

# HOUSE BILL NO. 5423

February 07, 2024, Introduced by Reps. Jaime Greene, Steele, St. Germaine, Tisdell, Martin, Borton, Kuhn, Wozniak, Kunse, Bierlein, Paquette, Bruck, Bollin, BeGole and Lightner and referred to the Committee on Government Operations.

A bill to amend 1976 PA 442, entitled "Freedom of information act," by amending sections 13 and 14 (MCL 15.243 and 15.244), section 13 as amended by 2023 PA 64.

**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~~ records or  
3 information listed in this subsection or, as applicable to certain  
4 public bodies, subsection (2) or (3), but the public body is not  
5 required to do so. If a public body chooses to invoke any exemption

1 under this subsection or, as applicable to certain public bodies,  
2 subsection (2) or (3), it shall provide a complete statement of  
3 facts that explains why the claimed exemption applies and why the  
4 public interest in nondisclosure outweighs the public interest in  
5 disclosure in the particular instance. The exemptions that a public  
6 body may assert under this subsection are as follows:

7 (a) Information of a personal nature if public disclosure of  
8 the information would constitute a clearly unwarranted invasion of  
9 an individual's privacy. **This exemption does not apply to email**  
10 **addresses or other contact information for working groups, or**  
11 **similar information for members, employees, contractors, or vendors**  
12 **of a public body.**

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

16 (i) Interfere with law enforcement proceedings.

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

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

20 (iv) Disclose the identity of a confidential source, or if the  
21 record is compiled by a law enforcement agency in the course of a  
22 criminal investigation, disclose confidential information furnished  
23 only by a confidential source.

24 (v) Disclose law enforcement investigative techniques or  
25 procedures.

26 (vi) Endanger the life or physical safety of law enforcement  
27 personnel.

28 (vii) Disclose the identity of a party who, as described in  
29 subdivision ~~(ee)~~, **(aa)**, proceeds anonymously in a civil action in

1 which the party alleges that the party was the victim of sexual  
2 misconduct. For the purpose of securing the party's anonymity, that  
3 party or the party's designee may provide written notification of  
4 the civil action and the party's wish to remain anonymous to any  
5 law enforcement agency that has investigating records subject to  
6 this subparagraph, and the law enforcement agency shall retain a  
7 copy of that notification in its files with those investigating  
8 records.

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

15 (d) Records or information specifically described and exempted  
16 from disclosure by statute.

17 (e) A public record or information described in this section  
18 that is furnished by the public body originally compiling,  
19 preparing, or receiving the record or information to a public  
20 officer or public body in connection with the performance of the  
21 duties of that public officer or public body, if the considerations  
22 originally giving rise to the exempt nature of the public record  
23 remain applicable.

24 (f) Trade secrets or commercial or financial information  
25 voluntarily provided to an agency for use in developing  
26 governmental policy if:

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

29 (ii) The promise of confidentiality is authorized by the chief

1 administrative officer of the public body or by an elected official  
2 at the time the promise is made.

3 (iii) A description of the information is recorded by the public  
4 body within a reasonable time after it has been submitted,  
5 maintained in a central place within the public body, and made  
6 available to a person upon request. This subdivision does not apply  
7 to ~~information~~ **any of the following:**

8 (A) **Information** submitted as required by law or as a condition  
9 of receiving a governmental contract, license, or other benefit.

10 (B) **A final governmental policy developed as a result of**  
11 **commercial or financial information, or to any public record**  
12 **evidencing the fiscal impacts of that policy.**

13 (C) **A contract evidencing an economic development deal.**

14 (g) Information or records subject to ~~the attorney-client~~ **a**  
15 **legal privilege or protection recognized by statute, the common**  
16 **law, or court rule.**

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

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

25 (i) ~~(j)~~ Appraisals of real property to be acquired by the  
26 public body until either of the following occurs:

27 (i) An agreement is entered into.

28 (ii) Three years have elapsed since the making of the  
29 appraisal, unless litigation relative to the acquisition has not

1 yet terminated.

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

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

12 (l) ~~(m)~~—Communications and notes within a public body or  
13 between public bodies of an advisory nature to the extent that they  
14 cover other than purely factual materials and are preliminary to a  
15 final agency determination of policy or action. This exemption does  
16 not apply unless the public body shows that in the particular  
17 instance the public interest in encouraging frank communication  
18 between officials and employees of public bodies ~~clearly~~  
19 **substantially** outweighs the public interest in disclosure. This  
20 exemption does not constitute an exemption under state law for  
21 purposes of section ~~§(h)~~—**8(1)(h)** of the open meetings act, 1976 PA  
22 267, MCL 15.268. As used in this subdivision, "determination of  
23 policy or action" includes a determination relating to collective  
24 bargaining, unless the public record is otherwise required to be  
25 made available under 1947 PA 336, MCL 423.201 to 423.217.

