

HOUSE BILL No. 4936

June 17, 1997, Introduced by Reps. Dobronski, Wallace, Brater, Hale, Brewer, Martinez, Anthony, Gubow, Parks, Brackenridge, Cropsey and Willard and referred to the Committee on House Oversight and Ethics.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending section 13 (MCL 15.243), as amended by 1996 PA 553.

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:

3 (a) ~~Information of a personal nature where the public dis-~~
4 ~~closure of the information~~ PERSONNEL FILES, MEDICAL FILES, OR
5 SIMILAR FILES, OR INFORMATION WHICH IF DISCLOSED would constitute
6 a clearly unwarranted invasion of ~~an individual's~~ PERSONAL
7 privacy.

8 (b) Investigating records compiled for law enforcement pur-
9 poses, but only to the extent that disclosure as a public record
10 would do any of the following:

- 1 (i) Interfere with law enforcement proceedings.
- 2 (ii) Deprive a person of the right to a fair trial or
3 impartial administrative adjudication.
- 4 (iii) Constitute an unwarranted invasion of personal
5 privacy.
- 6 (iv) Disclose the identity of a confidential source, or if
7 the record is compiled by a law enforcement agency in the course
8 of a criminal investigation, disclose confidential information
9 furnished only by a confidential source.
- 10 (v) Disclose law enforcement investigative techniques or
11 procedures.
- 12 (vi) Endanger the life or physical safety of law enforcement
13 personnel.
- 14 (c) A public record that if disclosed would prejudice a
15 public body's ability to maintain the physical security of custo-
16 dial or penal institutions occupied by persons arrested or con-
17 victed of a crime or admitted because of a mental disability,
18 unless the public interest in disclosure under this act outweighs
19 the public interest in nondisclosure.
- 20 (d) Records or information specifically described and
21 exempted from disclosure by statute.
- 22 (e) Information the release of which would prevent the
23 public body from complying with section 444 of subpart 4 of part
24 C of the general education provisions act, title IV of Public Law
25 90-247, 20 U.S.C. 1232g, commonly referred to as the family edu-
26 cational rights and privacy act of 1974.

1 (f) A public record or information described in this section
2 that is furnished by the public body originally compiling,
3 preparing, or receiving the record or information to a public
4 officer or public body in connection with the performance of the
5 duties of that public officer or public body, if the considera-
6 tions originally giving rise to the exempt nature of the public
7 record remain applicable.

8 (g) Trade secrets or commercial or financial information
9 voluntarily provided to an agency for use in developing govern-
10 mental policy if:

11 (i) The information is submitted upon a promise of confiden-
12 tiality by the public body.

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

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

23 (h) Information or records subject to the attorney-client
24 privilege.

25 (i) Information or records subject to the physician-patient
26 privilege, the psychologist-patient privilege, the minister,

1 priest, or Christian Science practitioner privilege, or other
2 privilege recognized by statute or court rule.

3 (j) A bid or proposal by a person to enter into a contract
4 or agreement, until the time for the public opening of bids or
5 proposals, or if a public opening is not to be conducted, until
6 the deadline for submission of bids or proposals has expired.

7 (k) Appraisals of real property to be acquired by the public
8 body until EITHER OF THE FOLLOWING OCCURS:

9 (i) ~~an~~ AN agreement is entered into. ~~or~~

10 (ii) ~~3~~ THREE years ~~has~~ HAVE elapsed since the making of
11 the appraisal, unless litigation relative to the acquisition has
12 not yet terminated.

13 (l) Test questions and answers, scoring keys, and other
14 examination instruments or data used to administer a license,
15 public employment, or academic examination, unless the public
16 interest in disclosure under this act outweighs the public inter-
17 est in nondisclosure.

18 (m) Medical, counseling, or psychological facts or evalu-
19 ations concerning an individual if the individual's identity
20 would be revealed by a disclosure of those facts or evaluation.

21 (n) Communications and notes within a public body or between
22 public bodies of an advisory nature to the extent that they cover
23 other than purely factual materials and are preliminary to a
24 final agency determination of policy or action. This exemption
25 does not apply unless the public body shows that in the particu-
26 lar instance the public interest in encouraging frank
27 communications between officials and employees of public bodies

1 clearly outweighs the public interest in disclosure. This
2 exemption does not constitute an exemption under state law for
3 purposes of section 8(h) of the open meetings act, ~~Act No. 267~~
4 ~~of the Public Acts of 1976, being section 15.268 of the Michigan~~
5 ~~Compiled Laws~~ 1976 PA 267, MCL 15.268. As used in this subdivi-
6 sion, "determination of policy or action" includes a determina-
7 tion relating to collective bargaining, unless the public record
8 is otherwise required to be made available under ~~Act No. 336 of~~
9 ~~the Public Acts of 1947, being sections 423.201 to 423.217 of the~~
10 ~~Michigan Compiled Laws~~ 1947 PA 336, MCL 423.201 TO 423.217.

