

COHL, STOKER & TOSKEY, P.C.
ATTORNEYS AND COUNSELORS
601 NORTH CAPITOL AVENUE
LANSING, MICHIGAN 48933
(517) 372-9000

SHAREHOLDERS
PETER A. COHL
DAVID G. STOKER
BONNIE G. TOSKEY
ROBERT D. TOWNSEND
TIMOTHY M. PERRONE
MATTIS D. NORDEFJORD

ASSOCIATES
GORDON J. LOVE
COURTNEY A. GABBARA
SARAH K. OSBURN
—
OF COUNSEL
RICHARD D. McNULTY

FOIA - SELECTED OTHER STATUTORY EXEMPTIONS

Introduction

The Michigan Freedom of Information Act provides for access to certain public records of public bodies. A public body may exempt certain information from disclosure as a public record including, “*records or information specifically described and exempted from disclosure by statute.*” **[MCL 15.243(1)(d)]**

The Freedom of Information Coordinator In determining what records or information may be specifically exempted by statute should review some of the following potentially applicable statutes [Note that this is a sampling only of statutory exemptions and numerous other State and federal statutes may also provide potential exemptions]:

Michigan State Police Uniform Crime Reporting System - Names of individuals may not be reported on the uniform crime report submitted to the department of state police. **MCL 28.251**

LEIN - LEIN information may not be given to a private person for any purpose and doing so is a criminal offense under **MCL 28.214, 1981 AACS, R 28.5208(4).**

Criminal Investigative records -

- Audiovisual recordings of interrogations of individuals who are in police custody, regarding the individual’s involvement in the commission of a major felony prior to conviction or acquittal. **MCL 28.730(1)**
- Certain information regarding proceedings of grand juries, including the fact that an indictment for a felony has been found against any person not in custody or under recognizance. **MCL 767.4; 767.4a; 767.18; 767.25(5)**
- Petitions for immunity by the prosecuting attorney, orders of immunity, transcripts of testimony delivered to witnesses pursuant to grants of immunity; and records, documents, and physical evidence obtained by the prosecuting attorney pursuant to an investigation of commission of a felony. **MCL 767A.2(5), 767A.8**

Sexually Motivated Crimes Reports - Sheriff and Police Reports on accused persons against whom a warrant has been issued and the disposition thereof in sexually motivated crimes and juvenile offenses and crimes and juvenile offenses involving sexual conduct are confidential. **MCL 28.247**

Crime Victims’ Rights Act - A crime victim’s home and work, home and work telephone numbers; pictures, drawings and other visual representations or images (including digitally

stored images) of the victim; certain identifying information about victims of child abuse, criminal sexual conduct and similar crimes, and certain identifying information about the victim's family or relatives. **MCL 780.758(3); 780.769(2); 780.788(2); 780.818(2).**

Motor Vehicles - The Department of State Police shall not release information relating to an accident and the record of a driver to a nongovernmental agency, unless the driver was subsequently convicted of, or determined responsible for, a violation of the act in connection with the accident. **MCL 257.733**

Lost Property - Detailed descriptions of lost or stolen property provided to law enforcement agencies with information to determine ownership including the value of the property. **MCL 434.23(1)(b)**

Law Enforcement Body-Worn Cameras -

- Audio and video recordings that were recorded by a law enforcement officer with a body-worn camera that was recorded in a private place. **MCL 780.313(2)**
- Audio and video recordings that were recorded by a law enforcement officer with a body-worn camera that are retained by a law enforcement agency as part of an ongoing criminal or internal investigation, or relating to a civil action in which the requesting party and the public body are parties. **MCL 780.315**

Disclosures by Law Enforcement Officers Act - Involuntary statements by law enforcement officers made during an internal affairs investigation, if compelled under the threat of dismissal or any other employment sanction by the employing agency are confidential communications are not open to public inspection. **MCL 15.395**