26 (m) ~~(n)~~—Records of law enforcement communication codes, or  
27 plans for deployment of law enforcement personnel, that if  
28 disclosed would prejudice a public body's ability to protect the  
29 public safety unless the public interest in disclosure under this

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

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

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

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

20       **(q)** ~~(r)~~—Records of a campaign committee including a committee  
21 that receives money from a state campaign fund.

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

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

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

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

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

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

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

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

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

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

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

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

28           (i) The fact that an allegation has been received and an  
29 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 (t) ~~(u)~~—Records of a public body's security measures,  
6 including security plans, security codes and combinations,  
7 passwords, passes, keys, and security procedures, to the extent  
8 that the records relate to the ongoing security of the public body.  
9 **This exemption does not apply to email addresses or other contact**  
10 **information for working groups, or similar information for members,**  
11 **employees, contractors, or vendors, of a public body.**

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

14 (v) ~~(w)~~—Information or records that would disclose the Social  
15 Security number of an individual. **This exemption is mandatory for**  
16 **purposes of section 4(3)(a).**

17 (w) ~~(\*)~~—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       **(x)** ~~(y)~~—Records or information of measures designed to protect  
4 the security or safety of persons or property, or the  
5 confidentiality, integrity, or availability of information systems,  
6 whether public or private, including, but not limited to, building,  
7 public works, and public water supply designs to the extent that  
8 those designs relate to the ongoing security measures of a public  
9 body, 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. **This exemption does not apply to email addresses or other  
19 contact information for working groups, or similar information for  
20 members, employees, contractors, or vendors, of a public body.**

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

27       ~~(aa) Research data on road and attendant infrastructure  
28 collected, measured, recorded, processed, or disseminated by a  
29 public agency or private entity, or information about software or~~

1 ~~hardware created or used by the private entity for such purposes.~~

2       **(z)** ~~(bb)~~ Records or information that would reveal the specific  
3 location or GPS coordinates of game, including, but not limited to,  
4 records or information of the specific location or GPS coordinates  
5 of game obtained by the department of natural resources during any  
6 restoration, management, or research project conducted under  
7 section 40501 of the natural resources and environmental protection  
8 act, 1994 PA 451, MCL 324.40501, or in connection with the  
9 expenditure of money under section 43553 of the natural resources  
10 and environmental protection act, 1994 PA 451, MCL 324.43553. As  
11 used in this subdivision, "game" means that term as defined in  
12 section 40103 of the natural resources and environmental protection  
13 act, 1994 PA 451, MCL 324.40103.

14       **(aa)** ~~(ee)~~ Information that would reveal the identity of a  
15 party who proceeds anonymously in a civil action in which the party  
16 alleges that the party was the victim of sexual misconduct. As used  
17 in this subdivision, "sexual misconduct" means the conduct  
18 described in section 90, 136, 145a, 145b, 145c, 520b, 520c, 520d,  
19 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.90,  
20 750.136, 750.145a, 750.145b, 750.145c, 750.520b, 750.520c,  
21 750.520d, 750.520e, and 750.520g, regardless of whether the conduct  
22 resulted in a criminal conviction.

23       **(2) In addition to the grounds for exemption set forth in**  
24 **subsection (1), the executive office of the governor and lieutenant**  
25 **governor may exempt from disclosure as a public record under this**  
26 **act any of the following:**

27       **(a) 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, 2025.

2 (b) 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 that 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 (3) In addition to the grounds for exemption set forth in  
14 subsection (1), a public body that is a state legislative public  
15 body as described in section 2(j)(ii) may exempt from disclosure as  
16 a public record under this act any of the following:

17 (a) Records created, prepared, owned, used, in the possession  
18 of, or retained by a senator, representative, or employee in the  
19 legislative branch of the state government prior to January 1,  
20 2025.

21 (b) Communications, including any related records or  
22 information, between a legislator or a legislator's office and a  
23 constituent, other than a person required to be registered as a  
24 lobbyist under 1978 PA 472, MCL 4.411 to 4.431. For purposes of  
25 this subdivision, "constituent" means any of the following:

26 (i) An individual who is registered to vote in the district the  
27 legislator is elected to represent.

28 (ii) An individual who is a resident of the district the  
29 legislator is elected to represent and who is not registered to

1 vote outside of that district.

2 (iii) An individual other than an individual described in  
3 subparagraph (i) or (ii) if it can be reasonably inferred that the  
4 individual intended that the communication be with the legislator  
5 elected to represent the district where the individual is  
6 registered to vote or, if not registered to vote, resides.

7 (c) Records created, prepared, owned, used, in the possession  
8 of, or retained by the majority or minority caucuses of each house  
9 of the legislature.

10 (d) The personal cellular telephone number of any legislator  
11 or employee of the state legislative public body.

