



# HOUSE BILL No. 5210

November 18, 1993, Introduced by Reps. Wetters, Wallace, Byrum, Willard, Dobronski, Jondahl, Curtis, Clack, Jaye, Schroer, Harder, Olshove, Parks, Agee, Points and Gagliardi and referred to the Committee on House Oversight and Ethics.

A bill to amend sections 2 and 13 of Act No. 442 of the Public Acts of 1976, entitled "Freedom of information act," section 13 as amended by Act No. 82 of the Public Acts of 1993, being sections 15.232 and 15.243 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2 and 13 of Act No. 442 of the Public  
2 Acts of 1976, section 13 as amended by Act No. 82 of the Public  
3 Acts of 1993, being sections 15.232 and 15.243 of the Michigan  
4 Compiled Laws, are amended to read as follows:

5 Sec. 2. As used in this act:

6 (a) "Person" means an individual, corporation, partnership,  
7 firm, organization, or association.

8 (b) "Public body" means:

1       (i) A state officer, employee, agency, department, division,  
2 bureau, board, commission, council, authority, or other body in  
3 the executive branch of the state government, but does not  
4 include the governor or lieutenant governor, the executive office  
5 of the governor or lieutenant governor, or employees thereof.

6       (ii) An agency, board, commission, or council in the legis-  
7 lative branch of the state government.

8       (iii) A county, city, township, village, intercounty, inter-  
9 city, or regional governing body, council, school district, spe-  
10 cial district, or municipal corporation, or a board, department,  
11 commission, council, or agency thereof.

12       (iv) Any other body which is created by state or local  
13 authority or which is primarily funded by or through state or  
14 local authority.

15       (v) The judiciary, including the office of the county clerk  
16 and employees thereof when acting in the capacity of clerk to the  
17 circuit court, is not included in the definition of public body.

18       (vi) A PERSON THAT PROVIDES GOODS OR SERVICES TO THE STATE  
19 PURSUANT TO A CONTRACT WITH THE STATE.

20       (c) "Public record" means a writing prepared, owned, used,  
21 in the possession of, or retained by a public body in the per-  
22 formance of an official function, from the time it is created.  
23 This act separates public records into 2 classes: (i) those  
24 which are exempt from disclosure under section 13, and (ii) all  
25 others, which shall be subject to disclosure under this act.

1 (d) "Unusual circumstances" means any 1 or a combination of  
2 the following, but only to the extent necessary for the proper  
3 processing of a request:

4 (i) The need to search for, collect, or appropriately  
5 examine or review a voluminous amount of separate and distinct  
6 public records pursuant to a single request.

7 (ii) The need to collect the requested public records from  
8 numerous field offices, facilities, or other establishments which  
9 are located apart from the particular office receiving or pro-  
10 cessing the request.

11 (e) "Writing" means handwriting, typewriting, printing, pho-  
12 tostating, photographing, photocopying, and every other means of  
13 recording, and includes letters, words, pictures, sounds, or sym-  
14 bols, or combinations thereof, and papers, maps, magnetic or  
15 paper tapes, photographic films or prints, microfilm, microfiche,  
16 magnetic or punched cards, discs, drums, or other means of  
17 recording or retaining meaningful content.

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

20 (a) Information of a personal nature where the public dis-  
21 closure of the information would constitute a clearly unwarranted  
22 invasion of an individual's privacy.

23 (b) Investigating records compiled for law enforcement pur-  
24 poses, but only to the extent that disclosure as a public record  
25 would do any of the following:

26 (i) Interfere with law enforcement proceedings.

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

3       (iii) Constitute an unwarranted invasion of personal  
4 privacy.

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

9       (v) Disclose law enforcement investigative techniques or  
10 procedures.

11       (vi) Endanger the life or physical safety of law enforcement  
12 personnel.

13       (c) A public record that if disclosed would prejudice a  
14 public body's ability to maintain the physical security of custo-  
15 dial or penal institutions occupied by persons arrested or con-  
16 victed of a crime or admitted because of a mental disability,  
17 unless the public interest in disclosure under this act outweighs  
18 the public interest in nondisclosure.

19       (d) Records or information specifically described and  
20 exempted from disclosure by statute.

21       (e) Information the release of which would prevent the  
22 public body from complying with section 438 of subpart 2 of part  
23 C of the general education provisions act, title IV of Public Law  
24 90-247, 20 U.S.C. 1232g, commonly referred to as the family edu-  
25 cational rights and privacy act of 1974.

26       (f) A public record or information described in this section  
27 that is furnished by the public body originally compiling,

1 preparing, or receiving the record or information to a public  
2 officer or public body in connection with the performance of the  
3 duties of that public officer or public body, if the considera-  
4 tions originally giving rise to the exempt nature of the public  
5 record remain applicable.

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

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

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

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

21 (h) Information or records subject to the attorney-client  
22 privilege.

23 (i) Information or records subject to the physician-patient  
24 privilege, the psychologist-patient privilege, the minister,  
25 priest, or Christian science practitioner privilege, or other  
26 privilege recognized by statute or court rule.

