



HOUSE BILL No. 5651

March 5, 1996, Introduced by Reps. Baird, Cherry, Schroer, Kelly, Scott, Martinez, DeHart, Freeman, Hanley, Brater, LaForge, Willard, Yokich, Tesanovich, Kaza, Anthony, Pitoniak, Vaughn, Clack, Agee, Brewer and Leland 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 2 as amended by Act No. 131 of the Public Acts of 1994 and 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 2 as amended by Act No. 131 of the Public
3 Acts of 1994 and section 13 as amended by Act No. 82 of the
4 Public Acts of 1993, being sections 15.232 and 15.243 of the
5 Michigan Compiled Laws, are amended to read as follows:

6 Sec. 2. As used in this act:

1 (a) "Person" means an individual, corporation, partnership,
2 firm, organization, or association, except that person does not
3 include an individual serving a sentence of imprisonment in a
4 state or county correctional facility in this state or any other
5 state, or in a federal correctional facility.

6 (b) "Public body" means:

7 (i) A state officer, employee, agency, department, division,
8 bureau, board, commission, council, authority, or other body in
9 the executive branch of the state government, but does not
10 include the governor or lieutenant governor. ~~the executive~~
11 ~~office of the governor or lieutenant governor, or employees~~
12 ~~thereof.~~

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

15 (iii) A county, city, township, village, intercounty, inter-
16 city, or regional governing body, council, school district, spe-
17 cial district, or municipal corporation, or a board, department,
18 commission, council, or agency thereof.

19 (iv) Any other body which is created by state or local
20 authority or which is primarily funded by or through state or
21 local authority.

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

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

1 (c) "Public record" means a writing prepared, owned, used,
2 in the possession of, or retained by a public body in the
3 performance of an official function, from the time it is
4 created. This act separates public records into 2 classes: (i)
5 those which are exempt from disclosure under section 13, and (ii)
6 all others, which are subject to disclosure under this act.

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

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

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

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

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

1 (a) Information of a personal nature where the public
2 disclosure of the information would constitute a clearly
3 unwarranted invasion of an individual's privacy.

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

7 (i) Interfere with law enforcement proceedings.

8 (ii) Deprive a person of the right to a fair trial or impar-
9 tial administrative adjudication.

10 (iii) Constitute an unwarranted invasion of personal
11 privacy.

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

16 (v) Disclose law enforcement investigative techniques or
17 procedures.

18 (vi) Endanger the life or physical safety of law enforcement
19 personnel.

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

26 (d) Records or information specifically described and
27 exempted from disclosure by ~~statute.~~ ANY OF THE FOLLOWING:

1 (i) SECTION 10 OF THE SEX OFFENDERS REGISTRATION ACT, ACT
2 NO. 295 OF THE PUBLIC ACTS OF 1994, BEING SECTION 28.730 OF THE
3 MICHIGAN COMPILED LAWS.

4 (ii) SECTION 5P OF THE FIRE PREVENTION CODE, ACT NO. 207 OF
5 THE PUBLIC ACTS OF 1941, BEING SECTION 29.5P OF THE MICHIGAN
6 COMPILED LAWS.

7 (iii) SECTION 4 OF ACT NO. 175 OF THE PUBLIC ACTS OF 1982,
8 BEING SECTION 125.1954 OF THE MICHIGAN COMPILED LAWS.

9 (iv) SECTION 5 OF THE MICHIGAN STRATEGIC FUND ACT, ACT
10 NO. 270 OF THE PUBLIC ACTS OF 1984, BEING SECTION 125.2005 OF THE
11 MICHIGAN COMPILED LAWS.

12 (v) SECTION 7 OF THE AGRICULTURAL COMMODITIES MARKETING ACT,
13 ACT NO. 232 OF THE PUBLIC ACTS OF 1965, BEING SECTION 290.657 OF
14 THE MICHIGAN COMPILED LAWS.

15 (vi) SECTION 20117 OF THE NATURAL RESOURCES AND ENVIRONMEN-
16 TAL PROTECTION ACT, ACT NO. 451 OF THE PUBLIC ACTS OF 1994, BEING
17 SECTION 324.20117 OF THE MICHIGAN COMPILED LAWS.

18 (vii) SECTIONS 5114 AND 5114A OF THE PUBLIC HEALTH CODE, ACT
19 NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTIONS 333.5114 AND
20 333.5114A OF THE MICHIGAN COMPILED LAWS.

