

# HOUSE BILL No. 6231

June 27, 2002, Introduced by Rep. Rocca and referred to the Committee on Civil Law and the Judiciary.

A bill to amend 1976 PA 442, entitled "Freedom of information act," by amending section 13 (MCL 15.243), as amended by 2002 PA 130.

**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  
5 of an individual's privacy.

6       (b) Investigating records compiled for law enforcement pur-  
7 poses, but only to the extent that disclosure as a public record  
8 would do any of the following:

9       (i) Interfere with law enforcement proceedings.

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

1           (iii) Constitute an unwarranted invasion of personal  
2 privacy.

3           (iv) Disclose the identity of a confidential source, or if  
4 the record is compiled by a law enforcement agency in the course  
5 of a criminal investigation, disclose confidential information  
6 furnished only by a confidential source.

7           (v) Disclose law enforcement investigative techniques or  
8 procedures.

9           (vi) Endanger the life or physical safety of law enforcement  
10 personnel.

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

17          (d) Records or information specifically described and  
18 exempted from disclosure by statute.

19          (e) A public record or information described in this section  
20 that is furnished by the public body originally compiling, pre-  
21 paring, or receiving the record or information to a public offi-  
22 cer or public body in connection with the performance of the  
23 duties of that public officer or public body, if the considera-  
24 tions originally giving rise to the exempt nature of the public  
25 record remain applicable.

1 (f) Trade secrets or commercial or financial information  
2 voluntarily provided to an agency for use in developing  
3 governmental policy if:

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

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

9 (iii) A description of the information is recorded by the  
10 public body within a reasonable time after it has been submitted,  
11 maintained in a central place within the public body, and made  
12 available to a person upon request. This subdivision does not  
13 apply to information submitted as required by law or as a condi-  
14 tion of receiving a governmental contract, license, or other  
15 benefit.

16 (g) Information or records subject to the attorney-client  
17 privilege.

18 (h) Information or records subject to the physician-patient  
19 privilege, the psychologist-patient privilege, the minister,  
20 priest, or Christian Science practitioner privilege, or other  
21 privilege recognized by statute or court rule.

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

26 (j) Appraisals of real property to be acquired by the public  
27 body until (i) an agreement is entered into; or (ii) 3 years have

1 elapsed since the making of the appraisal, unless litigation  
2 relative to the acquisition has not yet terminated.

3 (k) Test questions and answers, scoring keys, and other  
4 examination instruments or data used to administer a license,  
5 public employment, or academic examination, unless the public  
6 interest in disclosure under this act outweighs the public inter-  
7 est in nondisclosure.

8 (l) Medical, counseling, or psychological facts or evalu-  
9 ations concerning an individual if the individual's identity  
10 would be revealed by a disclosure of those facts or evaluation.

11 (m) Communications and notes within a public body or between  
12 public bodies of an advisory nature to the extent that they cover  
13 other than purely factual materials and are preliminary to a  
14 final agency determination of policy or action. This exemption  
15 does not apply unless the public body shows that in the particu-  
16 lar instance the public interest in encouraging frank communica-  
17 tion between officials and employees of public bodies clearly  
18 outweighs the public interest in disclosure. This exemption does  
19 not constitute an exemption under state law for purposes of sec-  
20 tion 8(h) of the open meetings act, 1976 PA 267, MCL 15.268. As  
21 used in this subdivision, "determination of policy or action"  
22 includes a determination relating to collective bargaining,  
23 unless the public record is otherwise required to be made avail-  
24 able under 1947 PA 336, MCL 423.201 to 423.217.

25 (n) Records of law enforcement communication codes, or plans  
26 for deployment of law enforcement personnel, that if disclosed  
27 would prejudice a public body's ability to protect the public

1 safety unless the public interest in disclosure under this act  
2 outweighs the public interest in nondisclosure in the particular  
3 instance.

4 (o) Information that would reveal the exact location of  
5 archaeological sites. The department of history, arts, and  
6 libraries may promulgate rules in accordance with the administra-  
7 tive procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328,  
8 to provide for the disclosure of the location of archaeological  
9 sites for purposes relating to the preservation or scientific  
10 examination of sites.

11 (p) Testing data developed by a public body in determining  
12 whether bidders' products meet the specifications for purchase of  
13 those products by the public body, if disclosure of the data  
14 would reveal that only 1 bidder has met the specifications. This  
15 subdivision does not apply after 1 year has elapsed from the time  
16 the public body completes the testing.

