



HOUSE BILL No. 5425

November 29, 1995, Introduced by Reps. Baird, Freeman, LaForge, Nye, Ciaramitaro, Kaza, DeHart, Wallace, Geiger, Tesanovich, Dobronski, Martinez, Anthony, Schroer, Yokich, Wetters and Cherry and referred to the Committee on Judiciary and Civil Rights.

A bill to amend sections 2 and 13 of Act No. 442 of the Public Acts of 1976, entitled "Freedom of information act," section 2 as amended by Act No. 131 of the Public Acts of 1994 and section 13 as amended by Act No. 82 of the Public Acts of 1993, being sections 15.232 and 15.243 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2 and 13 of Act No. 442 of the Public
2 Acts of 1976, section 2 as amended by Act No. 131 of the Public
3 Acts of 1994 and section 13 as amended by Act No. 82 of the
4 Public Acts of 1993, being sections 15.232 and 15.243 of the
5 Michigan Compiled Laws, are amended to read as follows:

6 Sec. 2. As used in this act:

1 (a) "Person" means an individual, corporation, partnership,
2 firm, organization, or association, except that person does not
3 include an individual serving a sentence of imprisonment in a
4 state or county correctional facility in this state or any other
5 state, or in a federal correctional facility.

6 (b) "Public body" means:

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

12 (ii) An agency, board, commission, or council in the legis-
13 lative branch of the state government.

14 (iii) A county, city, township, village, intercounty, inter-
15 city, or regional governing body, council, school district, spe-
16 cial district, or municipal corporation, or a board, department,
17 commission, council, or agency thereof.

18 (iv) Any other body which is created by state or local
19 authority or which is primarily funded by or through state or
20 local authority.

21 (v) The judiciary, ~~including~~ EMPLOYEES OF THE JUDICIARY,
22 the office of the county clerk, and employees ~~thereof when~~
23 ~~acting in the capacity of clerk to the circuit court, is not~~
24 ~~included in the definition of public body.~~ OF THE OFFICE OF THE
25 COUNTY CLERK.

26 (c) "Public record" means a writing prepared, owned, used,
27 in the possession of, or retained by a public body in the

1 performance of an official function, from the time it is
2 created. This act separates public records into 2 classes: (i)
3 those which are exempt from disclosure under section 13, and (ii)
4 all others, which are subject to disclosure under this act.

5 (d) "Unusual circumstances" means any 1 or a combination of
6 the following, but only to the extent necessary for the proper
7 processing of a request:

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

11 (ii) The need to collect the requested public records from
12 numerous field offices, facilities, or other establishments which
13 are located apart from the particular office receiving or pro-
14 cessing the request.

15 (e) "Writing" means handwriting, typewriting, printing, pho-
16 tostating, photographing, photocopying, and every other means of
17 recording, and includes letters, words, pictures, sounds, or sym-
18 bols, or combinations thereof, and papers, maps, magnetic or
19 paper tapes, photographic films or prints, microfilm, microfiche,
20 magnetic or punched cards, discs, drums, or other means of
21 recording or retaining meaningful content.

22 Sec. 13. (1) A public body may exempt from disclosure as a
23 public record under this act:

24 (a) Information of a personal nature where the public dis-
25 closure of the information would constitute a clearly unwarranted
26 invasion of an individual's privacy.

1 (b) Investigating records compiled for law enforcement
2 purposes, but only to the extent that disclosure as a public
3 record 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 impar-
6 tial administrative adjudication.

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

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

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

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

17 (c) A public record that if disclosed would prejudice a
18 public body's ability to maintain the physical security of custo-
19 dial or penal institutions occupied by persons arrested or con-
20 victed of a crime or admitted because of a mental disability,
21 unless the public interest in disclosure under this act outweighs
22 the public interest in nondisclosure.

23 (d) Records or information specifically described and
24 exempted from disclosure by statute.

25 (e) Information the release of which would prevent the
26 public body from complying with section ~~438~~ 444 of subpart ~~2~~
27 4 of part C of the general education provisions act, title IV of

1 Public Law 90-247, 20 U.S.C. 1232g, commonly referred to as the
2 family educational rights and privacy act of 1974.

3 (f) A public record or information described in this section
4 that is furnished by the public body originally compiling, pre-
5 paring, or receiving the record or information to a public offi-
6 cer or public body in connection with the performance of the
7 duties of that public officer or public body, if the considera-
8 tions originally giving rise to the exempt nature of the public
9 record remain applicable.

10 (g) Trade secrets or commercial or financial information
11 voluntarily provided to an agency for use in developing govern-
12 mental policy if:

13 (i) The information is submitted upon a promise of confiden-
14 tiality by the public body.

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

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

25 (h) Information or records subject to the attorney-client
26 privilege.

1 (i) Information or records subject to the physician-patient
2 privilege, the psychologist-patient privilege, the minister,
3 priest, or Christian science practitioner privilege, or other
4 privilege recognized by statute or court rule.

5 (j) A bid or proposal by a person to enter into a contract
6 or agreement, until the time for the public opening of bids or
7 proposals, or if a public opening is not to be conducted, until
8 the time for the receipt of bids or proposals has expired.

