of the following:

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

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

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

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

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

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

1 the position.

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

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

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

28 **(bb) Records or information in the possession of the executive**
29 **office of the governor or lieutenant governor or of an employee of**

1 either of those offices that relates to any of the following:

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

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

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

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

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

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

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

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

1 (dd) Records created, prepared, owned, used, in the possession
2 of, or retained by the executive office of the governor or
3 lieutenant governor or an employee of either of those offices prior
4 to January 1, 2022.

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

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

19 (gg) The cell phone number of the governor or lieutenant
20 governor or an employee of the executive office of the governor or
21 lieutenant governor.

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

1 marketing, or solicitation, unless that public body determines that
2 the use is consistent with the educational mission of the public
3 body and beneficial to the affected students. A public body that is
4 a local or intermediate school district or a public school academy
5 may take steps to ensure that directory information disclosed under
6 this subsection ~~shall is~~ not be used, rented, or sold for the
7 purpose of surveys, marketing, or solicitation. Before disclosing
8 the directory information, a public body that is a local or
9 intermediate school district or a public school academy may require
10 the requester to execute an affidavit stating that directory
11 information provided under this subsection ~~shall will~~ not be used,
12 rented, or sold for the purpose of surveys, marketing, or
13 solicitation.

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

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

28 Enacting section 1. This amendatory act takes effect January
29 1, 2022.

1 Enacting section 2. This amendatory act does not take effect
2 unless Senate Bill No.____ or House Bill No. 4383 (request no.
3 00260'21 *) of the 101st Legislature is enacted into law.