

II
FREEDOM OF INFORMATION ACT
ACT 442 OF 1976

AN ACT to provide for public access to certain public records of public bodies; to permit certain fees; to prescribe the powers and duties of certain public officers and public bodies; to provide remedies and penalties; and to repeal certain acts and parts of acts.

HISTORY: 1976, Act 442, Eff. April 13, 1977.

Popular Name: Act 442

Popular Name: FOIA

The People of the State of Michigan enact:

15.231. Short title; public policy.

Sec. 1. (1) This act shall be known and may be cited as the “Freedom of Information Act.”

(2) It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this Act. The people shall be informed so that they may fully participate in the democratic process.

15.232. Definitions.

Sec. 2. As used in this Act:

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

(b) “FOIA coordinator” means either of the following:

(i) An individual who is a public body.

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

**SUBSTITUTE FOR
HOUSE BILL NO. 4540**

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) "CYBERSECURITY ASSESSMENT" MEANS INFORMATION ABOUT AN
3 INVESTIGATION UNDERTAKEN BY A PERSON, GOVERNMENTAL BODY, OR OTHER
4 ENTITY TO IDENTIFY VULNERABILITIES IN CYBERSECURITY PLANS.

5 (B) "CYBERSECURITY INCIDENT" INCLUDES, BUT IS NOT LIMITED TO,
6 A COMPUTER NETWORK INTRUSION; A BREACH OF PRIMARY COMPUTER NETWORK
7 CONTROLS; UNAUTHORIZED ACCESS TO PROGRAMS, DATA, OR INFORMATION
8 CONTAINED IN A COMPUTER SYSTEM; OR ACTIONS BY A THIRD PARTY THAT



1 MATERIALLY AFFECT COMPONENT PERFORMANCE OR, BECAUSE OF IMPACT TO
2 COMPONENT SYSTEMS, PREVENT NORMAL COMPUTER SYSTEM ACTIVITIES.

3 (C) "CYBERSECURITY PLAN" MEANS INFORMATION ABOUT A PERSON'S
4 NETWORK SECURITY, INCLUDING, BUT NOT LIMITED TO, ENCRYPTION,
5 NETWORK MAPPING, ACCESS CONTROL, PASSWORDS, AUTHENTICATION
6 PRACTICES, COMPUTER HARDWARE OR SOFTWARE, OR RESPONSE TO
7 CYBERSECURITY INCIDENTS.

8 (D) "CYBERSECURITY THREAT" MEANS INFORMATION ABOUT COMPUTER
9 SYSTEM VULNERABILITIES OR PLANNED EXPLOITATION OF COMPUTER SYSTEMS
10 BY UNAUTHORIZED PARTIES.

11 (E) ~~(a)~~ "Field name" means the label or identification of an
12 element of a computer ~~data base~~ DATABASE that contains a specific
13 item of information, and includes but is not limited to a subject
14 heading such as a column header, data dictionary, or record layout.

15 (F) ~~(b)~~ "FOIA coordinator" means either of the following:

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

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

20 (G) ~~(c)~~ "Person" means an individual, corporation, limited
21 liability company, partnership, firm, organization, association,
22 governmental entity, or other legal entity. Person does not include
23 an individual serving a sentence of imprisonment in a state or
24 county correctional facility in this state or any other state, or
25 in a federal correctional facility.

26 (H) ~~(d)~~ "Public body" means any of the following:

27 (i) A state officer, employee, agency, department, division,



1 bureau, board, commission, council, authority, or other body in the
2 executive branch of the state government, but does not include the
3 governor or lieutenant governor, the executive office of the
4 governor or lieutenant governor, or employees thereof.

5 (ii) An agency, board, commission, or council in the
6 legislative branch of the state government.

7 (iii) A county, city, township, village, intercounty,
8 intercity, or regional governing body, council, school district,
9 special district, or municipal corporation, or a board, department,
10 commission, council, or agency thereof.

11 (iv) Any other body ~~which~~ **THAT** is created by state or local
12 authority or ~~which~~ is primarily funded by or through state or local
13 authority, -

14 ~~(v) The~~ **EXCEPT THAT THE** judiciary, including the office of the
15 county clerk and **ITS** employees ~~thereof~~ when acting in the capacity
16 of clerk to the circuit court, is not included in the definition of
17 public body.

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

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

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

27 (J) ~~(f)~~ "Software" means a set of statements or instructions



1 that when incorporated in a machine usable medium is capable of
2 causing a machine or device having information processing
3 capabilities to indicate, perform, or achieve a particular
4 function, task, or result. Software does not include computer-
5 stored information or data, or a field name if disclosure of that
6 field name does not violate a software license.

7 (K) ~~(g)~~ "Unusual circumstances" means any 1 or a combination
8 of the following, but only to the extent necessary for the proper
9 processing of a request:

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

13 (ii) The need to collect the requested public records from
14 numerous field offices, facilities, or other establishments which
15 are located apart from the particular office receiving or
16 processing the request.