12 (4) ~~(2)~~—A public body shall exempt from disclosure information  
13 that, if released, would prevent the public body from complying  
14 with 20 USC 1232g, commonly referred to as the family educational  
15 rights and privacy act of 1974. A public body that is a local or  
16 intermediate school district or a public school academy shall  
17 exempt from disclosure directory information, as defined by 20 USC  
18 1232g, commonly referred to as the family educational rights and  
19 privacy act of 1974, requested for the purpose of surveys,  
20 marketing, or solicitation, unless that public body determines that  
21 the use is consistent with the educational mission of the public  
22 body and beneficial to the affected students. A public body that is  
23 a local or intermediate school district or a public school academy  
24 may take steps to ensure that directory information disclosed under  
25 this subsection is not used, rented, or sold for the purpose of  
26 surveys, marketing, or solicitation. Before disclosing the  
27 directory information, a public body that is a local or  
28 intermediate school district or a public school academy may require  
29 the requestor to execute an affidavit stating that directory

1 information provided under this subsection will not be used,  
 2 rented, or sold for the purpose of surveys, marketing, or  
 3 solicitation. **This exemption may be considered mandatory for  
 4 purposes of section 4(3)(a).**

5 (5) ~~(3)~~—This act does not authorize the withholding of  
 6 information otherwise required by law to be made available to the  
 7 public or to a party in a contested case under the administrative  
 8 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

9 (6) ~~(4) Except as otherwise exempt under subsection (1), this~~  
 10 ~~act does not authorize the withholding of a public record in the~~  
 11 ~~possession of the executive office of the governor or lieutenant~~  
 12 ~~governor, or an employee of either executive office, if the public~~  
 13 ~~record is transferred to the executive office of the governor or~~  
 14 ~~lieutenant governor, or an employee of either executive office,~~  
 15 ~~after a request for the public record has been received by a state~~  
 16 ~~officer, employee, agency, department, division, bureau, board,~~  
 17 ~~commission, council, authority, or other body in the executive~~  
 18 ~~branch of government that is subject to this act.~~ **A public body that**  
 19 **applies an exemption described in this section to redact a portion**  
 20 **of a public record must specifically identify which exemption**  
 21 **applies to that redaction. A general assertion of an exemption in**  
 22 **support of 2 or more redactions from a public record does not**  
 23 **satisfy this requirement; instead, each redaction must be**  
 24 **accompanied with a specific citation to at least 1 statutory**  
 25 **exemption asserted in support of the redaction.**

26 (7) A public body is not permitted to withhold the existence  
 27 of a public record under this section, even if the entire contents  
 28 of the public record is thought to be exempt under 1 or more  
 29 provisions of this section. A public record thought to be entirely

1 exempt must be produced, with appropriate redactions as described  
2 in subsection (6), including a specific indication of each asserted  
3 exemption as described in subsection (6).

4 (8) If a public body asserts an exemption described in this  
5 section, the public body bears the burden of proving, by clear and  
6 convincing evidence, that the exemption applies in the particular  
7 instance, and all public records are presumed to be subject to  
8 disclosure absent such a showing. A public body that, on appeal,  
9 has been determined to have misapplied an exemption is subject to  
10 the monetary penalties described in this act.

11 Sec. 14. ~~(1)~~ If a public record contains material ~~which that~~  
12 is not exempt under section 13, ~~as well as and~~ material ~~which that~~  
13 is exempt ~~from disclosure~~ under section 13, the public body shall  
14 separate the exempt and nonexempt material and make the nonexempt  
15 material available for examination and copying. **The public body**  
16 **shall also describe, with as much specificity as possible, the**  
17 **nature of the exempt information, including details relating to the**  
18 **contents of the exempt material, the senders and receivers of any**  
19 **exempt correspondence, and other factual information that would**  
20 **help a requestor determine whether an exemption is being applied**  
21 **properly. A public body need not provide information that would**  
22 **defeat the purpose of an exemption, but must provide as much**  
23 **information as is otherwise possible. This section is to be**  
24 **construed strictly against the public body.**

25 ~~(2) When designing a public record, a public body shall, to~~  
26 ~~the extent practicable, facilitate a separation of exempt from~~  
27 ~~nonexempt information. If the separation is readily apparent to a~~  
28 ~~person requesting to inspect or receive copies of the form, the~~  
29 ~~public body shall generally describe the material exempted unless~~

1 ~~that description would reveal the contents of the exempt~~  
2 ~~information and thus defeat the purpose of the exemption.~~

3       Enacting section 1. This amendatory act does not take effect  
4 unless all of the following bills of the 102nd Legislature are  
5 enacted into law:

6       (a) Senate Bill No. \_\_\_\_ or House Bill No. 5427 (request no.  
7 04892'23).

8       (b) Senate Bill No. \_\_\_\_ or House Bill No. 5426 (request no.  
9 05111'23).

10       (c) Senate Bill No. \_\_\_\_ or House Bill No. 5422 (request no.  
11 05112'23).

12       (d) Senate Bill No. \_\_\_\_ or House Bill No. 5425 (request no.  
13 05113'23).

14       (e) Senate Bill No. \_\_\_\_ or House Bill No. 5424 (request no.  
15 05114'23).