

**SUBSTITUTE FOR  
HOUSE BILL NO. 4007**

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 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  
7 purposes, but only to the extent that disclosure as a public record  
8 would do any of the following:

9           (i) Interfere with law enforcement proceedings.



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

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

4           (iv) Disclose the identity of a confidential source, or if the  
5 record is compiled by a law enforcement agency in the course of a  
6 criminal investigation, disclose confidential information furnished  
7 only by a confidential source.

8           (v) Disclose law enforcement investigative techniques or  
9 procedures.

10          (vi) Endanger the life or physical safety of law enforcement  
11 personnel.

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

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

20          (e) A public record or information described in this section  
21 that is furnished by the public body originally compiling,  
22 preparing, or receiving the record or information to a public  
23 officer or public body in connection with the performance of the  
24 duties of that public officer or public body, if the considerations  
25 originally giving rise to the exempt nature of the public record  
26 remain applicable. **For purposes of this subdivision, "public body"**  
27 **includes a public body as defined in part 2.**

28          (f) Trade secrets or commercial or financial information  
29 voluntarily provided to an agency for use in developing



1 governmental policy if:

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

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

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

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

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

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

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

25 (i) An agreement is entered into.

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

29 (k) Test questions and answers, scoring keys, and other



1 examination instruments or data used to administer a license,  
2 public employment, or academic examination, unless the public  
3 interest in disclosure under this act outweighs the public interest  
4 in nondisclosure.

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

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

27 (n) Records of law enforcement communication codes, or plans  
28 for deployment of law enforcement personnel, that if disclosed  
29 would prejudice a public body's ability to protect the public



1 safety unless the public interest in disclosure under this act  
2 outweighs the public interest in nondisclosure in the particular  
3 instance.

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

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

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

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

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

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

28 (ii) Identify or provide a means of identifying a law  
29 enforcement undercover officer or agent or a plain clothes officer



1 as a law enforcement officer or agent.

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

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

8 (v) Disclose operational instructions for law enforcement  
9 officers or agents.

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

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

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

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

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

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

27 (i) The fact that an allegation has been received and an  
28 investigation is being conducted, and the date the allegation was



1 received.

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

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

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

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

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

28 (y) Records or information of measures designed to protect the  
29 security or safety of persons or property, or the confidentiality,



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

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

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

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

28 **(i) The appointment of an individual as a department or agency**  
29 **director; as a member of a board, commission, or council; to fill a**





1 vacancy on a court pursuant to section 23 of article VI of the  
2 state constitution of 1963; or to any other position the governor  
3 appoints as provided by law. After an individual has been appointed  
4 to a position described in this subparagraph, the exemption does  
5 not apply to records or information that relates to that individual  
6 except as to a letter of recommendation or reference.

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

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

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

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

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

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

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

27 (dd) Records created, prepared, owned, used, in the possession  
28 of, or retained by the executive office of the governor or  
29 lieutenant governor or an employee of either of those offices prior



1 to January 1, 2020.

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

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

16 (gg) The cell phone number of the governor or lieutenant  
17 governor or an employee of the executive office of the governor or  
18 lieutenant governor.

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



1 a local or intermediate school district or a public school academy  
2 may take steps to ensure that directory information disclosed under  
3 this subsection ~~shall-is~~ not be used, rented, or sold for the  
4 purpose of surveys, marketing, or solicitation. Before disclosing  
5 the directory information, a public body that is a local or  
6 intermediate school district or a public school academy may require  
7 the requester to execute an affidavit stating that directory  
8 information provided under this subsection ~~shall-will~~ not be used,  
9 rented, or sold for the purpose of surveys, marketing, or  
10 solicitation.

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

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

25 Enacting section 1. This amendatory act takes effect January  
26 1, 2020.

27 Enacting section 2. This amendatory act does not take effect  
28 unless House Bill No. 4011 of the 100th Legislature is enacted into  
29 law.

