

SUBSTITUTE FOR  
SENATE BILL NO. 81

A bill to amend 1976 PA 442, entitled  
"Freedom of information act,"  
by amending section 13 (MCL 15.243), as amended by 2002 PA 130.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 13. (1) A public body ~~may~~ SHALL exempt from disclo-  
2   sure AN INDIVIDUAL'S SOCIAL SECURITY NUMBER THAT IS CONTAINED IN  
3   A PUBLIC RECORD. A PUBLIC BODY MAY EXEMPT FROM DISCLOSURE as a  
4   public record under this act any of the following:

5           (a) Information of a personal nature if public disclosure of  
6   the information would constitute a clearly unwarranted invasion  
7   of an individual's 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:

**SB 81, As Passed Senate, May 2, 2002**

Senate Bill No. 81

2

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) A public record or information described in this section  
23 that is furnished by the public body originally compiling, pre-  
24 paring, or receiving the record or information to a public offi-  
25 cer or public body in connection with the performance of the  
26 duties of that public officer or public body, if the

**SB 81, As Passed Senate, May 2, 2002**

Senate Bill No. 81

3

1 considerations originally giving rise to the exempt nature of the  
2 public record remain applicable.

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

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

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

11 (iii) A description of the information is recorded by the  
12 public 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  
15 apply to information submitted as required by law or as a condi-  
16 tion of receiving a governmental contract, license, or other  
17 benefit.

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

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

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

**SB 81, As Passed Senate, May 2, 2002**

Senate Bill No. 81

4

1           (j) Appraisals of real property to be acquired by the public  
2 body until (i) an agreement is entered into; or (ii) 3 years have  
3 elapsed since the making of the appraisal, unless litigation rel-  
4 ative to the acquisition has not yet terminated.

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

10           (l) Medical, counseling, or psychological facts or evalu-  
11 ations concerning an individual if the individual's identity  
12 would be revealed by a disclosure of those facts or evaluation.

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  
16 final agency determination of policy or action. This exemption  
17 does not apply unless the public body shows that in the particu-  
18 lar instance the public interest in encouraging frank communica-  
19 tion between officials and employees of public bodies clearly  
20 outweighs the public interest in disclosure. This exemption does  
21 not constitute an exemption under state law for purposes of sec-  
22 tion 8(h) of the open meetings act, 1976 PA 267, MCL 15.268. As  
23 used in this subdivision, "determination of policy or action"  
24 includes a determination relating to collective bargaining,  
25 unless the public record is otherwise required to be made avail-  
26 able under 1947 PA 336, MCL 423.201 to 423.217.

**SB 81, As Passed Senate, May 2, 2002**

Senate Bill No. 81

5

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

7           (o) Information that would reveal the exact location of  
8 archaeological sites. The department of history, arts, and  
9 libraries may promulgate rules in accordance with the administra-  
10 tive procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328,  
11 to provide for the disclosure of the location of archaeological  
12 sites for purposes relating to the preservation or scientific  
13 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  
17 would 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 educa-  
21 tion established under section 5, 6, or 7 of article VIII of the  
22 state constitution of 1963, if the transcript pertains to a stu-  
23 dent who is delinquent in the payment of financial obligations to  
24 the institution.

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

**SB 81, As Passed Senate, May 2, 2002**

Senate Bill No. 81

6

1           (s) Unless the public interest in disclosure outweighs the  
2 public interest in nondisclosure in the particular instance,  
3 public records of a law enforcement agency, the release of which  
4 would do any of the following:

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

7           (ii) Identify or provide a means of identifying a law  
8 enforcement undercover officer or agent or a plain clothes offi-  
9 cer as a law enforcement officer or agent.

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

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

16           (v) Disclose operational instructions for law enforcement  
17 officers or agents.

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

20           (vii) Endanger the life or safety of law enforcement offi-  
21 cers or agents or their families, relatives, children, parents,  
22 or those who furnish information to law enforcement departments  
23 or agencies.

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

26           (ix) Disclose personnel records of law enforcement  
27 agencies.

**SB 81, As Passed Senate, May 2, 2002**

Senate Bill No. 81

7

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

4           (t) Except as otherwise provided in this subdivision,  
5 records and information pertaining to an investigation or a com-  
6 pliance conference conducted by the department of consumer and  
7 industry services under article 15 of the public health code,  
8 1978 PA 368, MCL 333.16101 to 333.18838, before a complaint is  
9 issued. This subdivision does not apply to records or informa-  
10 tion pertaining to 1 or more of the following:

11           (i) The fact that an allegation has been received and an  
12 investigation is being conducted, and the date the allegation was  
13 received.

14           (ii) The fact that an allegation was received by the depart-  
15 ment of consumer and industry services; the fact that the depart-  
16 ment of consumer and industry services did not issue a complaint  
17 for the allegation; and the fact that the allegation was  
18 dismissed.

19           (u) Records of a public body's security measures, including  
20 security plans, security codes and combinations, passwords,  
21 passes, keys, and security procedures, to the extent that the  
22 records relate to the ongoing security of the public body.

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

25           (w) Information or records that would disclose the social  
26 security number of any individual.

**SB 81, As Passed Senate, May 2, 2002**

Senate Bill No. 81

8

1           (x) Except as otherwise provided in this subdivision, an  
2 application for the position of president of an institution of  
3 higher education established under section 4, 5, or 6 of article  
4 VIII of the state constitution of 1963, materials submitted with  
5 such an application, letters of recommendation or references con-  
6 cerning an applicant, and records or information relating to the  
7 process of searching for and selecting an individual for a posi-  
8 tion described in this subdivision, if the records or information  
9 could be used to identify a candidate for the position. However,  
10 after 1 or more individuals have been identified as finalists for  
11 a position described in this subdivision, this subdivision does  
12 not apply to a public record described in this subdivision,  
13 except a letter of recommendation or reference, to the extent  
14 that the public record relates to an individual identified as a  
15 finalist for the position.

16           (y) Records or information of measures designed to protect  
17 the security or safety of persons or property, whether public or  
18 private, including, but not limited to, building, public works,  
19 and public water supply designs to the extent that those designs  
20 relate to the ongoing security measures of a public body, capa-  
21 bilities and plans for responding to a violation of the Michigan  
22 anti-terrorism act, chapter LXXXIII-A of the Michigan penal code,  
23 1931 PA 328, MCL ~~750.543~~ 750.543A to 750.543z, emergency  
24 response plans, risk planning documents, threat assessments, and  
25 domestic preparedness strategies, unless disclosure would not  
26 impair a public body's ability to protect the security or safety  
27 of persons or property or unless the public interest in



**SB 81, As Passed Senate, May 2, 2002**

Senate Bill No. 81

9

1 disclosure outweighs the public interest in nondisclosure in the  
2 particular instance.

3 (2) A public body shall exempt from disclosure information  
4 that, if released, would prevent the public body from complying  
5 with section 444 of subpart 4 of part C of the general education  
6 provisions act, title IV of Public Law 90-247, 20 U.S.C. 1232g,  
7 commonly referred to as the family educational rights and privacy  
8 act of 1974.

9 (3) This act does not authorize the withholding of informa-  
10 tion otherwise required by law to be made available to the public  
11 or to a party in a contested case under the administrative proce-  
12 dures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

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