



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4378 (Substitute H-1 as passed by the House)
Sponsor: Representative Kristy Pagan
House Committee: Judiciary
Senate Committee: Judiciary and Public Safety

Date Completed: 12-1-20

CONTENT

The bill would amend the Freedom of Information Act (FOIA) to exempt from disclosure information that would reveal the identity of an anonymous party in a civil action alleging sexual misconduct and investigating records compiled for law enforcement purposes to the extent that disclosure as a public record would disclose the identity of a party who proceeded anonymously in a civil action in which the party alleged that he or she was the victim of sexual misconduct.

Under the Act, after providing a public body's FOIA coordinator with a written request that describes a public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy, or receive copies of the requested public record of the public body. A public body may exempt a public record from disclosure under a number of exemptions in the Act.

The bill would allow a public body to exempt from disclosure information that would reveal the identity of a party who proceeded anonymously in a civil action in which the party alleged that he or she was the victim of sexual misconduct.

"Sexual misconduct" would mean conduct described in Section 90, 136, 145a, 145b, 145c, 520b, 520c, 520d, 520e, or 520g of the Michigan Penal Code, regardless of whether the conduct resulted in a criminal conviction. (Those sections prohibit the following conduct, respectively: sexual intercourse under the pretext of medical treatment, female genital mutilation, contributing to the neglect or delinquency of a minor, accosting or soliciting a minor for immoral purposes, accosting or soliciting a minor for immoral purposes after a prior conviction, child sexually abusive activity, first-, second-, third-, and fourth-degree criminal sexual conduct (CSC), and assault with intent to commit CSC.)

The Act also allows a public body to exempt from disclosure investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

- Interfere with law enforcement proceedings.
- Deprive a person of the right to a fair trial or impartial administrative adjudication.
- Constitute an unwarranted invasion of personal property.
- Disclosure the identity of a confidential source, or if the record is compiled by a law enforcement agency in the court of a criminal investigation, disclose confidential information furnished only by a confidential source.
- Disclose law enforcement investigative techniques.

-- Endanger the life or physical safety of law enforcement personnel.

Under the bill, a public also could exempt from disclosure investigating records compiled for law enforcement purposes only to the extent that disclosure as a public record would disclose the identity of a party who, as described below, proceeded anonymously in a civil action in which the party alleged that he or she was the victim of sexual misconduct. For the purpose of securing his or her anonymity, that party or his or her designee could provide written notification of the civil action and his or her wish to remain anonymous to any law enforcement agency that had investigating records subject to this provision, and the law enforcement agency would have to retain a copy of the notification in its files with those investigating records.

MCL 15.243

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bruce Baker

SAS\S1920\s4378sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.