

Act No. 55  
Public Acts of 1994  
Approved by the Governor  
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**STATE OF MICHIGAN  
87TH LEGISLATURE  
REGULAR SESSION OF 1994**

**Introduced by Senators Schwarz Ehlers Wartner Gast and Pollack**

**ENROLLED SENATE BILL No. 857**

AN ACT to protect from public disclosure certain information obtained in research and related activities of public universities and colleges and to prescribe certain duties of public universities and colleges

*The People of the State of Michigan enact*

Sec 1 This act shall be known and may be cited as the confidential research information act

Sec 2 As used in this act

(a) Commercial information means information regarding the purchase and sale of goods and services including but not limited to information regarding marketing strategy production data assessments of goods and services mineral exploration records and compilations of data regarding commercial activity

(b) Financial information means information regarding finances including but not limited to assets income liabilities net worth bank balances financial history or activities or creditworthiness

(c) Intellectual property means all original data findings or other products of the mind or intellect commonly associated with claims interests and rights that are protected under trade secret patent trademark copyright or unfair competition law

(d) Public university or college means a university college or community college described in section 4 5 6 or 7 of article VIII of the state constitution of 1963 or any institution of higher education established by the state after the effective date of this act

(e) Trade secret means information consisting of a valuable unpatented formula pattern device or process or other information that is used in a business and gives the possessor of the information a competitive advantage over those who do not know or use the information and for which sufficient measures have been taken to guard the secrecy of the information and preserve its confidentiality and that does not encompass information that is readily ascertainable by competitors or the general public without undue difficulty or hardship

Sec 3 (1) Except as otherwise provided in this section trade secrets commercial information or financial information including that information as it relates to computer hardware and software that is provided to a public university or college by a private external source and that is in the possession of the public university or college in the performance of a lawful function is exempt from disclosure as a public record under the freedom of information act Act No 442 of the Public Acts of 1976 being sections 15 231 to 15 246 of the Michigan Compiled Laws if all of the following conditions are met

(a) The information is used exclusively for research testing evaluation and related activities

(b) The information is clearly designated by the external source before or at the time it is received by the public university or college as being confidential

(c) The public university or college has entered into an agreement to keep the information confidential and the confidentiality agreement was authorized by the chief administrative officer of the public university or college or his or her designee

(d) A document containing a general description of the information to be received under the confidentiality agreement the term of the confidentiality agreement the name of the external source or person with whom the confidentiality agreement was made and a general description of the nature of the intended use for the information is recorded by the public university or college within 20 regular working days after it is received is maintained in a central place within the public university or college and is made available to a person upon request The description of the information to be received shall be sufficient to provide the public with the necessary information to understand the nature of the research or product involved in the confidentiality agreement

(2) Subsection (1) does not apply to information that meets both of the following

(a) Is otherwise publicly available

(b) Is submitted as required by law or as a condition of receiving a government contract license or other benefit

(3) To the extent that the information indicates a substantial likelihood that a person may be killed or injured by the use of the product or process a public university or college has an affirmative duty to take reasonable measures to promptly notify appropriate local state and federal regulatory agencies of information regarding a product or process that is in the stream of commerce at the time the public university or college receives the information or actively uses the information in its research and subsection (1) does not apply to the information The affirmative duty described in this subsection is not intended to and does not create a separate or additional liability or cause of action outside of the remedies provided for in Act No 442 of the Public Acts of 1976 A provision of a contract between a public university or college and another person that conflicts with this subsection is void for the purposes of this act as a matter of public policy However the affirmative duty described in this subsection does not apply to information described in this subsection if 1 or more of the following apply

(a) There already exists a duty upon the manufacturer distributor seller or owner of the product or process to disclose the information to a regulatory agency and the public university or college does not have actual knowledge that the information has not been disclosed in accordance with that duty

(b) The hazards of the product or process are obvious to the user or consumer

(c) The hazards of the product or process are disclosed to the user or consumer in recommendations warnings or other instructions supplied to the user or consumer by the manufacturer distributor seller or owner of the product or process

(4) To the extent that the information and its commercial value are capable of being adequately protected by copyright patent or trademark protection and are not encompassed by a pending unissued patent application subsection (1) does not apply to information regarding a product or process if the public university or college is selling or marketing the product or process to the general public

Sec 4 (1) Except as otherwise provided in this section the following information in which a public university or college holds an interest or that is owned prepared used or retained by or in the possession of a public university or college is exempt from disclosure as a public record under the freedom of information act Act No 442 of the Public Acts of 1976 being sections 15 231 to 15 246 of the Michigan Compiled Laws

(a) Intellectual property created by a person employed by or under contract to a public university or college for purposes that include research education and related activities until a reasonable opportunity is provided for the information to be published in a timely manner in a forum intended to convey the information to the academic community

(b) Original works of authorship fixed in any tangible medium of expression created by a person employed by or under contract to a public university or college for purposes that include research education or related activities until a reasonable opportunity is provided for the author to secure copyright registration not to exceed 12 months from the date the work is first fixed in a tangible medium of expression

(c) Records regarding a process a machine an item of manufacture or a composition of matter or any new and useful improvement of a process a machine an item of manufacture or a composition of matter until a reasonable opportunity is provided for the inventor to secure patent protection not to exceed 5 years from the date the records are first made

(d) Trade secrets or other proprietary information in which a public university or college holds an interest or that a public university or college owns that is determined by the public university or college to have potential commercial value if a general description of the nature of the information and a description of the extent of the interest held by the public university or college in the information is made available to a person upon request

(2) To the extent that the information and its commercial value are capable of being adequately protected by copyright patent or trademark protection and are not encompassed by a pending unissued patent application subsection (1) does not apply to information regarding a product or process if the public university or college is selling or marketing the product or process to the general public

(3) Section 3(3) applies to information described in this section that is provided by a private external source

Sec 5 This act does not limit the ability of a person employed by or under contract to a public university or college to engage in lawful projects independent of a public university or college or prohibit such a person from disclosing information regarding those independent projects or from receiving pecuniary income from those independent projects

Sec 6 The provisions of this act exempting information from disclosure shall be strictly construed

Sec 7 A person receiving a request under the freedom of information act Act No 442 of the Public Acts of 1976 being sections 15 231 to 15 246 of the Michigan Compiled Laws for information exempt from disclosure under this act shall comply with the procedures and requirements of Act No 442 of the Public Acts of 1976 in responding to the request and shall also provide to the person making the request a general written description of the information and a written explanation of the reason the request has been denied

This act is ordered to take immediate effect

Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor