

# HOUSE BILL No. 5797

April 12, 2018, Introduced by Reps. Pagan, Clemente, Hoadley, Iden, Geiss, Greimel, Hauck, Kesto and Chang and referred to the Committee on Law and Justice.

A bill to amend 1976 PA 442, entitled  
"Freedom of information act,"  
by amending section 13 (MCL 15.243), as amended by 2018 PA 68.

## 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:

9       (i) Interfere with law enforcement proceedings.

10       (ii) Deprive a person of the right to a fair trial or

1 impartial administrative adjudication.

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

3 (iv) Disclose the identity of a confidential source, or if the  
4 record is compiled by a law enforcement agency in the course of a  
5 criminal investigation, disclose confidential information furnished  
6 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 public  
12 body's ability to maintain the physical security of custodial or  
13 penal institutions occupied by persons arrested or convicted of a  
14 crime or admitted because of a mental disability, unless the public  
15 interest in disclosure under this act outweighs the public interest  
16 in nondisclosure.

17 (d) Records or information specifically described and exempted  
18 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 considerations  
24 originally giving rise to the exempt nature of the public record  
25 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 chief  
5 administrative officer of the public body or by an elected official  
6 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 apply  
11 to information submitted as required by law or as a condition of  
12 receiving a governmental contract, license, or other benefit.

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

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

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

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

25 (i) An agreement is entered into.

26 (ii) Three years have elapsed since the making of the  
27 appraisal, unless litigation relative to the acquisition has not

1 yet terminated.

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

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

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 final  
14 agency determination of policy or action. This exemption does not  
15 apply unless the public body shows that in the particular instance  
16 the public interest in encouraging frank communication between  
17 officials and employees of public bodies clearly outweighs the  
18 public interest in disclosure. This exemption does not constitute  
19 an exemption under state law for purposes of section 8(h) of the  
20 open meetings act, 1976 PA 267, MCL 15.268. As used in this  
21 subdivision, "determination of policy or action" includes a  
22 determination relating to collective bargaining, unless the public  
23 record is otherwise required to be made available under 1947 PA  
24 336, 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 natural resources may  
6 promulgate rules in accordance with the administrative procedures  
7 act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to provide for the  
8 disclosure of the location of archaeological sites for purposes  
9 relating to the preservation or scientific examination of sites.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23          (t) Except as otherwise provided in this subdivision, records  
24 and information pertaining to an investigation or a compliance  
25 conference conducted by the department under article 15 of the  
26 public health code, 1978 PA 368, MCL 333.16101 to 333.18838, before  
27 a complaint is issued. This subdivision does not apply to records

1 or information pertaining to 1 or more of the following:

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

5 (ii) The fact that an allegation was received by the  
6 department; the fact that the department did not issue a complaint  
7 for the allegation; and the fact that the allegation was dismissed.

8 (u) Records of a public body's security measures, including  
9 security plans, security codes and combinations, passwords, passes,  
10 keys, and security procedures, to the extent that the records  
11 relate to the ongoing security of the public body.

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

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

16 (x) Except as otherwise provided in this subdivision, an  
17 application for the position of president of an institution of  
18 higher education established under section 4, 5, or 6 of article  
19 VIII of the state constitution of 1963, materials submitted with  
20 such an application, letters of recommendation or references  
21 concerning an applicant, and records or information relating to the  
22 process of searching for and selecting an individual for a position  
23 described in this subdivision, if the records or information could  
24 be used to identify a candidate for the position. However, after 1  
25 or more individuals have been identified as finalists for a  
26 position described in this subdivision, this subdivision does not  
27 apply to a public record described in this subdivision, except a

1 letter of recommendation or reference, to the extent that the  
2 public record relates to an individual identified as a finalist for  
3 the position.

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

20 (z) Information that would identify or provide a means of  
21 identifying a person that may, as a result of disclosure of the  
22 information, become a victim of a cybersecurity incident or that  
23 would disclose a person's cybersecurity plans or cybersecurity-  
24 related practices, procedures, methods, results, organizational  
25 information system infrastructure, hardware, or software.

26 (aa) Research data on road and attendant infrastructure  
27 collected, measured, recorded, processed, or disseminated by a



1 public agency or private entity, or information about software or  
2 hardware created or used by the private entity for such purposes.

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

24 **(3) A PUBLIC BODY SHALL EXEMPT FROM DISCLOSURE INFORMATION**  
25 **THAT WOULD REVEAL THE IDENTITY OF A PARTY WHO PROCEEDS ANONYMOUSLY**  
26 **IN A CIVIL ACTION IN WHICH THAT PARTY ALLEGES THAT HE OR SHE WAS**  
27 **THE VICTIM OF SEXUAL MISCONDUCT.**

1       **(4)** ~~(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       **(5)** ~~(4)~~—Except as otherwise exempt under subsection (1), this  
6 act 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 public  
9 record is transferred to the executive office of the governor or  
10 lieutenant governor, or an employee of either executive office,  
11 after a request for the public record has been received by a state  
12 officer, employee, agency, department, division, bureau, board,  
13 commission, council, authority, or other body in the executive  
14 branch of government that is subject to this act.