

REPRINT

**SUBSTITUTE FOR
SENATE BILL NO. 588**

(As Passed the Senate December 2, 1999)

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending section 13 (MCL 15.243), as amended by 1996 PA 553.

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:

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

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

9 (i) Interfere with law enforcement proceedings.

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

1 (iii) Constitute an unwarranted invasion of personal
2 privacy.

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

7 (v) Disclose law enforcement investigative techniques or
8 procedures.

9 (vi) Endanger the life or physical safety of law enforcement
10 personnel.

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

17 (d) Records or information specifically described and
18 exempted from disclosure by statute.

19 ~~(e) Information the release of which would prevent the~~
20 ~~public body from complying with section 444 of subpart 4 of part~~
21 ~~C of the general education provisions act, title IV of Public Law~~
22 ~~90-247, 20 U.S.C. 1232g, commonly referred to as the family edu=~~
23 ~~cational rights and privacy act of 1974.~~

24 (E) ~~(f)~~ A public record or information described in this
25 section that is furnished by the public body originally compil-
26 ing, preparing, or receiving the record or information to a
27 public officer or public body in connection with the performance

1 of the duties of that public officer or public body, if the
2 considerations originally giving rise to the exempt nature of the
3 public record remain applicable.

4 (F) ~~-(g)-~~ Trade secrets or commercial or financial informa-
5 tion voluntarily provided to an agency for use in developing gov-
6 ernmental policy if:

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

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

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

19 (G) ~~-(h)-~~ Information or records subject to the
20 attorney-client privilege.

21 (H) ~~-(i)-~~ Information or records subject to the
22 physician-patient privilege, the psychologist-patient privilege,
23 the minister, priest, or Christian Science practitioner privi-
24 lege, or other privilege recognized by statute or court rule.

25 (I) ~~-(j)-~~ A bid or proposal by a person to enter into a con-
26 tract or agreement, until the time for the public opening of bids
27 or proposals, or if a public opening is not to be conducted,

1 until the deadline for submission of bids or proposals has
2 expired.

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

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

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

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

1 subdivision, "determination of policy or action" includes a
2 determination relating to collective bargaining, unless the
3 public record is otherwise required to be made available under
4 ~~Act No. 336 of the Public Acts of 1947, being sections 423.201~~
5 ~~to 423.217 of the Michigan Compiled Laws~~ 1947 PA 336, MCL
6 423.201 TO 423.217.

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

13 (O) ~~(p)~~ Information that would reveal the exact location
14 of archaeological sites. The secretary of state may promulgate
15 rules ~~pursuant to~~ IN ACCORDANCE WITH the administrative proce-
16 dures act of 1969, ~~Act No. 306 of the Public Acts of 1969, being~~
17 ~~sections 24.201 to 24.328 of the Michigan Compiled Laws~~ 1969 PA
18 306, MCL 24.201 TO 24.328, to provide for the disclosure of the
19 location of archaeological sites for purposes relating to the
20 preservation or scientific examination of sites.

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

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

6 (R) ~~(s)~~ Records of any campaign committee including any
7 committee that receives money from a state campaign fund.

8 (S) ~~(t)~~ Unless the public interest in disclosure outweighs
9 the public interest in nondisclosure in the particular instance,
10 public records of a law enforcement agency, the release of which
11 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 that law enforcement agencies are requested to check in the
9 absence of their owners or tenants.

10 (T) ~~(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 consumer and
13 industry services under article 15 of the public health code,
14 ~~Act No. 368 of the Public Acts of 1978, being sections 333.16101~~
15 ~~to 333.18838 of the Michigan Compiled Laws~~ 1978 PA 368, MCL
16 333.16101 TO 333.18838, before a complaint is issued. This sub-
17 division does not apply to records and information pertaining to
18 1 or more of the following:

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

22 (ii) The fact that an allegation was received by the depart-
23 ment of consumer and industry services; the fact that the depart-
24 ment of consumer and industry services did not issue a complaint
25 for the allegation; and the fact that the allegation was
26 dismissed.

1 (U) ~~-(v)-~~ Records of a public body's security measures,
2 including security plans, security codes and combinations,
3 passwords, passes, keys, and security procedures, to the extent
4 that the records relate to the ongoing security of the public
5 body.

6 (V) ~~-(w)-~~ Records or information relating to a civil action
7 in which the requesting party and the public body are parties.

8 (W) ~~-(x)-~~ Information or records that would disclose the
9 social security number of any individual.

10 (X) ~~-(y)-~~ Except as otherwise provided in this subdivision,
11 an application for the position of president of an institution of
12 higher education established under section 4, 5, or 6 of article
13 VIII of the state constitution of 1963, materials submitted with
14 such an application, letters of recommendation or references con-
15 cerning an applicant, and records or information relating to the
16 process of searching for and selecting an individual for a posi-
17 tion described in this subdivision, if the records or information
18 could be used to identify a candidate for the position. However,
19 after 1 or more individuals have been identified as finalists for
20 a position described in this subdivision, this subdivision does
21 not apply to a public record described in this subdivision,
22 except a letter of recommendation or reference, to the extent
23 that the public record relates to an individual identified as a
24 finalist for the position.

25 (2) A PUBLIC BODY SHALL EXEMPT FROM DISCLOSURE INFORMATION
26 THAT, IF RELEASED, WOULD PREVENT THE PUBLIC BODY FROM COMPLYING
27 WITH SECTION 444 OF SUBPART 4 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 (3) ~~-(2)-~~ This act does not authorize the withholding of
5 information otherwise required by law to be made available to the
6 public or to a party in a contested case under ~~Act No. 306 of~~
7 ~~the Public Acts of 1969~~ THE ADMINISTRATIVE PROCEDURES ACT OF
8 1969, 1969 PA 306, MCL 24.201 TO 24.328.

9 (4) ~~-(3)-~~ Except as otherwise exempt under subsection (1),
10 this act does not authorize the withholding of a public record in
11 the possession of the executive office of the governor or lieu-
12 tenant governor, or an employee of either executive office, if
13 the public record is transferred to the executive office of the
14 governor or lieutenant governor, or an employee of either execu-
15 tive office, after a request for the public record has been
16 received by a state officer, employee, agency, department, divi-
17 sion, bureau, board, commission, council, authority, or other
18 body in the executive branch of government that is subject to
19 this act.