



Michigan's Amended Freedom of Information Act

Presented by

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House Bill 4001 introduced by Representative Mike Shirkey (now, Senator Shirkey) on January 9, 2013

S-2 (Senate Substitute) approved by the Legislature December 19, 2014

Governor signed into law January 11, 2015, Public Act 463 of 2014



Michigan's Amended Freedom of Information Act

You want **WHAT?**

You want it **WHEN?**

It will cost **WHAT?**

How do I **APPEAL** your decision?



According to the Detroit Free Press (January 24, 2015), new things in the law include:

- Limiting cost of copies at \$.10 per page
- Penalizing government agencies for late responses, by reducing the fees they can charge
- Requiring fines of up to \$7,500 for government agencies that ignore the law
- Requiring public bodies to provide records electronically if they have the capability
- Allowing public bodies to include fringe benefits costs in their labor charges
- Requiring public bodies to have written summary of FOIA procedures available for free to the public



Some of the Noteworthy Changes to FOIA (Section 4/Fees and costs):

- Cost of paper copies limited to \$.10/page
- In calculating search time for records, public body must round down to the nearest 15 minutes
- In calculating cost of separating exempt from non-exempt information, public body is limited to rate of lowest paid person capable of separating limited to “6 times the state minimum wage” (currently \$8.15/hour), plus up to 50% of the labor charge to cover cost of fringe benefits
- If use legal counsel to separate exempt from non-exempt information, same cost limitation applies



Some of the Noteworthy Changes to FOIA (Section 4/FOIA procedures and guidelines):

- Must publish on public body website (if there is one); if not, must produce in written form
- Must include either website link to FOIA procedures or written copy in **EACH** FOIA response
- Procedures and guidelines must include (and written in a manner “to be easily understood by the general public”):
 - “How to submit written requests to the public body”
 - “Use of standard form for detailed itemization of any fee”
 - “How to understand a public body’s written responses”
 - “Deposit requirements”
 - “Fee calculations”
 - “Avenues for challenge and appeal”
- If FOIA requester so “stipulates,” public body **must** provide records in electronic form



Some of the Noteworthy Changes to FOIA (Section 4/FOIA requests and deposits):

- If entire fee estimate exceeds \$50 based upon “good-faith calculation,” 50% deposit can be required
- Public body must provide “detailed itemization” of all charges
- Response must contain a “best efforts estimate by the public body regarding the time frame...to comply ”
- Failure to timely respond – fees/charges to respond reduced 5%/day up to 50% if failure to respond was “willful and intentional”



Some of the Noteworthy Changes to FOIA (Section 5/responding to requests):

- If a FOIA request is delivered to the “public body’s spam or junk-mail folder,” the request is not received until 1 day after the public body becomes aware of the written request. The public body “shall note in its records both the “time” the written request was delivered to its spam folder and the “time” the public body became aware of that request
- It is a FOIA request if, in writing, “within first 250 words” it says “freedom of information”, “information”, “FOIA”, “copy”, or some abbreviations or “recognizable misspelling of such”



Some of the Noteworthy Changes to FOIA (Section 10/responding to **requests**):

- If a public body denies, in whole or in part, a FOIA request and the requester files a civil action, if the court determines the public body “arbitrarily and capriciously violated this act by refusal or delay,” the court “shall order the public body to pay a civil fine of \$1,000...into the general fund of the state treasury.”
- Court can also award punitive damages to the requester of \$1,000 (up from \$500)



Some of the Noteworthy Changes to FOIA (New Section 10a/responding to **fee appeals**):

- If a FOIA requester believes the fee estimate violates either FOIA or the “publicly available procedures and guidelines,” the requester may appeal the fee estimate to the “head of the public body”
- In response to a fee appeal, a public body must do 1 of the following:
 - Waive the fee
 - Reduce the fee and issue a “written determination” the basis for the balance of the fee and such determination must include “certification from the head of the public body” that its statements are accurate and comply with FOIA and the public body’s procedures and guidelines
 - Uphold the fee estimate and provide a written determination with certification
 - Extend time to decide for up to 10 business days but must include “detailed reason” for extension



Some of the Noteworthy Changes to FOIA (New Section 10a/penalties for improper fee):

- If a public body denies, in whole or in part, a FOIA request and the requester files a civil action, if the court determines the public body “arbitrarily and capriciously violated this act by charging an excessive fee,” the court “shall order the public body to pay a civil fine of \$500...into the general fund of the state treasury.”
- Also, the Court can also award punitive damages to the requester of \$500



Some of the Noteworthy Changes to FOIA (New Section 10b/Additional penalties):

- If a court determines the public body “willfully and intentionally failed to comply with this act or otherwise acted in bad faith, the court shall order the public body to pay, **in addition to any other award or sanction**, a civil fine of not less than \$2,500 or more than \$7,500 **for each occurrence.**”
- This fine will be deposited in the general fund of the state treasury



Next Steps?

1. Obtain a copy of your public body's current procedures and guidelines for the Freedom of Information Act
2. Obtain a copy of any FOIA forms from each department
3. Go to your public body's website and type in "Freedom of Information" and "FOIA" and see what turns up
4. Inquire who, at your public body, is addressing the required changes of PA 463 of 2014
5. July 1, 2015 is the deadline for having your procedures and guidelines updated and published; failure to do so will prevent the public body from recovering any costs or reimbursement of expenses



Query: Should Grand Valley Metro Council facilitate a collaborative effort to develop a model set of procedures and guidelines?



Questions?