

**SUBSTITUTE FOR
HOUSE BILL NO. 4378**

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 (vii) **Disclose the identity of a party who, as described in**
13 **subdivision (bb), proceeds anonymously in a civil action in which**
14 **the party alleges that he or she was the victim of sexual**
15 **misconduct. For the purpose of securing his or her anonymity, that**
16 **party or his or her designee may provide written notification of**
17 **the civil action and his or her wish to remain anonymous to any law**
18 **enforcement agency that has investigating records subject to this**
19 **subparagraph, and the law enforcement agency shall retain a copy of**
20 **that notification in its files with those investigating records.**

21 (c) A public record that if disclosed would prejudice a public
22 body's ability to maintain the physical security of custodial or
23 penal institutions occupied by persons arrested or convicted of a
24 crime or admitted because of a mental disability, unless the public
25 interest in disclosure under this act outweighs the public interest
26 in nondisclosure.

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

29 (e) A public record or information described in this section



1 that is furnished by the public body originally compiling,
2 preparing, or receiving the record or information to a public
3 officer or public body in connection with the performance of the
4 duties of that public officer or public body, if the considerations
5 originally giving rise to the exempt nature of the public record
6 remain applicable.

7 (f) Trade secrets or commercial or financial information
8 voluntarily provided to an agency for use in developing
9 governmental policy if:

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

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

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

21 (g) Information or records subject to the attorney-client
22 privilege.

23 (h) Information or records subject to the physician-patient
24 privilege, the psychologist-patient privilege, the minister,
25 priest, or Christian Science practitioner privilege, or other
26 privilege recognized by statute or court rule.

27 (i) A bid or proposal by a person to enter into a contract or
28 agreement, until the time for the public opening of bids or
29 proposals, or if a public opening is not to be conducted, until the



1 deadline for submission of bids or proposals has expired.

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

4 (i) An agreement is entered into.

5 (ii) Three years have elapsed since the making of the
6 appraisal, unless litigation relative to the acquisition has not
7 yet terminated.

8 (k) Test questions and answers, scoring keys, and other
9 examination instruments or data used to administer a license,
10 public employment, or academic examination, unless the public
11 interest in disclosure under this act outweighs the public interest
12 in nondisclosure.

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

17 (m) Communications and notes within a public body or between
18 public bodies of an advisory nature to the extent that they cover
19 other than purely factual materials and are preliminary to a final
20 agency determination of policy or action. This exemption does not
21 apply unless the public body shows that in the particular instance
22 the public interest in encouraging frank communication between
23 officials and employees of public bodies clearly outweighs the
24 public interest in disclosure. This exemption does not constitute
25 an exemption under state law for purposes of section 8(h) of the
26 open meetings act, 1976 PA 267, MCL 15.268. As used in this
27 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
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



1 a complaint is issued. This subdivision does not apply to records
2 or information pertaining to 1 or more of the following:

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

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

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

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

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

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



1 public record relates to an individual identified as a finalist for
2 the position.

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

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

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

29 **(bb) Information that would reveal the identity of a party who**



1 proceeds anonymously in a civil action in which the party alleges
2 that he or she was the victim of sexual misconduct. As used in this
3 subdivision, "sexual misconduct" means the conduct described in
4 section 90, 136, 145a, 145b, 145c, 520b, 520c, 520d, 520e, or 520g
5 of the Michigan penal code, 1931 PA 328, MCL 750.90, 750.136,
6 750.145a, 750.145b, 750.145c, 750.520b, 750.520c, 750.520d,
7 750.520e, and 750.520g, regardless of whether the conduct resulted
8 in a criminal conviction.

9 (2) A public body shall exempt from disclosure information
10 that, if released, would prevent the public body from complying
11 with 20 USC 1232g, commonly referred to as the family educational
12 rights and privacy act of 1974. A public body that is a local or
13 intermediate school district or a public school academy shall
14 exempt from disclosure directory information, as defined by 20 USC
15 1232g, commonly referred to as the family educational rights and
16 privacy act of 1974, requested for the purpose of surveys,
17 marketing, or solicitation, unless that public body determines that
18 the use is consistent with the educational mission of the public
19 body and beneficial to the affected students. A public body that is
20 a local or intermediate school district or a public school academy
21 may take steps to ensure that directory information disclosed under
22 this subsection ~~shall is~~ not be used, rented, or sold for the
23 purpose of surveys, marketing, or solicitation. Before disclosing
24 the directory information, a public body that is a local or
25 intermediate school district or a public school academy may require
26 the requester to execute an affidavit stating that directory
27 information provided under this subsection ~~shall will~~ not be used,
28 rented, or sold for the purpose of surveys, marketing, or
29 solicitation.



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

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

