

SENATE BILL No. 423

July 11, 1991, Introduced by Senators EMMONS, DUNASKISS, CISKY, MC MANUS, EHLERS, WARTNER, DE GROW, N. SMITH and PRIDNIA and referred to the Committee on Health Policy.

A bill to amend section 13 of Act No. 442 of the Public Acts of 1976, entitled
"Freedom of information act,"
being section 15.243 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 13 of Act No. 442 of the Public Acts of
2 1976, being section 15.243 of the Michigan Compiled Laws, is
3 amended to read as follows:

4 Sec. 13. (1) A public body may exempt from disclosure as a
5 public record under this act:

6 (a) Information of a personal nature where the public dis-
7 closure of the information would constitute a clearly unwarranted
8 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
3 record 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 impar-
6 tial administrative adjudication.

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

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

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

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

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

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

25 (e) Information the release of which would prevent the
26 public body from complying with ~~20 U.S.C. section 1232g~~

27 SECTION 438 OF SUBPART 2 OF PART C OF THE GENERAL EDUCATION

1 PROVISIONS ACT, TITLE IV OF PUBLIC LAW 90-247, 20 U.S.C. 1232g,
2 COMMONLY REFERRED TO AS THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY
3 ACT OF 1974.

4 (f) A public record or information described in this section
5 ~~which~~ THAT is furnished by the public body originally compil-
6 ing, preparing, or receiving the record or information to a
7 public officer or public body in connection with the performance
8 of the duties of that public officer or public body, if the con-
9 siderations originally giving rise to the exempt nature of the
10 public record remain applicable.

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

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

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

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

26 (h) Information or records subject to the attorney-client
27 privilege.

1 (i) Information or records subject to the physician-patient
2 PRIVILEGE, THE psychologist-patient PRIVILEGE, THE minister,
3 priest, or Christian science practitioner PRIVILEGE, or other
4 privilege recognized by statute or court rule.

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

9 (k) Appraisals of real property to be acquired by the public
10 body until (i) an agreement is entered into; or (ii) 3 years has
11 elapsed since the making of the appraisal, unless litigation rel-
12 ative to the acquisition has 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 ~~shall~~ DOES not apply unless the public body shows that in the
26 particular 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 of
4 the Public Acts of 1976, being section 15.268 of the Michigan
5 Compiled Laws. As used in this subdivision, "determination of
6 policy or action" includes a determination relating to collective
7 bargaining, unless the public record is otherwise required to be
8 made available under Act No. 336 of the Public Acts of 1947, as
9 amended, being sections 423.201 to 423.216 of the Michigan
10 Compiled Laws.

11 (o) Records of law enforcement communication codes, or plans
12 for deployment of law enforcement personnel, which 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 which would reveal the exact location of
18 ~~archeological~~ ARCHAEOLOGICAL sites. The secretary of state may
19 promulgate rules pursuant to THE ADMINISTRATIVE PROCEDURES ACT OF
20 1969, Act No. 306 of the Public Acts of 1969, as amended, being
21 sections 24.201 to ~~24.315~~ 24.328 of the Michigan Compiled Laws,
22 to provide for the disclosure of the location of ~~archeological~~
23 ARCHAEOLOGICAL sites for purposes relating to the preservation or
24 scientific 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 ~~shall~~ DOES not apply after 1 year has elapsed from
3 the time the public body completes the testing.

4 (r) Academic transcripts of an institution of higher educa-
5 tion established under sections 5, 6 or 7 of article ~~8~~ VIII of
6 the state constitution of 1963, where the record pertains to a
7 student who is delinquent in the payment of financial obligations
8 to the institution.

9 (s) Records of any campaign committee including any commit-
10 tee that receives ~~monies~~ 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 police or sheriff's agency or department, the
14 release of which 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
20 law enforcement officers or agents or any special skills that
21 they 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 which 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 AN
16 INFORMAL REGULATORY REVIEW CONFERENCE CONDUCTED BY THE DEPARTMENT
17 OF LICENSING AND REGULATION UNDER ARTICLE 15 OF THE PUBLIC HEALTH
18 CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTIONS
19 333.16101 TO 333.18838 OF THE MICHIGAN COMPILED LAWS, BEFORE A
20 COMPLAINT IS ISSUED. THIS SUBDIVISION DOES NOT APPLY TO RECORDS
21 AND INFORMATION PERTAINING TO ANY OF THE FOLLOWING:

22 (i) THE FACT THAT AN ALLEGATION HAS BEEN RECEIVED AND AN
23 INVESTIGATION IS BEING CONDUCTED BY THE DEPARTMENT OF LICENSING
24 AND REGULATION, AND THE DATE THE ALLEGATION WAS RECEIVED.

25 (ii) THE FACT THAT AN ALLEGATION WAS RECEIVED BY THE DEPART-
26 MENT OF LICENSING AND REGULATION; THE FACT THAT THE DEPARTMENT OF

1 LICENSING AND REGULATION DID NOT ISSUE A COMPLAINT FOR THE
2 ALLEGATION; AND THE FACT THAT THE ALLEGATION WAS DISMISSED.

3 (2) This act ~~shall~~ DOES not authorize the withholding of
4 information otherwise required by law to be made available to the
5 public ~~—~~ or to a party in a contested case under Act No. 306 of
6 the Public Acts of 1969, as amended.

7 Section 2. This amendatory act shall not take effect unless
8 Senate Bill No. 420

9 of the 86th Legislature is enacted into law.