

HOUSE BILL NO. 5351

November 14, 2023, Introduced by Reps. Scott and Tyrone Carter and referred to the Committee on Judiciary.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending section 13 (MCL 15.243), as amended by 2023 PA 64.

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)~~**8(1)(h)**
2 of the 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 requestor to execute an affidavit stating that directory
14 information provided under this subsection will not be used,
15 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.

2 (5) A public body shall exempt from disclosure information or
3 records prepared or compiled in connection with an investigation by
4 an office of inspector general for 2 years after the office
5 commences its investigation, or until the office closes the
6 investigation or issues a final report concerning the
7 investigation, whichever period is shorter. However, if the office
8 of inspector general refers the investigation to another agency,
9 the exemption under this subsection applies until that agency
10 closes its investigation, completes its prosecution, or issues a
11 final report concerning its investigation. If the agency refers the
12 investigation back to the office of inspector general or the office
13 of inspector general needs to take additional investigative actions
14 after the agency makes its final determination, the exemption under
15 this subsection applies for 2 years from the date of the referral
16 back to the office of inspector general, or until the office closes
17 the investigation or issues a final report concerning the
18 investigation, whichever period is shorter. As used in this
19 subsection, "office of inspector general" means a public,
20 independent oversight agency that investigates allegations of
21 waste, abuse, fraud, or corruption related to government,
22 government contractors, or governmental programs.