11 (o) Records of law enforcement communication codes, or plans
12 for deployment of law enforcement personnel, that if disclosed
13 would prejudice a public body's ability to protect the public
14 safety unless the public interest in disclosure under this act
15 outweighs the public interest in nondisclosure in the particular
16 instance.

17 (p) Information that would reveal the exact location of
18 archaeological sites. The secretary of state may promulgate
19 rules pursuant to the administrative procedures act of 1969, ~~Act~~
20 ~~No. 306 of the Public Acts of 1969, being sections 24.201 to~~
21 ~~24.328 of the Michigan Compiled Laws~~ 1969 PA 306, MCL 24.201 TO
22 24.328, to provide for the disclosure of the location of archaeo-
23 logical sites for purposes relating to the preservation or scien-
24 tific examination of sites.

25 (q) Testing data developed by a public body in determining
26 whether bidders' products meet the specifications for purchase of
27 those products by the public body, if disclosure of the data

1 would reveal that only 1 bidder has met the specifications. This
2 subdivision does not apply after 1 year has elapsed from the time
3 the public body completes the testing.

4 (r) Academic transcripts of an institution of higher educa-
5 tion established under section 5, 6, or 7 of article VIII of the
6 state constitution of 1963, if the transcript pertains to a stu-
7 dent who is delinquent in the payment of financial obligations to
8 the institution.

9 (s) Records of any campaign committee including any commit-
10 tee that receives money from a state campaign fund.

11 (t) Unless the public interest in disclosure outweighs the
12 public interest in nondisclosure in the particular instance,
13 public records of a law enforcement agency, the release of which
14 would do any of the following:

15 (i) Identify or provide a means of identifying an informer.

16 (ii) Identify or provide a means of identifying a law
17 enforcement undercover officer or agent or a plain clothes offi-
18 cer as a law enforcement officer or agent.

19 (iii) Disclose the personal address or telephone number of A
20 law enforcement ~~officers or agents or any~~ OFFICER OR AGENT OR A
21 special ~~skills~~ SKILL that ~~they~~ HE OR SHE may have.

22 (iv) Disclose the name, address, or telephone numbers of
23 family members, relatives, children, or parents of law enforce-
24 ment officers or agents.

25 (v) Disclose operational instructions for law enforcement
26 officers or agents.

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

3 (vii) Endanger the life or safety of law enforcement offi-
4 cers or agents or their families, relatives, children, parents,
5 or those who furnish information to law enforcement departments
6 or agencies.

7 (viii) Identify or provide a means of identifying a person
8 as a law enforcement officer, agent, or informer.

9 (ix) Disclose personnel records of law enforcement
10 agencies.

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

14 (u) Except as otherwise provided in this subdivision,
15 records and information pertaining to an investigation or a com-
16 pliance conference conducted by the department of consumer and
17 industry services under article 15 of the public health code,
18 ~~Act No. 368 of the Public Acts of 1978, being sections 333.16101~~
19 ~~to 333.18838 of the Michigan Compiled Laws~~ 1978 PA 368, MCL
20 333.16101 TO 333.18838, before a complaint is issued. This sub-
21 division does not apply to records and information pertaining to
22 1 or more of the following:

23 (i) The fact that an allegation has been received and an
24 investigation is being conducted, and the date the allegation was
25 received.

26 (ii) The fact that an allegation was received by the
27 department of consumer and industry services; the fact that the

1 department of consumer and industry services did not issue a
2 complaint for the allegation; and the fact that the allegation
3 was dismissed.

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

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

10 (x) Information or records that would disclose the social
11 security number of any individual.

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

1 (2) This act does not authorize the withholding of
2 information otherwise required by law to be made available to the
3 public or to a party in a contested case under ~~Act No. 306 of~~
4 ~~the Public Acts of 1969~~ THE ADMINISTRATIVE PROCEDURES ACT OF
5 1969, 1969 PA 306, MCL 24.201 TO 24.328.

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