

SENATE BILL No. 642

July 17, 2003, Introduced by Senators BRATER, JACOBS, SCHAUER, CLARK-COLEMAN, OLSHOVE, SCOTT, SWITALSKI, CROPSEY, PATTERSON and BISHOP and referred to the Committee on Judiciary.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending section 13 (MCL 15.243), as amended by 2002 PA 437.

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 any of the following:

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

6 (b) Investigating records compiled for law enforcement
7 purposes, but only to the extent that disclosure as a public
8 record 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
13 custodial or penal institutions occupied by persons arrested or
14 convicted 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) A public record or information described in this section
20 that is furnished by the public body originally compiling,
21 preparing, or receiving the record or information to a public
22 officer or public body in connection with the performance of the
23 duties of that public officer or public body, if the
24 considerations originally giving rise to the exempt nature of the
25 public record remain applicable.

26 (f) Trade secrets or commercial or financial information
27 voluntarily provided to an agency for use in developing

1 governmental policy if:

2 (i) The information is submitted upon a promise of
3 confidentiality by the public body.

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

7 (iii) A description of the information is recorded by the
8 public body within a reasonable time after it has been submitted,
9 maintained in a central place within the public body, and made
10 available to a person upon request. This subdivision does not
11 apply to information submitted as required by law or as a
12 condition of receiving a governmental contract, license, or other
13 benefit.

14 (g) Information or records subject to the attorney-client
15 privilege.

16 (h) Information or records subject to the physician-patient
17 privilege, the psychologist-patient privilege, the minister,
18 priest, or Christian Science practitioner privilege, or other
19 privilege recognized by statute or court rule.

20 (i) A bid or proposal by a person to enter into a contract or
21 agreement, until the time for the public opening of bids or
22 proposals, or if a public opening is not to be conducted, until
23 the deadline for submission of bids or proposals has expired.

24 (j) Appraisals of real property to be acquired by the public
25 body until either of the following occurs:

26 (i) An agreement is entered into.

27 (ii) Three years have elapsed since the making of the

1 appraisal, unless litigation relative to the acquisition has not
2 yet terminated.

3 (k) Test questions and answers, scoring keys, and other
4 examination instruments or data used to administer a license,
5 public employment, or academic examination, unless the public
6 interest in disclosure under this act outweighs the public
7 interest in nondisclosure.

8 (l) Medical, counseling, or psychological facts or
9 evaluations concerning an individual if the individual's identity
10 would be revealed by a disclosure of those facts or evaluation.

11 (m) Communications and notes within a public body or between
12 public bodies of an advisory nature to the extent that they cover
13 other than purely factual materials and are preliminary to a
14 final agency determination of policy or action. This exemption
15 does not apply unless the public body shows that in the
16 particular instance the public interest in encouraging frank
17 communication between officials and employees of public bodies
18 clearly outweighs the public interest in disclosure. This
19 exemption does not constitute an exemption under state law for
20 purposes of section 8(h) of the open meetings act, 1976 PA 267,
21 MCL 15.268. As used in this subdivision, "determination of
22 policy or action" includes a determination relating to collective
23 bargaining, unless the public record is otherwise required to be
24 made available under 1947 PA 336, MCL 423.201 to 423.217.

25 (n) Records of law enforcement communication codes, or plans
26 for deployment of law enforcement personnel, that if disclosed
27 would prejudice a public body's ability to protect the public

1 safety unless the public interest in disclosure under this act
2 outweighs the public interest in nondisclosure in the particular
3 instance.

4 (o) Information that would reveal the exact location of
5 archaeological sites. The department of history, arts, and
6 libraries may promulgate rules in accordance with the
7 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
8 24.328, to provide for the disclosure of the location of
9 archaeological sites for purposes relating to the preservation or
10 scientific examination of sites.

11 (p) Testing data developed by a public body in determining
12 whether bidders' products meet the specifications for purchase of
13 those products by the public body, if disclosure of the data
14 would reveal that only 1 bidder has met the specifications. This
15 subdivision does not apply after 1 year has elapsed from the time
16 the public body completes the testing.

17 (q) Academic transcripts of an institution of higher
18 education established under section 5, 6, or 7 of article VIII of
19 the state constitution of 1963, if the transcript pertains to a
20 student who is delinquent in the payment of financial obligations
21 to the institution.

22 (r) Records of a campaign committee including a committee
23 that receives money from a state campaign fund.

24 (s) Unless the public interest in disclosure outweighs the
25 public interest in nondisclosure in the particular instance,
26 public records of a law enforcement agency, the release of which
27 would do any of the following:

1 (i) Identify or provide a means of identifying an informant.

