

SENATE BILL NO. 1017

July 22, 2020, Introduced by Senator LUCIDO and referred to the Committee on Oversight.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending sections 2 and 13 (MCL 15.232 and 15.243), as amended
by 2018 PA 68.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 2. As used in this act:
- 2 (a) "Cybersecurity assessment" means an investigation
- 3 undertaken by a person, governmental body, or other entity to

1 identify vulnerabilities in cybersecurity plans.

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

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

19 (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 (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 (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 (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 **or legislative** branch of the state government. ~~, but does~~
9 ~~not include the governor or lieutenant governor, the executive~~
10 ~~office of the governor or lieutenant governor, or employees~~
11 ~~thereof.~~

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

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

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

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

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

1 (ii) All public records that are not exempt from disclosure
2 under section 13 and that are subject to disclosure under this act.

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

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

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

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

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

28 (m) "Written request" means a writing that asks for
29 information, and includes a writing transmitted by facsimile,

1 electronic mail, or other electronic means.

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

4 (a) Information of a personal nature if public disclosure of
5 the information would constitute a clearly unwarranted invasion of
6 an individual's privacy.

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

10 (i) Interfere with law enforcement proceedings.

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

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

14 (iv) Disclose the identity of a confidential source, or if the
15 record is compiled by a law enforcement agency in the course of a
16 criminal investigation, disclose confidential information furnished
17 only by a confidential source.

18 (v) Disclose law enforcement investigative techniques or
19 procedures.

20 (vi) Endanger the life or physical safety of law enforcement
21 personnel.

22 (c) A public record that if disclosed would prejudice a public
23 body's ability to maintain the physical security of custodial or
24 penal institutions occupied by persons arrested or convicted of a
25 crime or admitted because of a mental disability, unless the public
26 interest in disclosure under this act outweighs the public interest
27 in nondisclosure.

28 (d) Records or information specifically described and exempted
29 from disclosure by statute.

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

8 (f) Trade secrets or commercial or financial information
9 voluntarily provided to an agency for use in developing
10 governmental policy if:

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

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

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

22 (g) Information or records subject to the attorney-client
23 privilege.

24 (h) Information or records subject to the physician-patient
25 privilege, the psychologist-patient privilege, the minister,
26 priest, or Christian Science practitioner privilege, or other
27 privilege recognized by statute or court rule.

28 (i) A bid or proposal by a person to enter into a contract or
29 agreement, until the time for the public opening of bids or

1 proposals, or if a public opening is not to be conducted, until the
2 deadline for submission of bids or proposals has expired.

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

5 (i) An agreement is entered into.

6 (ii) Three years have elapsed since the making of the
7 appraisal, unless litigation relative to the acquisition has not
8 yet terminated.

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

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

18 (m) Communications and notes within a public body or between
19 public bodies of an advisory nature to the extent that they cover
20 other than purely factual materials and are preliminary to a final
21 agency determination of policy or action. This exemption does not
22 apply unless the public body shows that in the particular instance
23 the public interest in encouraging frank communication between
24 officials and employees of public bodies clearly outweighs the
25 public interest in disclosure. This exemption does not constitute
26 an exemption under state law for purposes of section 8(h) of the
27 open meetings act, 1976 PA 267, MCL 15.268. As used in this
28 subdivision, "determination of policy or action" includes a
29 determination relating to collective bargaining, unless the public

1 record is otherwise required to be made available under 1947 PA
2 336, MCL 423.201 to 423.217.

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

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

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

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

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

28 (s) Unless the public interest in disclosure outweighs the
29 public interest in nondisclosure in the particular instance, public

1 records of a law enforcement agency, the release of which would do
2 any of the following:

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

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

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

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

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

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

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

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

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

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

26 (t) Except as otherwise provided in this subdivision, records
27 and information pertaining to an investigation or a compliance
28 conference conducted by the department under article 15 of the

1 public health code, 1978 PA 368, MCL 333.16101 to 333.18838, before
2 a complaint is issued. This subdivision does not apply to records
3 or information pertaining to 1 or more of the following:

4 (i) The fact that an allegation has been received and an
5 investigation is being conducted, and the date the allegation was
6 received.

7 (ii) The fact that an allegation was received by the
8 department; the fact that the department did not issue a complaint
9 for the allegation; and the fact that the allegation was dismissed.

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

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

16 (w) Information or records that would disclose the ~~social~~
17 ~~security~~ **Social Security** number of an individual.

18 (x) Except as otherwise provided in this subdivision, an
19 application for the position of president of an institution of
20 higher education established under section 4, 5, or 6 of article
21 VIII of the state constitution of 1963, materials submitted with
22 such an application, letters of recommendation or references
23 concerning an applicant, and records or information relating to the
24 process of searching for and selecting an individual for a position
25 described in this subdivision, if the records or information could
26 be used to identify a candidate for the position. However, after 1
27 or more individuals have been identified as finalists for a
28 position described in this subdivision, this subdivision does not
29 apply to a public record described in this subdivision, except a

1 letter of recommendation or reference, to the extent that the
2 public record relates to an individual identified as a finalist for
3 the position.

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

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

26 (aa) Research data on road and attendant infrastructure
27 collected, measured, recorded, processed, or disseminated by a
28 public agency or private entity, or information about software or
29 hardware created or used by the private entity for such purposes.

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

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

26 ~~(4) Except as otherwise exempt under subsection (1), this act~~
27 ~~does not authorize the withholding of a public record in the~~
28 ~~possession of the executive office of the governor or lieutenant~~
29 ~~governor, or an employee of either executive office, if the public~~

1 ~~record is transferred to the executive office of the governor or~~
2 ~~lieutenant governor, or an employee of either executive office,~~
3 ~~after a request for the public record has been received by a state~~
4 ~~officer, employee, agency, department, division, bureau, board,~~
5 ~~commission, council, authority, or other body in the executive~~
6 ~~branch of government that is subject to this act.~~