21 (viii) SECTIONS 3 AND 4 OF THE CONFIDENTIAL RESEARCH INFOR-
22 MATION ACT, ACT NO. 55 OF THE PUBLIC ACTS OF 1994, BEING SECTIONS
23 390.1553 AND 390.1554 OF THE MICHIGAN COMPILED LAWS.

24 (ix) SECTIONS 14D AND 63 OF THE MICHIGAN OCCUPATIONAL SAFETY
25 AND HEALTH ACT, ACT NO. 154 OF THE PUBLIC ACTS OF 1974, BEING
26 SECTIONS 408.1014D AND 408.1063 OF THE MICHIGAN COMPILED LAWS.

1 (x) SECTIONS 212 AND 230 OF THE WORKER'S DISABILITY
2 COMPENSATION ACT OF 1969, ACT NO. 317 OF THE PUBLIC ACTS OF 1969,
3 BEING SECTIONS 418.212 AND 418.230 OF THE MICHIGAN COMPILED
4 LAWS.

5 (xi) SECTION 25 OF THE MCCAULEY-TRAXLER-LAW-BOWMAN-MCNEELY
6 LOTTERY ACT, ACT NO. 239 OF THE PUBLIC ACTS OF 1972, BEING SEC-
7 TION 432.25 OF THE MICHIGAN COMPILED LAWS.

8 (xii) SECTION 3 OF ACT NO. 273 OF THE PUBLIC ACTS OF 1987,
9 BEING SECTION 434.23 OF THE MICHIGAN COMPILED LAWS.

10 (xiii) SECTION 6 OF THE MOTOR CARRIER ACT, ACT NO. 254 OF
11 THE PUBLIC ACTS OF 1933, BEING SECTION 477.6 OF THE MICHIGAN
12 COMPILED LAWS.

13 (xiv) SECTION 11 OF THE REGULATORY LOAN ACT OF 1963, ACT
14 NO. 21 OF THE PUBLIC ACTS OF 1939, BEING SECTION 493.11 OF THE
15 MICHIGAN COMPILED LAWS.

16 (xv) SECTION 134 OF THE INSURANCE CODE OF 1956, ACT NO. 218
17 OF THE PUBLIC ACTS OF 1956, BEING SECTION 500.134 OF THE MICHIGAN
18 COMPILED LAWS.

19 (xvi) SECTION 34 OF THE THIRD PARTY ADMINISTRATOR ACT, ACT
20 NO. 218 OF THE PUBLIC ACTS OF 1984, BEING SECTION 550.934 OF THE
21 MICHIGAN COMPILED LAWS.

22 (xvii) SECTION 9 OF THE CHILDREN'S OMBUDSMAN ACT, ACT
23 NO. 204 OF THE PUBLIC ACTS OF 1994, BEING SECTION 722.929 OF THE
24 MICHIGAN COMPILED LAWS.

25 (xviii) SECTION 3 OF ACT NO. 213 OF THE PUBLIC ACTS OF 1965,
26 BEING SECTION 780.623 OF THE MICHIGAN COMPILED LAWS.

1 (xi) SECTIONS 19 AND 80 OF THE CRIME VICTIM'S RIGHTS ACT,
2 ACT NO. 87 OF THE PUBLIC ACTS OF 1985, BEING SECTIONS 780.769 AND
3 780.830 OF THE MICHIGAN COMPILED LAWS.

4 (xx) SECTION 30A OF ACT NO. 232 OF THE PUBLIC ACTS OF 1953,
5 BEING SECTION 791.230A OF THE MICHIGAN COMPILED LAWS.

6 (e) Information the release of which would prevent the
7 public body from complying with section ~~438~~ 444 of subpart ~~2~~
8 4 of part C of the general education provisions act, title IV of
9 Public Law 90-247, 20 U.S.C. 1232g, commonly referred to as the
10 family educational rights and privacy act of 1974.

11 (f) A public record or information described in this section
12 that is furnished by the public body originally compiling, pre-
13 paring, or receiving the record or information to a public offi-
14 cer or public body in connection with the performance of the
15 duties of that public officer or public body, if the considera-
16 tions originally giving rise to the exempt nature of the public
17 record remain applicable.

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

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

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

26 (iii) A description of the information is recorded by the
27 public body within a reasonable time after it has been submitted,

1 maintained in a central place within the public body, and made
2 available to a person upon request. This subdivision does not
3 apply to information submitted as required by law or as a condi-
4 tion of receiving a governmental contract, license, or other
5 benefit.