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

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

9 (l) Test questions and answers, scoring keys, and other  
10 examination instruments or data used to administer a license,  
11 public employment, or academic examination, unless the public  
12 interest in disclosure under this act outweighs the public inter-  
13 est in nondisclosure.

14 (m) Medical, counseling, or psychological facts or evalu-  
15 ations concerning an individual if the individual's identity  
16 would be revealed by a disclosure of those facts or evaluation.

17 (n) Communications and notes within a public body or between  
18 public bodies of an advisory nature to the extent that they cover  
19 other than purely factual materials and are preliminary to a  
20 final agency determination of policy or action. This ~~exemption~~  
21 EXEMPTION does not apply unless the public body shows that in the  
22 particular instance the public interest in encouraging frank com-  
23 munications between officials and employees of public bodies  
24 clearly outweighs the public interest in disclosure. This exemp-  
25 tion does not constitute an exemption under state law for pur-  
26 poses of section 8(h) of the open meetings act, Act No. 267 of  
27 the Public Acts of 1976, being section 15.268 of the Michigan

1 Compiled Laws. As used in this subdivision, "determination of  
2 policy or action" includes a determination relating to collective  
3 bargaining, unless the public record is otherwise required to be  
4 made available under Act No. 336 of the Public Acts of 1947, as  
5 amended, being sections 423.201 to 423.216 of the Michigan

6 Compiled Laws.

7 (o) Records of law enforcement communication codes, or plans  
8 for deployment of law enforcement personnel, which if disclosed  
9 would prejudice a public body's ability to protect the public  
10 safety unless the public interest in disclosure under this act  
11 outweighs the public interest in nondisclosure in the particular  
12 instance.

13 (p) Information which would reveal the exact location of  
14 archaeological sites. The secretary of state may promulgate  
15 rules pursuant to the administrative procedures act of 1969, Act  
16 No. 306 of the Public Acts of 1969, as amended, being sections  
17 24.201 to 24.328 of the Michigan Compiled Laws, to provide for  
18 the disclosure of the location of archaeological sites for pur-  
19 poses relating to the preservation or scientific examination of  
20 sites.

21 (q) Testing data developed by a public body in determining  
22 whether bidders' products meet the specifications for purchase of  
23 those products by the public body, if disclosure of the data  
24 would reveal that only 1 bidder has met the specifications. This  
25 subdivision does not apply after 1 year has elapsed from the time  
26 the public body completes the testing.

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

6 (s) Records of any campaign committee including any commit-  
7 tee that receives money from a state campaign fund.

8 (t) Unless the public interest in disclosure outweighs the  
9 public interest in nondisclosure in the particular instance,  
10 public records of a police or sheriff's agency or department, the  
11 release of which would do any of the following:

12 (i) Identify or provide a means of identifying an informer.

13 (ii) Identify or provide a means of identifying a law  
14 enforcement undercover officer or agent or a plain clothes offi-  
15 cer as a law enforcement officer or agent.

16 (iii) Disclose the personal address or telephone number of  
17 law enforcement officers or agents or any special skills that  
18 they may have.

19 (iv) Disclose the name, address, or telephone numbers of  
20 family members, relatives, children, or parents of law enforce-  
21 ment officers or agents.

22 (v) Disclose operational instructions for law enforcement  
23 officers or agents.

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

26 (vii) Endanger the life or safety of law enforcement  
27 officers or agents or their families, relatives, children,



1 parents, or those who furnish information to law enforcement  
2 departments or agencies.

3 (viii) Identify or provide a means of identifying a person  
4 as a law enforcement officer, agent, or informer.

5 (ix) Disclose personnel records of law enforcement  
6 agencies.

7 (x) Identify or provide a means of identifying residences  
8 which law enforcement agencies are requested to check in the  
9 absence of their owners or tenants.

10 (u) Except as otherwise provided in this subdivision,  
11 records and information pertaining to an investigation or a com-  
12 pliance conference conducted by the department of commerce under  
13 article 15 of the public health code, Act No. 368 of the Public  
14 Acts of 1978, being sections 333.16101 to 333.18838 of the  
15 Michigan Compiled Laws, before a complaint is issued. This sub-  
16 division does not apply to records and information pertaining to  
17 any of the following:

18 (i) The fact that an allegation has been received and an  
19 investigation is being conducted, and the date the allegation was  
20 received.

21 (ii) The fact that an allegation was received by the depart-  
22 ment of commerce; the fact that the department of commerce did  
23 not issue a complaint for the allegation; and the fact that the  
24 allegation was dismissed.

25 (V) THOSE BUSINESS RECORDS OF A PERSON DESCRIBED IN  
26 SECTION 2(B)(vi) THAT DO NOT CONTAIN INFORMATION IDENTIFYING

1 MONEY THE PERSON RECEIVES, OR GOODS OR SERVICES THE PERSON  
2 PROVIDES, PURSUANT TO A CONTRACT WITH THE STATE.

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