

# HOUSE BILL NO. 5749

May 30, 2024, Introduced by Reps. Tyrone Carter, Hoskins, Brabec, Wilson, Young, Grant, Dievendorf, Pohutsky, MacDonell, Wegela, Brixie, Liberati, Tsernoglou, Haadsma, Roth, Farhat, Hope, Scott, Snyder and Aiyash and referred to the Committee on Criminal Justice.

A bill to amend 1976 PA 442, entitled  
"Freedom of information act,"  
by amending section 13 (MCL 15.243), as amended by 2021 PA 33.

## 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. **For the purpose of the exemption under**  
6 **this subdivision, the release of law enforcement disciplinary**  
7 **records is not an unwarranted invasion of an individual's privacy.**

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

4 (i) Interfere with law enforcement proceedings.

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

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

8 (iv) Disclose the identity of a confidential source, or if the  
9 record is compiled by a law enforcement agency in the course of a  
10 criminal investigation, disclose confidential information furnished  
11 only by a confidential source.

12 (v) Disclose law enforcement investigative techniques or  
13 procedures.

14 (vi) Endanger the life or physical safety of law enforcement  
15 personnel.

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

22 (d) Records or information specifically described and exempted  
23 from disclosure by statute.

24 (e) A public record or information described in this section  
25 that is furnished by the public body originally compiling,  
26 preparing, or receiving the record or information to a public  
27 officer or public body in connection with the performance of the  
28 duties of that public officer or public body, if the considerations  
29 originally giving rise to the exempt nature of the public record

1 remain applicable.

2 (f) Trade secrets or commercial or financial information  
3 voluntarily provided to an agency for use in developing  
4 governmental policy if:

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

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

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

16 (g) Information or records subject to the attorney-client  
17 privilege.

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

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

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

28 (i) An agreement is entered into.

29 (ii) Three years have elapsed since the making of the

1 appraisal, unless litigation relative to the acquisition has not  
2 yet terminated.

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

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

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

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

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

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

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

22 (s) ~~Unless~~ **Only if** the public interest in ~~disclosure~~  
23 **nondisclosure** outweighs the public interest in ~~nondisclosure~~  
24 **disclosure** in the particular instance, public records of a law  
25 enforcement agency, the release of which would do any of the  
26 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 **Social Security number**, personal or email  
3 address, or telephone or **cellular phone** number of active or retired  
4 law enforcement officers or agents or a special skill that they may  
5 have.

6 (iv) Disclose the name, **Social Security number**, **personal or**  
7 **email** address, or telephone or **cellular phone** numbers of family  
8 members, relatives, children, or parents of active or retired law  
9 enforcement officers or agents.

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

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

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

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

19 (ix) Disclose ~~personnel records of law enforcement~~  
20 ~~agencies~~ **records of either of the following:**

21 (A) **The medical history of a law enforcement officer or agent.**

22 (B) **The use of an employee assistance program, mental health**  
23 **service, or substance abuse assistance service by a law enforcement**  
24 **officer or agent, unless the use of the program or service is**  
25 **mandated by a disciplinary proceeding the records of which are not**  
26 **exempt under this section.**

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

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

7 (i) The fact that an allegation has been received and an  
8 investigation is being conducted, and the date the allegation was  
9 received.

10 (ii) The fact that an allegation was received by the  
11 department; the fact that the department did not issue a complaint  
12 for the allegation; and the fact that the allegation was dismissed.

13 (u) Records of a public body's security measures, including  
14 security plans, security codes and combinations, passwords, passes,  
15 keys, and security procedures, to the extent that the records  
16 relate to the ongoing security of the public body.

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

19 (w) Information or records that would disclose the Social  
20 Security number of an individual.

21 (x) Except as otherwise provided in this subdivision, an  
22 application for the position of president of an institution of  
23 higher education established under section 4, 5, or 6 of article  
24 VIII of the state constitution of 1963, materials submitted with  
25 such an application, letters of recommendation or references  
26 concerning an applicant, and records or information relating to the  
27 process of searching for and selecting an individual for a position  
28 described in this subdivision, if the records or information could  
29 be used to identify a candidate for the position. However, after 1

1 or more individuals have been identified as finalists for a  
2 position described in this subdivision, this subdivision does not  
3 apply to a public record described in this subdivision, except a  
4 letter of recommendation or reference, to the extent that the  
5 public record relates to an individual identified as a finalist for  
6 the position.

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

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

29 (aa) Research data on road and attendant infrastructure



1 collected, measured, recorded, processed, or disseminated by a  
2 public agency or private entity, or information about software or  
3 hardware created or used by the private entity for such purposes.

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

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

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

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

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

22 **(5) As used in this section:**

23 **(a) "Disciplinary proceeding" means the commencement of any**  
24 **investigation and any subsequent hearing or other proceeding**  
25 **conducted by the Michigan commission on law enforcement standards**  
26 **or any state or local law enforcement agency, department,**  
27 **independent review board, or other entity tasked with evaluating**  
28 **any complaint, allegation, or charge against a law enforcement**  
29 **officer or agent.**

1           (b) "Law enforcement agency" means a public body that employs  
2 1 or more law enforcement officers or agents.

3           (c) "Law enforcement disciplinary records" means all records  
4 created in furtherance of a disciplinary proceeding conducted by  
5 the Michigan commission on law enforcement standards or any state  
6 or local law enforcement agency, department, independent review  
7 board, or other entity tasked with evaluating any complaint,  
8 allegation, or charge against a law enforcement officer or agent,  
9 other than a complaint, allegation, or charge of a technical  
10 infraction, including, but not limited to, all of the following  
11 records and information:

12           (i) Records of any complaint, allegation, or charge against a  
13 law enforcement officer or agent.

14           (ii) The name of any law enforcement officer or agent against  
15 whom a complaint, allegation, or charge has been made.

16           (iii) All records, documents, and files, in whatever form,  
17 related to the investigation, adjudication, or disposition of any  
18 complaint, allegation, or charge against a law enforcement officer  
19 or agent.

20           (iv) The transcript of any disciplinary proceeding, including  
21 any exhibits introduced at the proceeding, regarding any complaint,  
22 allegation, or charge against a law enforcement officer or agent.

23           (v) Any finding by the Michigan commission on law enforcement  
24 standards or any state or local law enforcement agency, department,  
25 independent review board, or other entity tasked with evaluating  
26 any complaint, allegation, or charge against a law enforcement  
27 officer or agent during a disciplinary proceeding.

28           (vi) Any final written opinion or memorandum supporting the  
29 disposition and disciplinary action imposed, or the decision not to

1 impose disciplinary action, on a law enforcement officer or agent  
2 against whom a complaint, allegation, or charge has been made,  
3 including all of the following:

4 (A) All factual findings.

5 (B) Any analysis of alleged misconduct.

6 (C) A description of the disciplinary action imposed on the  
7 law enforcement officer or agent, if any, and the data supporting  
8 the disciplinary action taken or the decision not to take  
9 disciplinary action.

10 (d) "Law enforcement officer or agent" includes a police  
11 officer employed by a municipality, county, or this state, an  
12 employee of a sheriff's office who performs law enforcement duties,  
13 a correctional officer, or any employee who provides public safety  
14 or investigative services for the department of corrections, a  
15 state correctional facility, a county jail, or a juvenile detention  
16 facility.

17 (e) "Technical infraction" means a minor rule violation by a  
18 law enforcement officer or agent, solely related to the enforcement  
19 of administrative departmental rules, that meets all of the  
20 following:

21 (i) Did not involve interaction with members of the public.

22 (ii) Was unrelated to the investigative, enforcement, training,  
23 supervision, or reporting responsibilities of the law enforcement  
24 officer or agent.

25 (iii) Did not involve deception, misrepresentation, dishonesty,  
26 or intemperate behavior by the law enforcement officer or agent.