9 (k) Appraisals of real property to be acquired by the public
10 body until (i) an agreement is entered into; or (ii) 3 years has
11 elapsed since the making of the appraisal, unless litigation rel-
12 ative to the acquisition has not yet terminated.

13 (l) 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 inter-
17 est in nondisclosure.

18 (m) Medical, counseling, or psychological facts or evalu-
19 ations concerning an individual if the individual's identity
20 would be revealed by a disclosure of those facts or evaluation.

21 (n) Communications and notes within a public body or between
22 public bodies of an advisory nature to the extent that they cover
23 other than purely factual materials and are preliminary to a
24 final agency determination of policy or action. This exemption
25 does not apply unless the public body shows that in the particu-
26 lar instance the public interest in encouraging frank
27 communications between officials and employees of public bodies

1 clearly outweighs the public interest in disclosure. This
2 exemption does not constitute an exemption under state law for
3 purposes of section 8(h) of the open meetings act, Act No. 267 of
4 the Public Acts of 1976, being section 15.268 of the Michigan
5 Compiled Laws. As used in this subdivision, "determination of
6 policy or action" includes a determination relating to collective
7 bargaining, unless the public record is otherwise required to be
8 made available under Act No. 336 of the Public Acts of 1947, ~~as~~
9 ~~amended,~~ being sections 423.201 to ~~423.216~~ 423.217 of the
10 Michigan Compiled Laws.

11 (o) Records of law enforcement communication codes, or plans
12 for deployment of law enforcement personnel, which if disclosed
13 would prejudice a public body's ability to protect the public
14 safety unless the public interest in disclosure under this act
15 outweighs the public interest in nondisclosure in the particular
16 instance.

17 (p) Information which would reveal the exact location of
18 archaeological sites. The secretary of state may promulgate
19 rules pursuant to the administrative procedures act of 1969, Act
20 No. 306 of the Public Acts of 1969, ~~as amended,~~ being sections
21 24.201 to 24.328 of the Michigan Compiled Laws, to provide for
22 the disclosure of the location of archaeological sites for pur-
23 poses relating to the preservation or scientific examination of
24 sites.

25 (q) Testing data developed by a public body in determining
26 whether bidders' products meet the specifications for purchase of
27 those products by the public body, if disclosure of the data

1 would reveal that only 1 bidder has met the specifications. This
2 subdivision does not apply after 1 year has elapsed from the time
3 the public body completes the testing.

4 (r) Academic transcripts of an institution of higher educa-
5 tion established under ~~sections~~ SECTION 5, 6, or 7 of article
6 VIII of the state constitution of 1963, where the record pertains
7 to a student who is delinquent in the payment of financial obli-
8 gations to the institution.

9 (s) Records of any campaign committee including any commit-
10 tee that receives money from a state campaign fund.

11 (t) Unless the public interest in disclosure outweighs the
12 public interest in nondisclosure in the particular instance,
13 public records of a police or sheriff's agency or department, the
14 release of which would do any of the following:

15 (i) Identify or provide a means of identifying an informer.

16 (ii) Identify or provide a means of identifying a law
17 enforcement undercover officer or agent or a plain clothes offi-
18 cer as a law enforcement officer or agent.

19 (iii) Disclose the personal address or telephone number of
20 law enforcement officers or agents or any special skills that
21 they may have.

22 (iv) Disclose the name, address, or telephone numbers of
23 family members, relatives, children, or parents of law enforce-
24 ment officers or agents.

25 (v) Disclose operational instructions for law enforcement
26 officers or agents.

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

3 (vii) Endanger the life or safety of law enforcement offi-
4 cers or agents or their families, relatives, children, parents,
5 or those who furnish information to law enforcement departments
6 or agencies.

7 (viii) Identify or provide a means of identifying a person
8 as a law enforcement officer, agent, or informer.

9 (ix) Disclose personnel records of law enforcement
10 agencies.

11 (x) Identify or provide a means of identifying residences
12 which law enforcement agencies are requested to check in the
13 absence of their owners or tenants.

14 (u) Except as otherwise provided in this subdivision,
15 records and information pertaining to an investigation or a com-
16 pliance conference conducted by the department of commerce under
17 article 15 of the public health code, Act No. 368 of the Public
18 Acts of 1978, being sections 333.16101 to 333.18838 of the
19 Michigan Compiled Laws, before a complaint is issued. This sub-
20 division does not apply to records and information pertaining to
21 any of the following:

22 (i) The fact that an allegation has been received and an
23 investigation is being conducted, and the date the allegation was
24 received.

25 (ii) The fact that an allegation was received by the depart-
26 ment of commerce; the fact that the department of commerce did

1 not issue a complaint for the allegation; and the fact that the
2 allegation was dismissed.

3 (V) A PUBLIC RECORD OF THE JUDICIARY UNRELATED TO FINANCIAL,
4 BUDGETARY, OR ADMINISTRATIVE MATTERS OF THE JUDICIARY.

5 (2) This act does not authorize the withholding of informa-
6 tion otherwise required by law to be made available to the public
7 or to a party in a contested case under Act No. 306 of the Public
8 Acts of 1969. ~~, as amended.~~

9 Section 2. This amendatory act shall not take effect unless
10 House Joint Resolution S of the 88th Legislature becomes part of
11 the state constitution of 1963 as provided in section 1 of arti-
12 cle XII of the state constitution of 1963.