

SENATE BILL NO. 841

March 12, 2020, Introduced by Senators MCBROOM, MOSS, LUCIDO, BULLOCK, BAYER, POLEHANKI, MCMORROW, IRWIN, GEISS, BRINKS, MCCANN, RUNESTAD, WOJNO, BARRETT, HERTEL and HOLLIER and referred to the Committee on Oversight.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
(MCL 15.231 to 15.246) by adding sections 29c and 29d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 29c. (1) This part shall not be construed to limit,
2 modify, waive, or otherwise affect the privileges and immunities
3 guaranteed under section 11 of article IV of the state constitution
4 of 1963.

5 (2) This part does not create or imply a private cause of

1 action for a violation of this part.

2 Sec. 29d. (1) A public body may exempt from disclosure as a
3 public record under this part any of the following:

4 (a) Records or information of a personal nature if public
5 disclosure of the information would constitute a clearly
6 unwarranted invasion of an individual's privacy. That information
7 includes, but is not limited to, the following:

8 (i) An individual's Social Security number, financial
9 institution record, electronic fund number, deferred compensation,
10 savings bonds, W-2 and W-4 forms, and any court-enforced judgments.

11 (ii) An employee's health care benefit selection.

12 (iii) Unemployment compensation and worker's disability
13 compensation records.

14 (iv) Internet-use records unless the records indicate an
15 unlawful use of public resources.

16 (b) Medical, counseling, or psychological facts or evaluations
17 concerning an individual if the individual's identity would be
18 revealed by a disclosure of those facts or evaluation, including
19 protected health information, as defined in 45 CFR 160.103.

20 (c) Communications, including any related records or
21 information, between a legislator or a legislator's office and a
22 constituent, other than a person required to be registered as a
23 lobbyist under 1978 PA 472, MCL 4.411 to 4.431. For purposes of
24 this subdivision, "constituent" means any of the following:

25 (i) An individual who is registered to vote in the district the
26 legislator is elected to represent.

27 (ii) An individual who is a resident of the district the
28 legislator is elected to represent and who is not registered to
29 vote outside of that district.

1 (iii) An individual other than an individual described in
2 subparagraph (i) or (ii) if the individual intended that the
3 communication be with the legislator elected to represent the
4 district where he or she is registered to vote or, if not
5 registered to vote, resides.

6 (d) Communications and notes within a public body or between
7 public bodies of an advisory nature to the extent that they cover
8 other than purely factual materials and are preliminary to a final
9 determination of policy or action. This exemption does not apply if
10 in the particular instance the public interest in disclosure
11 clearly outweighs the public interest in encouraging frank
12 communications. For purposes of this subdivision, "public body"
13 includes a public body as defined in part 1.

14 (e) Records or information pertaining to an ongoing internal
15 or legislative investigation.

16 (f) Trade secrets or commercial or financial records or
17 information voluntarily provided in confidence for use in
18 developing governmental policy.

19 (g) Records or information subject to the attorney-client
20 privilege or any other privilege recognized by the constitution,
21 statute, or court rule.

22 (h) Records or information relating to a civil action in which
23 the public body is a party until such litigation or claim has been
24 finally adjudicated or otherwise settled.

25 (i) Records or information specifically described and exempted
26 from disclosure by statute and including the records and
27 information subject to confidentiality requirements in sections
28 109, 501, and 601 of the legislative council act, 1986 PA 268, MCL
29 4.1109, 4.1501, and 4.1601, in section 9 of 2016 PA 198, MCL 4.779,

1 and in section 9 of 1975 PA 46, MCL 4.359.

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

9 (k) Records of the office of sergeant at arms.

10 (l) Records of a public body's security measures, including
11 security plans, capabilities, procedures, measures, passwords,
12 passes, keys, and codes and combinations.

13 (m) A bid, quote, or proposal submitted by a person to enter
14 into a contract or agreement and records created in the preparation
15 for and evaluation of the bid, quote, or proposal until the time of
16 final notification of award of the contract or agreement.

17 (n) Records containing a trade secret as defined under section
18 2 of the uniform trade secrets act, 1998 PA 448, MCL 445.1902, or
19 financial or proprietary information submitted in connection with a
20 bid, quote, or proposal to enter into a contract or agreement.

21 (o) Records that would do any of the following if disclosed:

22 (i) Interfere with law enforcement proceedings.

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

25 (iii) Disclose the identity of a confidential source or
26 information furnished by a confidential source in the course of a
27 legislative investigation.

28 (iv) Endanger the life or physical safety of any individual.

29 (v) Prejudice a public body's ability to maintain the security

1 or integrity of its properties or information technology systems.

2 (p) Records created, prepared, owned, used, in the possession
3 of, or retained by a public body prior to January 1, 2021.

4 (q) Records created, prepared, owned, used, in the possession
5 of, or retained by the majority or minority caucuses of each house
6 of the legislature.

7 (r) The cell phone number of a public body.

8 (2) This part does not authorize the exemption from disclosure
9 of any salary record of an employee or official of a public body.

10 (3) This part does not authorize the exemption from disclosure
11 of a record otherwise required by law to be made available to the
12 public.

13 Enacting section 1. This amendatory act takes effect January
14 1, 2021.

15 Enacting section 2. This amendatory act does not take effect
16 unless Senate Bill No. 837 of the 100th Legislature is enacted into
17 law.