

# HOUSE BILL No. 4613

March 18, 2009, Introduced by Reps. Lund, McMillin and Calley and referred to the  
Committee on Government Operations.

A bill to amend 1976 PA 442, entitled  
"Freedom of information act,"  
by amending sections 2 and 13 (MCL 15.232 and 15.243), section 2 as  
amended by 1996 PA 553 and section 13 as amended by 2006 PA 482.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 2. As used in this act:

2       (a) "Field name" means the label or identification of an  
3       element of a computer data base that contains a specific item of  
4       information, and includes but is not limited to a subject heading  
5       such as a column header, data dictionary, or record layout.

6       (b) "FOIA coordinator" means either of the following:

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

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

5 (c) "Person" means an individual, corporation, limited  
6 liability company, partnership, firm, organization, association,  
7 governmental entity, or other legal entity. Person does not include  
8 an individual serving a sentence of imprisonment in a state or  
9 county correctional facility in this state or any other state, or  
10 in a federal correctional facility.

11 (d) "Public body" means any of the following:

12 (i) A state officer, employee, agency, department, division,  
13 bureau, board, commission, council, authority, or other body in the  
14 executive branch of the state government. ~~, but does not include~~  
15 ~~the governor or lieutenant governor, the executive office of the~~  
16 ~~governor or lieutenant governor, or employees thereof.~~

17 (ii) An **OFFICER, EMPLOYEE**, agency, board, commission, or  
18 council in the legislative branch of the state government.

19 (iii) A county, city, township, village, intercounty, intercity,  
20 or regional governing body, council, school district, special  
21 district, or municipal corporation, or a board, department,  
22 commission, council, or agency thereof.

23 (iv) Any other body ~~which~~ **THAT** is created by state or local  
24 authority or ~~which~~ **THAT** is primarily funded by or through state or  
25 local authority.

26 (v) The judiciary, including the office of the county clerk  
27 and employees thereof when acting in the capacity of clerk to the

1 circuit court. ~~, is not included in the definition of public body.~~

2 (e) "Public record" means a writing prepared, owned, used, in  
3 the possession of, or retained by a public body in the performance  
4 of an official function, from the time it is created. Public record  
5 does not include computer software. This act separates public  
6 records into the following 2 classes:

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

8 (ii) All public records that are not exempt from disclosure  
9 under section 13 and ~~which~~ **THAT** are subject to disclosure under  
10 this act.

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

18 (g) "Unusual circumstances" means any 1 or a combination of  
19 the following, but only to the extent necessary for the proper  
20 processing of a request:

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

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

1 (h) "Writing" means handwriting, typewriting, printing,  
2 photostating, photographing, photocopying, and every other means of  
3 recording, and includes letters, words, pictures, sounds, or  
4 symbols, or combinations thereof, and papers, maps, magnetic or  
5 paper tapes, photographic films or prints, microfilm, microfiche,  
6 magnetic or punched cards, discs, drums, or other means of  
7 recording or retaining meaningful content.

8 (i) "Written request" means a writing that asks for  
9 information, and includes a writing transmitted by facsimile,  
10 electronic mail, or other electronic means.

11 Sec. 13. (1) A public body may exempt from disclosure as a  
12 public record under this act any of the following:

13 (a) Information of a personal nature if public disclosure of  
14 the information would constitute a clearly unwarranted invasion of  
15 an individual's privacy.

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

19 (i) Interfere with law enforcement proceedings.

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

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

23 (iv) Disclose the identity of a confidential source, or if the  
24 record is compiled by a law enforcement agency in the course of a  
25 criminal investigation, disclose confidential information furnished  
26 only by a confidential source.

27 (v) Disclose law enforcement investigative techniques or

1 procedures.

2 (vi) Endanger the life or physical safety of law enforcement  
3 personnel.

4 (c) A public record that if disclosed would prejudice a public  
5 body's ability to maintain the physical security of custodial or  
6 penal institutions occupied by persons arrested or convicted of a  
7 crime or admitted because of a mental disability, unless the public  
8 interest in disclosure under this act outweighs the public interest  
9 in nondisclosure.

10 (d) Records or information specifically described and exempted  
11 from disclosure by statute.

12 (e) A public record or information described in this section  
13 that is furnished by the public body originally compiling,  
14 preparing, or receiving the record or information to a public  
15 officer or public body in connection with the performance of the  
16 duties of that public officer or public body, if the considerations  
17 originally giving rise to the exempt nature of the public record  
18 remain applicable.

19 (f) Trade secrets or commercial or financial information  
20 voluntarily provided to an agency for use in developing  
21 governmental policy if:

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

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

27 (iii) A description of the information is recorded by the public

1 body within a reasonable time after it has been submitted,  
2 maintained in a central place within the public body, and made  
3 available to a person upon request. This subdivision does not apply  
4 to information submitted as required by law or as a condition of  
5 receiving a governmental contract, license, or other benefit.

6 (g) Information or records subject to the attorney-client  
7 privilege.

8 (h) Information or records subject to the physician-patient  
9 privilege, the psychologist-patient privilege, the minister,  
10 priest, or Christian Science practitioner privilege, or other  
11 privilege recognized by statute or court rule.

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

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

18 (i) An agreement is entered into.

19 (ii) Three years have elapsed since the making of the  
20 appraisal, unless litigation relative to the acquisition has not  
21 yet terminated.

22 (k) Test questions and answers, scoring keys, and other  
23 examination instruments or data used to administer a license,  
24 public employment, or academic examination, unless the public  
25 interest in disclosure under this act outweighs the public interest  
26 in nondisclosure.

27 (l) Medical, counseling, or psychological facts or evaluations

1 concerning an individual if the individual's identity would be  
2 revealed by a disclosure of those facts or evaluation, including  
3 protected health information —as defined in 45 CFR 160.103.

