

# SENATE BILL NO. 73

February 16, 2023, Introduced by Senators SHINK, GEISS, CHANG, LAUWERS, BELLINO, BAYER, WOJNO, MCCANN, CAVANAGH and POLEHANKI and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1976 PA 442, entitled  
"Freedom of information act,"  
by amending section 13 (MCL 15.243), as amended by 2021 PA 33.

**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.

1 (b) Investigating records compiled for law enforcement  
2 purposes, but only to the extent that disclosure as a public record  
3 would do any of the following:

4 (i) Interfere with law enforcement proceedings.

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

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

8 (iv) Disclose the identity of a confidential source, or if the  
9 record is compiled by a law enforcement agency in the course of a  
10 criminal investigation, disclose confidential information furnished  
11 only by a confidential source.

12 (v) Disclose law enforcement investigative techniques or  
13 procedures.

14 (vi) Endanger the life or physical safety of law enforcement  
15 personnel.

16 **(vii) Disclose the identity of a party who, as described in**  
17 **subdivision (cc), proceeds anonymously in a civil action in which**  
18 **the party alleges that the party was the victim of sexual**  
19 **misconduct. For the purpose of securing the party's anonymity, that**  
20 **party or the party's designee may provide written notification of**  
21 **the civil action and the party's wish to remain anonymous to any**  
22 **law enforcement agency that has investigating records subject to**  
23 **this subparagraph, and the law enforcement agency shall retain a**  
24 **copy of that notification in its files with those investigating**  
25 **records.**

26 (c) A public record that if disclosed would prejudice a public  
27 body's ability to maintain the physical security of custodial or  
28 penal institutions occupied by persons arrested or convicted of a  
29 crime or admitted because of a mental disability, unless the public

1 interest in disclosure under this act outweighs the public interest  
2 in nondisclosure.

3 (d) Records or information specifically described and exempted  
4 from disclosure by statute.

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

12 (f) Trade secrets or commercial or financial information  
13 voluntarily provided to an agency for use in developing  
14 governmental policy if:

15 (i) The information is submitted upon a promise of  
16 confidentiality by the public body.

17 (ii) The promise of confidentiality is authorized by the chief  
18 administrative officer of the public body or by an elected official  
19 at the time the promise is made.

20 (iii) A description of the information is recorded by the public  
21 body within a reasonable time after it has been submitted,  
22 maintained in a central place within the public body, and made  
23 available to a person upon request. This subdivision does not apply  
24 to information submitted as required by law or as a condition of  
25 receiving a governmental contract, license, or other benefit.

26 (g) Information or records subject to the attorney-client  
27 privilege.

28 (h) Information or records subject to the physician-patient  
29 privilege, the psychologist-patient privilege, the minister,

1 priest, or Christian Science practitioner privilege, or other  
2 privilege recognized by statute or court rule.

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

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

9 (i) An agreement is entered into.

10 (ii) Three years have elapsed since the making of the  
11 appraisal, unless litigation relative to the acquisition has not  
12 yet terminated.

13 (k) Test questions and answers, scoring keys, and other  
14 examination instruments or data used to administer a license,  
15 public employment, or academic examination, unless the public  
16 interest in disclosure under this act outweighs the public interest  
17 in nondisclosure.

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

22 (m) Communications and notes within a public body or between  
23 public bodies of an advisory nature to the extent that they cover  
24 other than purely factual materials and are preliminary to a final  
25 agency determination of policy or action. This exemption does not  
26 apply unless the public body shows that in the particular instance  
27 the public interest in encouraging frank communication between  
28 officials and employees of public bodies clearly outweighs the  
29 public interest in disclosure. This exemption does not constitute

1 an exemption under state law for purposes of section 8(h) of the  
2 open meetings act, 1976 PA 267, MCL 15.268. As used in this  
3 subdivision, "determination of policy or action" includes a  
4 determination relating to collective bargaining, unless the public  
5 record is otherwise required to be made available under 1947 PA  
6 336, MCL 423.201 to 423.217.

7 (n) Records of law enforcement communication codes, or plans  
8 for deployment of law enforcement personnel, that if disclosed  
9 would prejudice a public body's ability to protect the public  
10 safety unless the public interest in disclosure under this act  
11 outweighs the public interest in nondisclosure in the particular  
12 instance.

13 (o) Information that would reveal the exact location of  
14 archaeological sites. The department of natural resources may  
15 promulgate rules in accordance with the administrative procedures  
16 act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to provide for the  
17 disclosure of the location of archaeological sites for purposes  
18 relating to the preservation or scientific examination of sites.

19 (p) Testing data developed by a public body in determining  
20 whether bidders' products meet the specifications for purchase of  
21 those products by the public body, if disclosure of the data would  
22 reveal that only 1 bidder has met the specifications. This  
23 subdivision does not apply after 1 year has elapsed from the time  
24 the public body completes the testing.