17 (q) Academic transcripts of an institution of higher educa-  
18 tion established under section 5, 6, or 7 of article VIII of the  
19 state constitution of 1963, if the transcript pertains to a stu-  
20 dent who is delinquent in the payment of financial obligations to  
21 the institution.

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

24 (s) Unless the public interest in disclosure outweighs the  
25 public interest in nondisclosure in the particular instance,  
26 public records of a law enforcement agency, the release of which  
27 would do any of the following:

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

3           (ii) Identify or provide a means of identifying a law  
4 enforcement undercover officer or agent or a plain clothes offi-  
5 cer as a law enforcement officer or agent.

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

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

12          (v) Disclose operational instructions for law enforcement  
13 officers or agents.

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

16          (vii) Endanger the life or safety of law enforcement offi-  
17 cers or agents or their families, relatives, children, parents,  
18 or those who furnish information to law enforcement departments  
19 or agencies.

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

22          (ix) Disclose personnel records of law enforcement  
23 agencies.

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

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

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

11           (ii) The fact that an allegation was received by the depart-  
12 ment of consumer and industry services; the fact that the depart-  
13 ment of consumer and industry services did not issue a complaint  
14 for the allegation; and the fact that the allegation was  
15 dismissed.

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

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

22           (w) Information or records that would disclose the social  
23 security number of any individual.

24           (x) Except as otherwise provided in this subdivision, an  
25 application for the position of president of an institution of  
26 higher education established under section 4, 5, or 6 of article  
27 VIII of the state constitution of 1963, materials submitted with

1 such an application, letters of recommendation or references  
2 concerning an applicant, and records or information relating to  
3 the process of searching for and selecting an individual for a  
4 position described in this subdivision, if the records or infor-  
5 mation could be used to identify a candidate for the position.  
6 However, after 1 or more individuals have been identified as  
7 finalists for a position described in this subdivision, this sub-  
8 division does not apply to a public record described in this sub-  
9 division, except a letter of recommendation or reference, to the  
10 extent that the public record relates to an individual identified  
11 as a finalist for the position.

12 (y) Records or information of measures designed to protect  
13 the security or safety of persons or property, whether public or  
14 private, including, but not limited to, building, public works,  
15 and public water supply designs to the extent that those designs  
16 relate to the ongoing security measures of a public body, capa-  
17 bilities and plans for responding to a violation of the Michigan  
18 anti-terrorism act, chapter LXXXIII-A of the Michigan penal code,  
19 1931 PA 328, MCL ~~750.543~~ 750.543A to 750.543z, emergency  
20 response plans, risk planning documents, threat assessments, and  
21 domestic preparedness strategies, unless disclosure would not  
22 impair a public body's ability to protect the security or safety  
23 of persons or property or unless the public interest in disclo-  
24 sure outweighs the public interest in nondisclosure in the par-  
25 ticular instance.

26 (Z) AN AUDIO RECORDING OR AUTOPSY PHOTOGRAPH PRODUCED DURING  
27 AN AUTOPSY, UNLESS REQUESTED BY A LAW ENFORCEMENT AGENCY FOR LAW



1 ENFORCEMENT PURPOSES. FOR THE PURPOSES OF THIS SUBDIVISION,  
2 "AUTOPSY PHOTOGRAPH" MEANS AN IMAGE OBTAINED DURING AN AUTOPSY,  
3 CAPTURED DIGITALLY OR ON FILM, AND INCLUDES AN IMAGE ON VIDEOTAPE  
4 OR A MOTION PICTURE.

5 (2) A public body shall exempt from disclosure information  
6 that, if released, would prevent the public body from complying  
7 with section 444 of subpart 4 of part C of the general education  
8 provisions act, title IV of Public Law 90-247, 20 U.S.C. 1232g,  
9 commonly referred to as the family educational rights and privacy  
10 act of 1974.

11 (3) This act does not authorize the withholding of informa-  
12 tion otherwise required by law to be made available to the public  
13 or to a party in a contested case under the administrative proce-  
14 dures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

15 (4) Except as otherwise exempt under subsection (1), this  
16 act does not authorize the withholding of a public record in the  
17 possession of the executive office of the governor or lieutenant  
18 governor, or an employee of either executive office, if the  
19 public record is transferred to the executive office of the gov-  
20 ernor or lieutenant governor, or an employee of either executive  
21 office, after a request for the public record has been received  
22 by a state officer, employee, agency, department, division,  
23 bureau, board, commission, council, authority, or other body in  
24 the executive branch of government that is subject to this act.