

HOUSE BILL No. 4370

March 3, 1999, Introduced by Reps. Brater, Stallworth, DeHart, LaForge, Baird, Jacobs, Dennis, Quarles, Clarke, Scott, Minore, Jellema, Hale and Daniels and referred to the Committee on Constitutional Law and Ethics.

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 (f) A public record or information described in this section
25 that is furnished by the public body originally compiling, pre-
26 paring, or receiving the record or information to a public
27 officer or public body in connection with the performance of the

1 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 (g) Trade secrets or commercial or financial information
5 voluntarily provided to an agency for use in developing govern-
6 mental 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 (h) Information or records subject to the attorney-client
20 privilege.

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

25 (j) A bid or proposal by a person to enter into a contract
26 or agreement, until the time for the public opening of bids or

1 proposals, or if a public opening is not to be conducted, until
2 the deadline for submission of bids or proposals has expired.

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

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

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

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

1 relating to collective bargaining, unless the public record is
2 otherwise required to be made available under ~~Act No. 336 of the~~
3 ~~Public Acts of 1947, being sections 423.201 to 423.217 of the~~
4 ~~Michigan Compiled Laws~~ 1947 PA 336, MCL 423.201 TO 423.217.

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

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

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

25 (r) Academic transcripts of an institution of higher educa-
26 tion established under section 5, 6, or 7 of article VIII of the
27 state constitution of 1963, if the transcript pertains to a

1 student who is delinquent in the payment of financial obligations
2 to the institution.

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

5 (t) Unless the public interest in disclosure outweighs the
6 public interest in nondisclosure in the particular instance,
7 public records of a law enforcement agency, the release of which
8 would do any of the following:

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

10 (ii) Identify or provide a means of identifying a law
11 enforcement undercover officer or agent or a plain clothes offi-
12 cer as a law enforcement officer or agent.

13 (iii) Disclose the personal address or telephone number of
14 law enforcement officers or agents or any special skills that
15 they may have.

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

19 (v) Disclose operational instructions for law enforcement
20 officers or agents.

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

23 (vii) Endanger the life or safety of law enforcement offi-
24 cers or agents or their families, relatives, children, parents,
25 or those who furnish information to law enforcement departments
26 or agencies.

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

3 (ix) Disclose personnel records of law enforcement
4 agencies.

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

8 (u) Except as otherwise provided in this subdivision,
9 records and information pertaining to an investigation or a com-
10 pliance conference conducted by the department of consumer and
11 industry services under article 15 of the public health code,
12 ~~Act No. 368 of the Public Acts of 1978, being sections 333.16101~~
13 ~~to 333.18838 of the Michigan Compiled Laws~~ 1978 PA 368, MCL
14 333.16101 TO 333.18838, before a complaint is issued. This sub-
15 division does not apply to records and information pertaining to
16 1 or more of the following:

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

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

25 (v) Records of a public body's security measures, including
26 security plans, security codes and combinations, passwords,

1 passes, keys, and security procedures, to the extent that the
2 records relate to the ongoing security of the public body.

3 (w) Records or information relating to a civil action in
4 which the requesting party and the public body are parties.

5 (x) Information or records that would disclose the social
6 security number of any individual.

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

22 (Z) INFORMATION OR RECORDS OF A PUBLIC SCHOOL, INCLUDING
23 INFORMATION CONTAINED IN A PUBLIC SCHOOL STUDENT DIRECTORY, THAT
24 WOULD REVEAL THE NAME, ADDRESS, TELEPHONE NUMBER, PHOTOGRAPH, OR
25 OTHER IDENTIFYING INFORMATION ABOUT A STUDENT AT THAT PUBLIC
26 SCHOOL. AS USED IN THIS SUBDIVISION, "PUBLIC SCHOOL" MEANS THAT

1 TERM AS DEFINED IN SECTION 5 OF THE REVISED SCHOOL CODE, 1976 PA
2 451, MCL 380.5.

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~~
6 ~~Public Acts of 1969~~ THE ADMINISTRATIVE PROCEDURES ACT OF 1969,
7 1969 PA 306, MCL 24.201 TO 24.328.

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