6 (h) Information or records subject to the attorney-client
7 privilege.

8 (i) Information or records subject to the physician-patient
9 privilege, the psychologist-patient privilege, the minister,
10 priest, or Christian science practitioner privilege, or other
11 privilege recognized by statute or court rule.

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

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

20 (l) Test questions and answers, scoring keys, and other
21 examination instruments or data used to administer a license,
22 public employment, or academic examination, unless the public
23 interest in disclosure under this act outweighs the public inter-
24 est in nondisclosure.

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

1 (n) Communications and notes within a public body or between
2 public bodies of an advisory nature to the extent that they cover
3 other than purely factual materials and are preliminary to a
4 final agency determination of policy or action. This exemption
5 does not apply unless the public body shows that in the particu-
6 lar instance the public interest in encouraging frank communica-
7 tions between officials and employees of public bodies clearly
8 outweighs the public interest in disclosure. This exemption does
9 not constitute an exemption under state law for purposes of sec-
10 tion 8(h) of the open meetings act, Act No. 267 of the Public
11 Acts of 1976, being section 15.268 of the Michigan Compiled
12 Laws. As used in this subdivision, "determination of policy or
13 action" includes a determination relating to collective bargain-
14 ing, unless the public record is otherwise required to be made
15 available under Act No. 336 of the Public Acts of 1947, ~~as~~
16 ~~amended,~~ being sections 423.201 to ~~423.216~~ 423.217 of the
17 Michigan Compiled Laws.

18 (o) Records of law enforcement communication codes, or plans
19 for deployment of law enforcement personnel, which if disclosed
20 would prejudice a public body's ability to protect the public
21 safety unless the public interest in disclosure under this act
22 outweighs the public interest in nondisclosure in the particular
23 instance.

24 (p) Information which would reveal the exact location of
25 archaeological sites. The secretary of state may promulgate
26 rules pursuant to the administrative procedures act of 1969, Act
27 No. 306 of the Public Acts of 1969, ~~as amended,~~ being sections

1 24.201 to 24.328 of the Michigan Compiled Laws, to provide for
2 the disclosure of the location of archaeological sites for pur-
3 poses relating to the preservation or scientific examination of
4 sites.

5 (q) Testing data developed by a public body in determining
6 whether bidders' products meet the specifications for purchase of
7 those products by the public body, if disclosure of the data
8 would reveal that only 1 bidder has met the specifications. This
9 subdivision does not apply after 1 year has elapsed from the time
10 the public body completes the testing.

11 (r) Academic transcripts of an institution of higher educa-
12 tion established under ~~sections~~ SECTION 5, 6, or 7 of article
13 VIII of the state constitution of 1963, where the record pertains
14 to a student who is delinquent in the payment of financial obli-
15 gations to the institution.

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

18 (t) Unless the public interest in disclosure outweighs the
19 public interest in nondisclosure in the particular instance,
20 public records of a police or sheriff's agency or department, the
21 release of which would do any of the following:

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

23 (ii) Identify or provide a means of identifying a law
24 enforcement undercover officer or agent or a plain clothes offi-
25 cer as a law enforcement officer or agent.

1 (iii) Disclose the personal address or telephone number of
2 law enforcement officers or agents or any special skills that
3 they may have.

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

7 (v) Disclose operational instructions for law enforcement
8 officers or agents.

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

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

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

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

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

22 (u) Except as otherwise provided in this subdivision,
23 records and information pertaining to an investigation or a com-
24 pliance conference conducted by the department of commerce under
25 article 15 of the public health code, Act No. 368 of the Public
26 Acts of 1978, being sections 333.16101 to 333.18838 of the
27 Michigan Compiled Laws, before a complaint is issued. This

1 subdivision does not apply to records and information pertaining
2 to any of the following:

3 (i) The fact that an allegation has been received and an
4 investigation is being conducted, and the date the allegation was
5 received.

6 (ii) The fact that an allegation was received by the depart-
7 ment of commerce; the fact that the department of commerce did
8 not issue a complaint for the allegation; and the fact that the
9 allegation was dismissed.

10 (V) THOSE BUSINESS RECORDS OF A PERSON DESCRIBED IN SECTION
11 2(B)(vi) THAT DO NOT CONTAIN INFORMATION IDENTIFYING MONEY THE
12 PERSON RECEIVES, OR GOODS OR SERVICES THE PERSON PROVIDES, PURSU-
13 ANT TO A CONTRACT WITH THE STATE.

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