

HOUSE BILL NO. 5849

February 24, 2022, Introduced by Reps. Clemente, Kuppa, Weiss, Sowerby, Stone, Steckloff, Cavanagh, Cherry, Steenland, Neeley, Brabec, Breen, Liberati, O'Neal, Pohutsky, Cynthia Johnson, Rabhi, Tyrone Carter, Bolden, Rogers, Brenda Carter, Koleszar, Aiyash, Young, Haadsma, Hertel, Scott, Thanedar, Ellison, Peterson, Hood, Puri, Garza, Jones, Anthony, Camilleri and Whitsett and referred to the Committee on Education.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending section 2 (MCL 15.232), as amended by 2018 PA 68.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Cybersecurity assessment" means an investigation
3 undertaken by a person, governmental body, or other entity to
4 identify vulnerabilities in cybersecurity plans.

5 (b) "Cybersecurity incident" includes, but is not limited to,
6 a computer network intrusion or attempted intrusion; a breach of

1 primary computer network controls; unauthorized access to programs,
2 data, or information contained in a computer system; or actions by
3 a third party that materially affect component performance or,
4 because of impact to component systems, prevent normal computer
5 system activities.

6 (c) "Cybersecurity plan" includes, but is not limited to,
7 information about a person's information systems, network security,
8 encryption, network mapping, access control, passwords,
9 authentication practices, computer hardware or software, or
10 response to cybersecurity incidents.

11 (d) "Cybersecurity vulnerability" means a deficiency within
12 computer hardware or software, or within a computer network or
13 information system, that could be exploited by unauthorized parties
14 for use against an individual computer user or a computer network
15 or information system.

16 (e) "Field name" means the label or identification of an
17 element of a computer database that contains a specific item of
18 information, and includes but is not limited to a subject heading
19 such as a column header, data dictionary, or record layout.

20 (f) "FOIA coordinator" means either of the following:

21 (i) An individual who is a public body.

22 (ii) An individual designated by a public body in accordance
23 with section 6 to accept and process requests for public records
24 under this act.

25 (g) "Person" means an individual, corporation, limited
26 liability company, partnership, firm, organization, association,
27 governmental entity, or other legal entity. Person does not include
28 an individual serving a sentence of imprisonment in a state or
29 county correctional facility in this state or any other state, or

1 in a federal correctional facility.

2 (h) "Public body" means any of the following:

3 (i) A state officer, employee, agency, department, division,
4 bureau, board, commission, council, authority, or other body in the
5 executive branch of the state government, but does not include the
6 governor or lieutenant governor, the executive office of the
7 governor or lieutenant governor, or employees thereof.

8 (ii) An agency, board, commission, or council in the
9 legislative branch of the state government.

10 (iii) A county, city, township, village, intercounty, intercity,
11 or regional governing body, council, school district, special
12 district, or municipal corporation, or a board, department,
13 commission, council, or agency thereof.

14 (iv) Any other body that is created by state or local authority
15 or is primarily funded by or through state or local authority,
16 except that **it does not include** the judiciary ~~, including or~~ the
17 office of the county clerk and its employees when acting in the
18 capacity of clerk to the circuit court. ~~, is not included in the~~
19 ~~definition of public body.~~

20 (v) **An educational management organization. As used in this**
21 **subparagraph, "educational management organization" means either of**
22 **the following:**

23 (A) **That term as defined in section 503c of the revised school**
24 **code, 1976 PA 451, MCL 380.503c.**

25 (B) **An educational management company as that term is defined**
26 **in section 521 of the revised school code, 1976 PA 451, MCL**
27 **380.521.**

28 (i) "Public record" means a writing prepared, owned, used, in
29 the possession of, or retained by a public body in the performance

1 of an official function, from the time it is created. Public record
2 does not include computer software. This act separates public
3 records into the following 2 classes:

4 (i) Those that are exempt from disclosure under section 13.

5 (ii) All public records that are not exempt from disclosure
6 under section 13 and that are subject to disclosure under this act.

7 (j) "Software" means a set of statements or instructions that
8 when incorporated in a machine usable medium is capable of causing
9 a machine or device having information processing capabilities to
10 indicate, perform, or achieve a particular function, task, or
11 result. Software does not include computer-stored information or
12 data, or a field name if disclosure of that field name does not
13 violate a software license.

14 (k) "Unusual circumstances" means any 1 or a combination of
15 the following, but only to the extent necessary for the proper
16 processing of a request:

17 (i) The need to search for, collect, or appropriately examine
18 or review a voluminous amount of separate and distinct public
19 records pursuant to a single request.

20 (ii) The need to collect the requested public records from
21 numerous field offices, facilities, or other establishments ~~which~~
22 **that** are located apart from the particular office receiving or
23 processing the request.

24 (l) "Writing" means handwriting, typewriting, printing,
25 photostating, photographing, photocopying, and every other means of
26 recording, and includes letters, words, pictures, sounds, or
27 symbols, or combinations thereof, and papers, maps, magnetic or
28 paper tapes, photographic films or prints, microfilm, microfiche,
29 magnetic or punched cards, discs, drums, hard drives, solid state

1 storage components, or other means of recording or retaining
2 meaningful content.

3 (m) "Written request" means a writing that asks for
4 information, and includes a writing transmitted by facsimile,
5 ~~electronic mail, email~~, or other electronic means.