

HOUSE BILL NO. 5923

March 16, 2022, Introduced by Reps. VanWoerkom, Steven Johnson and Borton and referred to the Committee on Oversight.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending sections 2 and 5 (MCL 15.232 and 15.235), section 2 as
amended by 2018 PA 68 and section 5 as amended by 2020 PA 36.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 2. As used in this act:
- 2 **(a) "Business day" means a day that is not a Saturday, Sunday,**
3 **or legal holiday.**
- 4 **(b) ~~(a)~~**—"Cybersecurity assessment" means an investigation
5 undertaken by a person, governmental body, or other entity to

1 identify vulnerabilities in cybersecurity plans.

2 **(c)** ~~(b)~~—"Cybersecurity incident" includes, but is not limited
3 to, a computer network intrusion or attempted intrusion; a breach
4 of primary computer network controls; unauthorized access to
5 programs, data, or information contained in a computer system; or
6 actions by a third party that materially affect component
7 performance or, because of impact to component systems, prevent
8 normal computer system activities.

9 **(d)** ~~(e)~~—"Cybersecurity plan" includes, but is not limited to,
10 information about a person's information systems, network security,
11 encryption, network mapping, access control, passwords,
12 authentication practices, computer hardware or software, or
13 response to cybersecurity incidents.

14 **(e)** ~~(d)~~—"Cybersecurity vulnerability" means a deficiency
15 within computer hardware or software, or within a computer network
16 or information system, that could be exploited by unauthorized
17 parties for use against an individual computer user or a computer
18 network or information system.

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

23 **(g)** ~~(f)~~—"FOIA coordinator" means either of the following:

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

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

28 **(h)** ~~(g)~~—"Person" means an individual, corporation, limited
29 liability company, partnership, firm, organization, association,

1 governmental entity, or other legal entity. Person does not include
 2 an individual serving a sentence of imprisonment in a state or
 3 county correctional facility in this state or any other state, or
 4 in a federal correctional facility.

5 (i) ~~(h)~~ "Public body" means any of the following:

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

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

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

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

23 (j) ~~(i)~~ "Public record" means a writing prepared, owned, used,
 24 in the possession of, or retained by a public body in the
 25 performance of an official function, from the time it is created.
 26 Public record does not include computer software. This act
 27 separates public records into the following 2 classes:

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

29 (ii) All public records that are not exempt from disclosure

under section 13 and that are subject to disclosure under this act.

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

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

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

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

(m) ~~(l)~~—"Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, hard drives, solid state storage components, or other means of recording or retaining meaningful content.

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

1 Sec. 5. (1) Except as provided in section 3, a person desiring
2 to inspect or receive a copy of a public record shall make a
3 written request for the public record to the FOIA coordinator of a
4 public body. A written request made by facsimile, ~~electronic mail,~~
5 **email**, or other electronic transmission is not received by a public
6 body's FOIA coordinator until 1 business day after the electronic
7 transmission is made. However, if a written request is sent by
8 ~~electronic mail~~**email** and delivered to the public body's spam or
9 junk-mail folder, the request is not received until 1 day after the
10 public body first becomes aware of the written request. The public
11 body shall note in its records both the time a written request is
12 delivered to its spam or junk-mail folder and the time the public
13 body first becomes aware of that request. **Not later than 2 business**
14 **days after receiving a written request for a public record, the**
15 **public body shall notify the requestor in writing of its receipt of**
16 **the request.**

17 (2) Unless otherwise agreed to in writing by the person making
18 the request, a public body shall, subject to subsection (10),
19 respond to a request for a public record within 5 business days
20 after the public body receives the request by doing 1 of the
21 following:

22 (a) Granting the request.

23 (b) Issuing a written notice to the requesting person denying
24 the request.

25 (c) Granting the request in part and issuing a written notice
26 to the requesting person denying the request in part.

27 (d) Issuing a notice extending for not more than 10 business
28 days the period during which the public body shall respond to the
29 request. A public body shall not issue more than 1 notice of

1 extension for a particular request.

2 (3) Failure to respond to a request under subsection (2)
3 constitutes a public body's final determination to deny the request
4 if either of the following applies:

5 (a) The failure was willful and intentional.