Firearms Records -

- Firearms records including licenses to carry pistol, concealed carry licenses, and sale reports for pistols and other firearms. **MCL 28.421b(1)**
- Information concerning retired law enforcement officer who apply for a certificate to carry a concealed weapon. **MCL 28.520(4)**

Controlled Substance - A nonpublic record is to be maintained by the Department of State Police for a person arrested and discharge/dismissal under this section. This record shall only be furnished as provided for in the statute. **MCL 333.7411(2)**

Domestic Violence - A nonpublic record is to be maintained for a person charged with spousal abuse if the charge is dismissed pursuant to the section. **MCL 769.4a**

Child Protection Law -

- Any person who has reasonable cause to suspect child abuse or neglect may report the matter to the family independence agency. The reporting person's identity is confidential subject to disclosure only by consent or judicial process. **MCL 722.625**
- Information contained in the children's protection registry, including the names, addresses, IP addresses, and phone numbers of children and parents in the registry. **MCL 752.1066(4)**

Sex Offenders Registration Act - The registration and reports of convicted sex offenders that are filed with law enforcement agencies. **MCL 28.730(1)**

Holmes Youthful Trainee Act - All proceedings regarding the disposition of the criminal charge and the individual's assignment as youthful trainee shall be closed to public inspection. **MCL 762.14(4)**

Probate Code/Juvenile Division - The Department of State Police shall retain a nonpublic record of an order setting aside adjudication for a juvenile and of the record of the arrest, fingerprints, adjudication and disposition of the applicant in the case to which the order applies. The nonpublic record shall be made available only to a court, a law enforcement agency, a prosecuting attorney, and a limited number of others upon request for limited purposes. **MCL 712A.18e**

Polygraph Results - Any recipient of information, report or results from a polygraph examiner, except for the person tested, shall not provide, disclose or convey such information, report or results to a third party except as may be required by law and the rules promulgated by the board. **MCL 338.1728**

Medical Examiner -

- The medical records, books, papers, documents, and other items a medical examiner collects in investigating an unexpected, unattended or violent death. **MCL 52.202**
- Medical examiner reports on suspicious or sudden deaths of elderly or vulnerable adults by the county medical examiner's adult death review team. **MCL 52. 203(4)**

Public Health Code -

- Confidential information acquired from an individual consulting the licensed psychologist, social worker, licensed professional counselor or a limited licensed counselor in his or her professional capacity may not be disclosed. **MCL 333.18117; MCL 333.18237; MCL 333.18513**
- Patient or resident personal and medical records of licensed health facility or agency are confidential. **MCL 333.5114a(7); 333.20201**
- All reports, records, and data pertaining to testing, care, treatment, reporting, and research, and information pertaining to partner notification that are associated with the serious communicable diseases or infections of HIV infection and acquired immunodeficiency syndrome are confidential. **MCL 333.5131**
- Vital records kept by local registrars including certificates of registration of birth, death, marriage, or divorce; acknowledgement of parentage; or related data, and vital statistics, are not subject to FOIA and are to be released only as provided in the Public Health Code procedures. **MCL 333.2888**
- Reports by a physician, hospital, clinic, or employer of an employee who has a job-related disease. **MCL 333.5621(1).**
- Parts of reports filed by veterinarians and physicians detailing controlled substances dispensed to patients and patient identifying information, including names, birthdates, addresses, and social security numbers. **MCL 333.7333a(9)**
- If a defendant receives a deferral on a conviction for a qualifying offense relating to narcotic drugs or controlled substances, all proceedings regarding the disposition of the

criminal charge, including the record of arrest, court proceedings, and disposition of the charge [unless a judgment of conviction (guilt) is entered]. **MCL 333.7411**

- Health Department reports on residents of a residential dwelling where lead-based paint investigations have been conducted, and information that could be used to identify children with elevated blood lead levels. **MCL 333.5473a(5)**
- A prescription or equivalent record on file in a pharmacy. **MCL 333.17752**
- Fingerprint records and any state or national criminal history records of those applying to be registered health professionals. **MCL 333.16174(3)**
- Details of traumatic emergency situations delivered to critical incident stress management personnel by emergency service providers such as police officers, EMS technicians and fire fighters. **MCL 333.20982(1)-(2)**

