

HOUSE BILL No. 4261

February 16, 2011, Introduced by Rep. McMillin 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 2006 PA 482.

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 of
5 an individual's privacy.

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

1 (i) Interfere with law enforcement proceedings.

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

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

5 (iv) Disclose the identity of a confidential source, or if the
6 record is compiled by a law enforcement agency in the course of a
7 criminal investigation, disclose confidential information furnished
8 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 (vii) DISCLOSE ANY OF THE FOLLOWING IN THE CASE OF A RECORD
14 PERTAINING TO A CRIME OF CHILD ABUSE, CRIMINAL SEXUAL CONDUCT,
15 SEXUAL ASSAULT OR MOLESTATION, OR SIMILAR CRIME, IN WHICH 1 OR MORE
16 VICTIMS ARE LESS THAN 18 YEARS OF AGE:

17 (A) THE NAME AND ADDRESS OF ANY VICTIM.

18 (B) THE NAMES AND ADDRESSES OF A VICTIM'S IMMEDIATE FAMILY
19 MEMBERS OR A VICTIM'S RELATIVES WHO HAVE THE SAME SURNAME AS THAT
20 VICTIM, OTHER THAN THE NAME AND ADDRESS OF THE ACCUSED.

21 (C) ANY OTHER INFORMATION THAT WOULD TEND TO REVEAL THE
22 IDENTITY OF ANY VICTIM, INCLUDING ANY REFERENCE TO A VICTIM'S
23 FAMILIAL OR OTHER RELATIONSHIP TO THE ACCUSED.

24 (c) A public record that if disclosed would prejudice a public
25 body's ability to maintain the physical security of custodial or
26 penal institutions occupied by persons arrested or convicted of a
27 crime or admitted because of a mental disability, unless the public

1 interest in disclosure under this act outweighs the public interest
2 in nondisclosure.

3 (d) Records or information specifically described and exempted
4 from disclosure by statute.

5 (e) A public record or information described in this section
6 that is furnished by the public body originally compiling,
7 preparing, or receiving the record or information to a public
8 officer or public body in connection with the performance of the
9 duties of that public officer or public body, if the considerations
10 originally giving rise to the exempt nature of the public record
11 remain applicable.

12 (f) Trade secrets or commercial or financial information
13 voluntarily provided to an agency for use in developing
14 governmental policy if **ALL OF THE FOLLOWING APPLY:**

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

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

20 (iii) A description of the information is recorded by the public
21 body within a reasonable time after it has been submitted,
22 maintained in a central place within the public body, and made
23 available to a person upon request. This subdivision does not apply
24 to information submitted as required by law or as a condition of
25 receiving a governmental contract, license, or other benefit.

26 (g) Information or records subject to the attorney-client
27 privilege.

1 (h) Information or records subject to the physician-patient
2 privilege, the psychologist-patient privilege, the minister,
3 priest, or Christian Science practitioner privilege, or other
4 privilege recognized by statute or court rule.

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

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

11 (i) An agreement is entered into.

12 (ii) Three years have elapsed since the making of the
13 appraisal, unless litigation relative to the acquisition has not
14 yet terminated.

15 (k) Test questions and answers, scoring keys, and other
16 examination instruments or data used to administer a license,
17 public employment, or academic examination, unless the public
18 interest in disclosure under this act outweighs the public interest
19 in nondisclosure.

20 (l) Medical, counseling, or psychological facts or evaluations
21 concerning an individual if the individual's identity would be
22 revealed by a disclosure of those facts or evaluation, including
23 protected health information, as defined in 45 CFR 160.103.

24 (m) Communications and notes within a public body or between
25 public bodies of an advisory nature to the extent that they cover
26 other than purely factual materials and are preliminary to a final
27 agency determination of policy or action. This exemption does not

1 apply unless the public body shows that in the particular instance
2 the public interest in encouraging frank communication between
3 officials and employees of public bodies clearly outweighs the
4 public interest in disclosure. This exemption does not constitute
5 an exemption under state law for purposes of section 8(h) of the
6 open meetings act, 1976 PA 267, MCL 15.268. As used in this
7 subdivision, "determination of policy or action" includes a
8 determination relating to collective bargaining, unless the public
9 record is otherwise required to be made available under 1947 PA
10 336, MCL 423.201 to 423.217.