6 (b) The written request included language that conveyed a
7 request for information within the first 250 words of the body of a
8 letter, facsimile, ~~electronic mail, email~~, or ~~electronic mail email~~
9 attachment, or specifically included the words, characters, or
10 abbreviations for "freedom of information", "information", "FOIA",
11 "copy", or a recognizable misspelling of such, or appropriate legal
12 code reference to this act, on the front of an envelope or in the
13 subject line of an ~~electronic mail, email~~, letter, or facsimile
14 cover page.

15 (4) In a civil action to compel a public body's disclosure of
16 a public record under section 10, the court shall assess damages
17 against the public body under section 10(7) if the court has done
18 both of the following:

19 (a) Determined that the public body has not complied with
20 subsection (2).

21 (b) Ordered the public body to disclose or provide copies of
22 all or a portion of the public record.

23 (5) A written notice denying a request for a public record in
24 whole or in part is a public body's final determination to deny the
25 request or portion of that request. The written notice must
26 contain:

27 (a) An explanation of the basis under this act or other
28 statute for the determination that the public record, or portion of
29 that public record, is exempt from disclosure, if that is the

1 reason for denying all or a portion of the request. **For each public**
 2 **record entirely withheld from disclosure on the basis of 1 or more**
 3 **exemptions, the public body's explanation under this subdivision**
 4 **must acknowledge that the record exists, generally describe it, and**
 5 **fully explain the public body's grounds for every asserted**
 6 **exemption.**

7 (b) A certificate that the public record does not exist under
 8 the name given by the ~~requester~~**requestor** or by another name
 9 reasonably known to the public body, if that is the reason for
 10 denying the request or a portion of the request.

11 (c) A description of a public record or information on a
 12 public record that is separated or deleted under section 14, if a
 13 separation or deletion is made.

14 (d) A full explanation of the requesting person's right to do
 15 either of the following:

16 (i) Submit to the head of the public body a written appeal that
 17 specifically states the word "appeal" and identifies the reason or
 18 reasons for reversal of the disclosure denial.

19 (ii) Seek judicial review of the denial under section 10.

20 (e) Notice of the right to receive ~~attorneys'~~**attorney** fees
 21 and damages as provided in section 10 if, after judicial review,
 22 the court determines that the public body has not complied with
 23 this section and orders disclosure of all or a portion of a public
 24 record.

25 (6) The individual designated in section 6 as responsible for
 26 the denial of the request shall sign the written notice of denial.

27 (7) If a public body issues a notice extending the period for
 28 a response to the request, the notice must specify the reasons for
 29 the extension and the date by which the public body will do 1 of

1 the following:

2 (a) Grant the request.

3 (b) Issue a written notice to the requesting person denying
4 the request.

5 (c) Grant the request in part and issue a written notice to
6 the requesting person denying the request in part.

7 (8) If a public body makes a final determination to deny in
8 whole or in part a request to inspect or receive a copy of a public
9 record or portion of that public record, the requesting person may
10 do either of the following:

11 (a) Appeal the denial to the head of the public body under
12 section 10.

13 (b) Commence a civil action, under section 10.

14 (9) Notwithstanding any other provision of this act to the
15 contrary, a public body that maintains a law enforcement records
16 management system and stores public records for another public body
17 that subscribes to the law enforcement records management system is
18 not in possession of, retaining, or the custodian of, a public
19 record stored on behalf of the subscribing public body. If the
20 public body that maintains a law enforcement records management
21 system receives a written request for a public record that is
22 stored on behalf of a subscribing public body, the public body that
23 maintains the law enforcement records management system shall,
24 within 10 business days after receipt of the request, give written
25 notice to the requesting person identifying the subscribing public
26 body and stating that the requesting person shall submit the
27 request to the subscribing public body. As used in this subsection,
28 "law enforcement records management system" means a data storage
29 system that may be used voluntarily by subscribers, including any

1 subscribing public bodies, to share information and facilitate
2 intergovernmental collaboration in the provision of law enforcement
3 services.

4 (10) A person making a request under subsection (1) may
5 stipulate that the public body's response under subsection (2) be
6 ~~electronically mailed, emailed~~, delivered by facsimile, or
7 delivered by first-class mail. This subsection does not apply if
8 the public body lacks the technological capability to provide an
9 ~~electronically mailed~~ **emailed** response.