HIPAA - Medical information officers gather as they go about their duties and investigations but not information objected by court order. **45 CFR 164.508, 45 CFR 164.510. 45 CFR 164.512**

Michigan Medical Marijuana -

- Certain information a municipality obtains from an applicant for a marijuana facility license. **MCL 333.27205(4)**
- Individual's name and other identifying information of person who has been issued registry identification cards is confidential and is exempt from disclosure under the freedom of information act; **MCL 333.26426**. A person, including an employee or official of the department or another state agency or local unit of government, who discloses confidential information in violation of this act is guilty of a misdemeanor, punishable by imprisonment for not more than 6 months, or a fine of not more than \$1, 000.00, or both; **MCL 333.26426(4)**. **Caution** - A person who has applied to MOCH and has an application that has been pending more than 20 days is presumed to have been issued a registry identification card.

Marriage License Information -

- Applications for marriage licenses which contain the applicants' names, birthdates and social security numbers. **MCL 551.102**
- Sealed marriage documents, including the license, when ordered by the probate judge. **MCL 551.203; 551.204.**

Polygraph Tests -

- Any recipient of information, report or results from a polygraph examiner, except for the person tested, shall not provide, disclose or convey such information, report or results to a third party except as may be required by law and the rules promulgated by the board. **MCL 338.1728**
- An employer or employment agency shall not share with any other person information that communicates the results of an employee's or applicant's polygraph examination, or the fact that an employee or applicant for employment refused to submit to a polygraph examination. **MCL 37.205**

General Property Tax - No personal or real property tax statements, as requested by the assessor, shall be used for any purpose other than for assessing taxes. **MCL 211.23**

City Income Tax Act - Information gained by the administrator, city treasurer or any other city official, agent or employee as a result of a return, investigation, hearing or verification required or authorized by the tax ordinance. **MCL 141.674**

Copyrighted Material - Copyrighted materials may not be copied and distributed in violation of the Copyright Act, 17 USCA 106, 109, Op.Atty.Gen.1979, No. 5500, p. 255. *Caveat* may not cover copyrighted materials required by law to be file with the public body. **Op.Atty.Gen.1997, No. 6965**

Business Incubation Act - A community board appointed pursuant to the Business Incubation Act shall not disclose matters of a proprietary nature without the consent of the applicant submitting information. **MCL 125.1574**

Bidders on Public Works - Questionnaires and sworn statements required of bidders on public work construction contracts are confidential. **MCL 123.504**

Open Meetings Act - Closed session minutes maintained by the clerk of the public body "shall not be made available to the public". **MCL 15.267**

Uniform Condemnation Procedures Act - Documents and other information that a property owner provides to the agency regarding determination of just compensation in condemnation proceedings. **MCL 213.55**

Michigan Election Law -

- Voter Registration that contains the voter's birthdate (other than the year of the elector's birth), driver's license number, telephone number, the office that received the registered voter's application, a record that the voter declined to register, and/or the last four digits of the voter's social security number. **MCL 168.509gg(1)-(2); 168.522a**
- Email addresses of overseas voters and voters in military service who apply for absentee ballots. **MCL 168.759a(11)**

The Social Welfare Act - Records relating to categorical assistance, including medical assistance, shall be confidential. **MCL 400.35; MCL 400.64(2)**

Social Security Numbers - Any sequence of more than 4 digits in a person's social security number, which may appear in records concerning employment, taxes, health insurance and elsewhere. **MCL 445.85**

Employer's Workers' Compensation Insurance Records - Records regarding applications for self-insured status, benefits paid to injured employees, and information or forms concerning the issuance of insurance policies to employees. **MCL 418.230(1)**

Dated: January 28, 2019