17 (l) ~~(h)~~ "Writing" means handwriting, typewriting, printing,
18 photostating, photographing, photocopying, and every other means of
19 recording, and includes letters, words, pictures, sounds, or
20 symbols, or combinations thereof, and papers, maps, magnetic or
21 paper tapes, photographic films or prints, microfilm, microfiche,
22 magnetic or punched cards, discs, drums, or other means of
23 recording or retaining meaningful content.

24 (M) ~~(i)~~ "Written request" means a writing that asks for
25 information, and includes a writing transmitted by facsimile,
26 electronic mail, or other electronic means.

27 Sec. 13. (1) A public body may exempt from disclosure as a



1 public record under this act any of the following:

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

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

8 (i) Interfere with law enforcement proceedings.

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

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

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

16 (v) Disclose law enforcement investigative techniques or
17 procedures.

18 (vi) Endanger the life or physical safety of law enforcement
19 personnel.

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

26 (d) Records or information specifically described and exempted
27 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
17 public 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.



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

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

7 (i) An agreement is entered into.

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

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

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

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



1 an exemption under state law for purposes of section 8(h) of the
2 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 ~~history, arts, and~~
15 ~~libraries~~ **NATURAL RESOURCES** may promulgate rules in accordance with
16 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
17 to 24.328, to provide for the disclosure of the location of
18 archaeological sites for purposes relating to the preservation or
19 scientific examination of sites.

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

26 (q) Academic transcripts of an institution of higher education
27 established under section 5, 6, or 7 of article VIII of the state



1 constitution of 1963, if the transcript pertains to a student who
2 is delinquent in the payment of financial obligations to the
3 institution.

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

6 (s) Unless the public interest in disclosure outweighs the
7 public interest in nondisclosure in the particular instance, public
8 records of a law enforcement agency, the release of which would do
9 any of the following:

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

11 (ii) Identify or provide a means of identifying a law
12 enforcement undercover officer or agent or a plain clothes officer
13 as a law enforcement officer or agent.

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

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

20 (v) Disclose operational instructions for law enforcement
21 officers or agents.

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

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

27 (viii) Identify or provide a means of identifying a person as



1 a law enforcement officer, agent, or informant.

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

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

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

12 (i) The fact that an allegation has been received and an
13 investigation is being conducted, and the date the allegation was
14 received.

15 (ii) The fact that an allegation was received by the
16 department; the fact that the department did not issue a complaint
17 for the allegation; and the fact that the allegation was dismissed.

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

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

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

26 (x) Except as otherwise provided in this subdivision, an
27 application for the position of president of an institution of



1 higher education established under section 4, 5, or 6 of article
2 VIII of the state constitution of 1963, materials submitted with
3 such an application, letters of recommendation or references
4 concerning an applicant, and records or information relating to the
5 process of searching for and selecting an individual for a position
6 described in this subdivision, if the records or information could
7 be used to identify a candidate for the position. However, after 1
8 or more individuals have been identified as finalists for a
9 position described in this subdivision, this subdivision does not
10 apply to a public record described in this subdivision, except a
11 letter of recommendation or reference, to the extent that the
12 public record relates to an individual identified as a finalist for
13 the position.

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



1 (Z) CRITICAL INFRASTRUCTURE INFORMATION, AS DEFINED IN 6 USC
2 131(3), THAT IS VOLUNTARILY SUBMITTED TO THE MICHIGAN PUBLIC
3 SERVICE COMMISSION OR MICHIGAN STATE POLICE DIVISION OF EMERGENCY
4 MANAGEMENT AND HOMELAND SECURITY FOR USE BY THOSE OFFICES,
5 INCLUDING THE IDENTITY OF THE INDIVIDUAL OR ENTITY THAT VOLUNTARILY
6 SUBMITTED THE INFORMATION. AS USED IN THIS SUBDIVISION,
7 "VOLUNTARILY SUBMITTED" MEANS SUBMITTED ENTIRELY AT THE OPTION OF
8 THE PERSON MAKING THE SUBMISSION WITHOUT THE EXERCISE OF ANY LEGAL
9 AUTHORITY TO COMPEL ACCESS TO OR SUBMISSION OF THE INFORMATION.
10 THIS SUBDIVISION DOES NOT APPLY TO AFFECT THE STATUS OF INFORMATION
11 IN THE POSSESSION OF ANY OTHER STATE OR LOCAL GOVERNMENTAL AGENCY.

12 (2) A public body shall exempt from disclosure information
13 that, if released, would prevent the public body from complying
14 with 20 USC 1232g, commonly referred to as the family educational
15 rights and privacy act of 1974. A public body that is a local or
16 intermediate school district or a public school academy shall
17 exempt from disclosure directory information, as defined by 20 USC
18 1232g, commonly referred to as the family educational rights and
19 privacy act of 1974, requested for the purpose of surveys,
20 marketing, or solicitation, unless that public body determines that
21 the use is consistent with the educational mission of the public
22 body and beneficial to the affected students. A public body that is
23 a local or intermediate school district or a public school academy
24 may take steps to ensure that directory information disclosed under
25 this subsection shall not be used, rented, or sold for the purpose
26 of surveys, marketing, or solicitation. Before disclosing the
27 directory information, a public body that is a local or



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

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

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

20 Enacting section 1. This amendatory act takes effect 90 days
21 after the date it is enacted into law.