25 (q) Academic transcripts of an institution of higher education  
26 established under section 5, 6, or 7 of article VIII of the state  
27 constitution of 1963, if the transcript pertains to a student who  
28 is delinquent in the payment of financial obligations to the  
29 institution.

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

3 (s) Unless the public interest in disclosure outweighs the  
4 public interest in nondisclosure in the particular instance, public  
5 records of a law enforcement agency, the release of which would do  
6 any of the following:

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

8 (ii) Identify or provide a means of identifying a law  
9 enforcement undercover officer or agent or a plain clothes officer  
10 as a law enforcement officer or agent.

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

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

17 (v) Disclose operational instructions for law enforcement  
18 officers or agents.

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

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

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

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

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

1           (t) Except as otherwise provided in this subdivision, records  
2 and information pertaining to an investigation or a compliance  
3 conference conducted by the department under article 15 of the  
4 public health code, 1978 PA 368, MCL 333.16101 to 333.18838, before  
5 a complaint is issued. This subdivision does not apply to records  
6 or information pertaining to 1 or more of the following:

7           (i) The fact that an allegation has been received and an  
8 investigation is being conducted, and the date the allegation was  
9 received.

10          (ii) The fact that an allegation was received by the  
11 department; the fact that the department did not issue a complaint  
12 for the allegation; and the fact that the allegation was dismissed.

13          (u) Records of a public body's security measures, including  
14 security plans, security codes and combinations, passwords, passes,  
15 keys, and security procedures, to the extent that the records  
16 relate to the ongoing security of the public body.

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

19          (w) Information or records that would disclose the Social  
20 Security number of an individual.

21          (x) Except as otherwise provided in this subdivision, an  
22 application for the position of president of an institution of  
23 higher education established under section 4, 5, or 6 of article  
24 VIII of the state constitution of 1963, materials submitted with  
25 such an application, letters of recommendation or references  
26 concerning an applicant, and records or information relating to the  
27 process of searching for and selecting an individual for a position  
28 described in this subdivision, if the records or information could  
29 be used to identify a candidate for the position. However, after 1

1 or more individuals have been identified as finalists for a  
2 position described in this subdivision, this subdivision does not  
3 apply to a public record described in this subdivision, except a  
4 letter of recommendation or reference, to the extent that the  
5 public record relates to an individual identified as a finalist for  
6 the position.

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

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

29 (aa) Research data on road and attendant infrastructure

1 collected, measured, recorded, processed, or disseminated by a  
2 public agency or private entity, or information about software or  
3 hardware created or used by the private entity for such purposes.

4 (bb) Records or information that would reveal the specific  
5 location or GPS coordinates of game, including, but not limited to,  
6 records or information of the specific location or GPS coordinates  
7 of game obtained by the department of natural resources during any  
8 restoration, management, or research project conducted under  
9 section 40501 of the natural resources and environmental protection  
10 act, 1994 PA 451, MCL 324.40501, or in connection with the  
11 expenditure of money under section 43553 of the natural resources  
12 and environmental protection act, 1994 PA 451, MCL 324.43553. As  
13 used in this subdivision, "game" means that term as defined in  
14 section 40103 of the natural resources and environmental protection  
15 act, 1994 PA 451, MCL 324.40103.

16 (cc) **Information that would reveal the identity of a party who**  
17 **proceeds anonymously in a civil action in which the party alleges**  
18 **that the party was the victim of sexual misconduct. As used in this**  
19 **subdivision, "sexual misconduct" means the conduct described in**  
20 **section 90, 136, 145a, 145b, 145c, 520b, 520c, 520d, 520e, or 520g**  
21 **of the Michigan penal code, 1931 PA 328, MCL 750.90, 750.136,**  
22 **750.145a, 750.145b, 750.145c, 750.520b, 750.520c, 750.520d,**  
23 **750.520e, and 750.520g, regardless of whether the conduct resulted**  
24 **in a criminal conviction.**

25 (2) A public body shall exempt from disclosure information  
26 that, if released, would prevent the public body from complying  
27 with 20 USC 1232g, commonly referred to as the family educational  
28 rights and privacy act of 1974. A public body that is a local or  
29 intermediate school district or a public school academy shall

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

17 (3) This act does not authorize the withholding of information  
18 otherwise required by law to be made available to the public or to  
19 a party in a contested case under the administrative procedures act  
20 of 1969, 1969 PA 306, MCL 24.201 to 24.328.

21 (4) Except as otherwise exempt under subsection (1), this act  
22 does not authorize the withholding of a public record in the  
23 possession of the executive office of the governor or lieutenant  
24 governor, or an employee of either executive office, if the public  
25 record is transferred to the executive office of the governor or  
26 lieutenant governor, or an employee of either executive office,  
27 after a request for the public record has been received by a state  
28 officer, employee, agency, department, division, bureau, board,  
29 commission, council, authority, or other body in the executive

**1** branch of government that is subject to this act.