4 (m) Communications and notes within a public body or between  
5 public bodies of an advisory nature to the extent that they cover  
6 other than purely factual materials and are preliminary to a final  
7 agency determination of policy or action. This exemption does not  
8 apply unless the public body shows that in the particular instance  
9 the public interest in encouraging frank communication between  
10 officials and employees of public bodies clearly outweighs the  
11 public interest in disclosure. This exemption does not constitute  
12 an exemption under state law for purposes of section 8(h) of the  
13 open meetings act, 1976 PA 267, MCL 15.268. As used in this  
14 subdivision, "determination of policy or action" includes a  
15 determination relating to collective bargaining, unless the public  
16 record is otherwise required to be made available under 1947 PA  
17 336, MCL 423.201 to 423.217.

18 (n) Records of law enforcement communication codes, or plans  
19 for deployment of law enforcement personnel, that if disclosed  
20 would prejudice a public body's ability to protect the public  
21 safety unless the public interest in disclosure under this act  
22 outweighs the public interest in nondisclosure in the particular  
23 instance.

24 (o) Information that would reveal the exact location of  
25 archaeological sites. The department of history, arts, and  
26 libraries may promulgate rules in accordance with the  
27 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to

1 24.328, to provide for the disclosure of the location of  
2 archaeological sites for purposes relating to the preservation or  
3 scientific examination of sites.

4 (p) Testing data developed by a public body in determining  
5 whether bidders' products meet the specifications for purchase of  
6 those products by the public body, if disclosure of the data would  
7 reveal that only 1 bidder has met the specifications. This  
8 subdivision does not apply after 1 year has elapsed from the time  
9 the public body completes the testing.

10 (q) Academic transcripts of an institution of higher education  
11 established under section 5, 6, or 7 of article VIII of the state  
12 constitution of 1963, if the transcript pertains to a student who  
13 is delinquent in the payment of financial obligations to the  
14 institution.

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

17 (s) Unless the public interest in disclosure outweighs the  
18 public interest in nondisclosure in the particular instance, public  
19 records of a law enforcement agency, the release of which would do  
20 any of the following:

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

22 (ii) Identify or provide a means of identifying a law  
23 enforcement undercover officer or agent or a plain clothes officer  
24 as a law enforcement officer or agent.

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

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

4           (v) Disclose operational instructions for law enforcement  
5 officers or agents.

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

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

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

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

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

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

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

26           (ii) The fact that an allegation was received by the  
27 department; the fact that the department did not issue a complaint

1 for the allegation; and the fact that the allegation was dismissed.

2 (u) Records of a public body's security measures, including  
3 security plans, security codes and combinations, passwords, passes,  
4 keys, and security procedures, to the extent that the records  
5 relate to the ongoing security of the public body.

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

8 (w) Information or records that would disclose the social  
9 security number of an individual.

10 (x) Except as otherwise provided in this subdivision, an  
11 application for the position of president of an institution of  
12 higher education established under section 4, 5, or 6 of article  
13 VIII of the state constitution of 1963, materials submitted with  
14 ~~such an~~ **THE** application, letters of recommendation or references  
15 concerning an applicant, and records or information relating to the  
16 process of searching for and selecting an individual for a position  
17 described in this subdivision, if the records or information could  
18 be used to identify a candidate for the position. However, after 1  
19 or more individuals have been identified as finalists for a  
20 position described in this subdivision, this subdivision does not  
21 apply to a public record described in this subdivision, except a  
22 letter of recommendation or reference, to the extent that the  
23 public record relates to an individual identified as a finalist for  
24 the position.

25 (y) Records or information of measures designed to protect the  
26 security or safety of persons or property, whether public or  
27 private, including, but not limited to, building, public works, and

1 public water supply designs to the extent that those designs relate  
2 to the ongoing security measures of a public body, capabilities and  
3 plans for responding to a violation of the Michigan anti-terrorism  
4 act, chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL  
5 750.543a to 750.543z, emergency response plans, risk planning  
6 documents, threat assessments, and domestic preparedness  
7 strategies, unless disclosure would not impair a public body's  
8 ability to protect the security or safety of persons or property or  
9 unless the public interest in disclosure outweighs the public  
10 interest in nondisclosure in the particular instance.

11 **(Z) RECORDS OF THE JUDICIAL BRANCH OF GOVERNMENT, EXCEPT THOSE**  
12 **THAT CONCERN GENERAL ADMINISTRATIVE MATTERS.**

13 **(AA) COMMUNICATIONS BETWEEN A LEGISLATOR AND HIS OR HER**  
14 **CONSTITUENTS.**

15 (2) A public body shall exempt from disclosure information  
16 that, if released, would prevent the public body from complying  
17 with 20 USC 1232g, commonly referred to as the family educational  
18 rights and privacy act of 1974. A public body that is a local or  
19 intermediate school district or a public school academy shall  
20 exempt from disclosure directory information, as defined by 20 USC  
21 1232g, commonly referred to as the family educational rights and  
22 privacy act of 1974, requested for the purpose of surveys,  
23 marketing, or solicitation, unless that public body determines that  
24 the use is consistent with the educational mission of the public  
25 body and beneficial to the affected students. A public body that is  
26 a local or intermediate school district or a public school academy  
27 may take steps to ensure that directory information disclosed under

1 this subsection shall not be used, rented, or sold for the purpose  
2 of surveys, marketing, or solicitation. Before disclosing the  
3 directory information, a public body that is a local or  
4 intermediate school district or a public school academy may require  
5 the requester to execute an affidavit stating that directory  
6 information provided under this subsection shall not be used,  
7 rented, or sold for the purpose of surveys, marketing, or  
8 solicitation.

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

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