2 (ii) Identify or provide a means of identifying a law
3 enforcement undercover officer or agent or a plain clothes
4 officer as a law enforcement officer or agent.

5 (iii) Disclose the personal address or telephone number of
6 active or retired law enforcement officers or agents or a special
7 skill that they may have.

8 (iv) Disclose the name, address, or telephone numbers of
9 family members, relatives, children, or parents of active or
10 retired law enforcement officers or agents.

11 (v) Disclose operational instructions for law enforcement
12 officers or agents.

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

15 (vii) Endanger the life or safety of law enforcement officers
16 or agents or their families, relatives, children, parents, or
17 those who furnish information to law enforcement departments or
18 agencies.

19 (viii) Identify or provide a means of identifying a person as
20 a law enforcement officer, agent, or informant.

21 (ix) Disclose personnel records of law enforcement agencies.

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

25 (t) Except as otherwise provided in this subdivision, records
26 and information pertaining to an investigation or a compliance
27 conference conducted by the department of consumer and industry

1 services under article 15 of the public health code, 1978 PA 368,
2 MCL 333.16101 to 333.18838, before a complaint is issued. This
3 subdivision does not apply to records or information pertaining
4 to 1 or more of the following:

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

8 (ii) The fact that an allegation was received by the
9 department of consumer and industry services; the fact that the
10 department of consumer and industry services did not issue a
11 complaint for the allegation; and the fact that the allegation
12 was dismissed.

13 (u) Records of a public body's security measures, including
14 security plans, security codes and combinations, passwords,
15 passes, keys, and security procedures, to the extent that the
16 records relate to the ongoing security of the public body.

17 (v) Records or information relating to a civil action in
18 which the requesting party and the public body are parties.

19 (w) Information or records that would disclose the social
20 security number of an individual.

21 (x) Except as otherwise provided in this subdivision, an
22 application for the position of president of an institution of
23 higher education established under section 4, 5, or 6 of article
24 VIII of the state constitution of 1963, materials submitted with
25 such an application, letters of recommendation or references
26 concerning an applicant, and records or information relating to
27 the process of searching for and selecting an individual for a

1 position described in this subdivision, if the records or
2 information could be used to identify a candidate for the
3 position. However, after 1 or more individuals have been
4 identified as finalists for a position described in this
5 subdivision, this subdivision does not apply to a public record
6 described in this subdivision, except a letter of recommendation
7 or reference, to the extent that the public record relates to an
8 individual identified as a finalist for the position.

9 (y) Records or information of measures designed to protect
10 the security or safety of persons or property, whether public or
11 private, including, but not limited to, building, public works,
12 and public water supply designs to the extent that those designs
13 relate to the ongoing security measures of a public body,
14 capabilities and plans for responding to a violation of the
15 Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan
16 penal code, 1931 PA 328, MCL 750.543a to 750.543z, emergency
17 response plans, risk planning documents, threat assessments, and
18 domestic preparedness strategies, unless disclosure would not
19 impair a public body's ability to protect the security or safety
20 of persons or property or unless the public interest in
21 disclosure outweighs the public interest in nondisclosure in the
22 particular instance.

23 (z) Information or records of a public school, including
24 information contained in a public school student directory, that
25 would reveal the name, address, telephone number, photograph, or
26 other identifying information about a student at that public
27 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) A public body shall exempt from disclosure information
4 that, if released, would prevent the public body from complying
5 with section 444 of subpart 4 of part C of the general education
6 provisions act, title IV of Public Law 90-247, 20 U.S.C. 1232g,
7 commonly referred to as the family educational rights and privacy
8 act of 1974. A public body that is a local or intermediate
9 school district or a public school academy shall exempt from
10 disclosure directory information, as defined by section 444 of
11 subpart 4 of part C of the general education provisions act,
12 title IV of Public Law 90-247, 20 U.S.C. 1232g, commonly referred
13 to as the family educational rights and privacy act of 1974,
14 requested for the purpose of surveys, marketing, or solicitation,
15 unless that public body determines that the use is consistent
16 with the educational mission of the public body and beneficial to
17 the affected students. A public body that is a local or
18 intermediate school district or a public school academy may take
19 steps to ensure that directory information disclosed under this
20 subsection shall not be used, rented, or sold for the purpose of
21 surveys, marketing, or solicitation. Before disclosing the
22 directory information, a public body that is a local or
23 intermediate school district or a public school academy may
24 require the requester to execute an affidavit stating that
25 directory information provided under this subsection shall not be
26 used, rented, or sold for the purpose of surveys, marketing, or
27 solicitation.

1 (3) This act does not authorize the withholding of
2 information otherwise required by law to be made available to the
3 public or to a party in a contested case under the administrative
4 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

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