11 (n) Records of law enforcement communication codes, or plans
12 for deployment of law enforcement personnel, that if disclosed
13 would prejudice a public body's ability to protect the public
14 safety unless the public interest in disclosure under this act
15 outweighs the public interest in nondisclosure in the particular
16 instance.

17 (o) Information that would reveal the exact location of
18 archaeological sites. The department of history, arts, and
19 libraries may promulgate rules in accordance with the
20 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
21 24.328, to provide for the disclosure of the location of
22 archaeological sites for purposes relating to the preservation or
23 scientific examination of sites.

24 (p) Testing data developed by a public body in determining
25 whether bidders' products meet the specifications for purchase of
26 those products by the public body, if disclosure of the data would
27 reveal that only 1 bidder has met the specifications. This

1 subdivision does not apply after 1 year has elapsed from the time
2 the public body completes the testing.

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

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

10 (s) Unless the public interest in disclosure outweighs the
11 public interest in nondisclosure in the particular instance, public
12 records of a law enforcement agency, the release of which would do
13 any of the following:

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

15 (ii) Identify or provide a means of identifying a law
16 enforcement undercover officer or agent or a plain clothes officer
17 as a law enforcement officer or agent.

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

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

24 (v) Disclose operational instructions for law enforcement
25 officers or agents.

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

1 (vii) Endanger the life or safety of law enforcement officers
2 or agents or their families, relatives, children, parents, or those
3 who furnish information to law enforcement departments or agencies.

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

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

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

10 (t) Except as otherwise provided in this subdivision, records
11 and information pertaining to an investigation or a compliance
12 conference conducted by the department under article 15 of the
13 public health code, 1978 PA 368, MCL 333.16101 to 333.18838, before
14 a complaint is issued. This subdivision does not apply to records
15 or information pertaining to 1 or more of the following:

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

19 (ii) The fact that an allegation was received by the
20 department; the fact that the department did not issue a complaint
21 for the allegation; and the fact that the allegation was dismissed.

22 (u) Records of a public body's security measures, including
23 security plans, security codes and combinations, passwords, passes,
24 keys, and security procedures, to the extent that the records
25 relate to the ongoing security of the public body.

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

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

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

18 (y) Records or information of measures designed to protect the
19 security or safety of persons or property, whether public or
20 private, including, but not limited to, building, public works, and
21 public water supply designs to the extent that those designs relate
22 to the ongoing security measures of a public body, capabilities and
23 plans for responding to a violation of the Michigan anti-terrorism
24 act, chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL
25 750.543a to 750.543z, emergency response plans, risk planning
26 documents, threat assessments, and domestic preparedness
27 strategies, unless disclosure would not impair a public body's

1 ability to protect the security or safety of persons or property or
2 unless the public interest in disclosure outweighs the public
3 interest in nondisclosure in the particular instance.

4 (2) A public body shall exempt from disclosure information
5 that, if released, would prevent the public body from complying
6 with 20 USC 1232g, commonly referred to as the family educational
7 rights and privacy act of 1974. A public body that is a local or
8 intermediate school district or a public school academy shall
9 exempt from disclosure directory information, as defined by 20 USC
10 1232g, commonly referred to as the family educational rights and
11 privacy act of 1974, requested for the purpose of surveys,
12 marketing, or solicitation, unless that public body determines that
13 the use is consistent with the educational mission of the public
14 body and beneficial to the affected students. A public body that is
15 a local or intermediate school district or a public school academy
16 may take steps to ensure that directory information disclosed under
17 this subsection shall not be used, rented, or sold for the purpose
18 of surveys, marketing, or solicitation. Before disclosing the
19 directory information, a public body that is a local or
20 intermediate school district or a public school academy may require
21 the requester to execute an affidavit stating that directory
22 information provided under this subsection shall not be used,
23 rented, or sold for the purpose of surveys, marketing, or
24 solicitation.

25 (3) This act does not authorize the withholding of information
26 otherwise required by law to be made available to the public or to
27 a party in a contested case under the administrative procedures act

1 of 1969, 1969 PA 306, MCL 24.201 to 24.328.

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