

Overview of the Michigan Freedom of Information Act

1976 PA 442(MCL 15.231 et seq.)

Basic intent

The Freedom of Information Act (1976 PA 442; MCL 15.231 et seq.) regulates and sets requirements for the disclosure of public records by all “public bodies” in the state.

Key definitions

“Freedom of Information Act Coordinator” means an individual who is a public body or an individual designated to accept and process requests for public records.

“Public body” means:

- a state officer, employee, agency, department, division, bureau, board, commission, council, authority or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor or employees thereof;
- an agency, board, commission or council in the legislative branch of the state government;
- a county, city, township, village, inter-county, intercity or regional governing body, council, school district, special district or municipal corporation, or a board, department, commission, council or agency thereof; or
- any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

“Public record” means a writing prepared, owned, used, in the possession of or retained by a public body in the performance of an official function, from the time it is created.

Coverage

The Freedom of Information Act regulates and sets requirements for the disclosure of

public records by all “public bodies” in the state. All state agencies, county and other local governments, school boards, other boards, departments, commissions, councils and public colleges and universities are covered. Any program primarily funded by the state or local authority is also covered.

Public records open to disclosure

In general, all records except those specifically cited as exemptions are covered by the Freedom of Information Act. The records covered include working papers and research material, minutes of meetings, officials’ voting records, staff manuals, final orders or decisions in contested cases and the records on which they were made, and promulgated rules and other written statements which implement or interpret laws, rules or policy, including but not limited to, guidelines, manuals and forms with instructions, adopted or used by the agency in the discharge of its functions.

It does not matter what form the record is in. The act applies to any handwriting, typewriting, printing, photostating, photographing, photocopying and every other means of recording. It includes letters, words, pictures, sounds or symbols, or combinations thereof, as well as papers, maps, magnetic or punched cards, discs, drums or other means of recording or retaining meaningful content.

Public records exempt from disclosure

A public body may (but is not required to) withhold from public disclosure certain categories of public records under the Freedom of Information Act. The following categories of information may be withheld: the act should always be consulted if information is to be withheld. Other conditions or requirements may apply.

- information of a personal nature if the release of the information would constitute a clearly unwarranted invasion of the person's privacy;
- investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:
 - interfere with law enforcement proceedings,
 - deprive a person of the right to a fair trial or impartial administrative adjudication,
 - constitute an unwarranted invasion of personal privacy,
 - disclose law enforcement investigative techniques or procedures,
 - disclose the identity of a confidential source or, if the record is compiled by a criminal law enforcement agency in the court of a criminal investigation, disclose confidential information furnished only by a confidential source; or
 - endanger the life or physical safety of law enforcement personnel;
- public records which if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in non-disclosure;
- records or information specifically described and exempted from disclosure by statute;
- a public record or information that is furnished by the public body originally compiling, preparing or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the consideration originally giving rise to the exempt nature of the public record remains applicable;
- trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy;
- information subject to attorney-client privilege;
- information subject to other enunciated privileges such as physician-patient and those recognized by statute or court rule;
- pending public bids to enter into contracts;
- appraisals of real property to be acquired by a public body;
- test questions and answers, scoring keys and other examination instruments;
- medical, counseling, or psychological facts which would reveal an individual's identity;
- communications and notes between the public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in the particular instance the public interest in encouraging frank communications between officials and employees of public bodies clearly outweighs the public interest in disclosure;
- law enforcement communication codes and deployment plans unless the public interest in disclosure outweighs the public interest in non-disclosure;
- information which would reveal the location of archaeological sites;
- product testing data developed by agencies buying products where only one bidder meets the specifications;
- a student's college academic transcript where the student is delinquent on university loans;

- records of any campaign committee including any committee that receives monies from a state campaign fund;
- public records of a law enforcement agency the release of which would do any of the following (unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance):
 - identify an informer,
 - identify a law enforcement undercover officer or agent or a plain clothes officer,
 - disclose the name, address, or telephone numbers of family members of law enforcement officers or agents,
 - disclose operational instructions for law enforcement officers or agents,
 - reveal the contents of law enforcement officers or agents' staff manuals,
 - endanger the life or safety of law enforcement officers or agents and their families or those who furnish information to law enforcement agencies or departments,
 - identify a person as a law enforcement officer, agent or informer,
 - disclose personnel records,
 - identify residences that law enforcement agencies are requested to check in the absence of their owners or tenants;
- information pertaining to an investigation or a compliance conference conducted by the department of consumer and industry services under article 15 of the public health code, 1978 PA 368, except records pertaining to the fact that an allegation has been received and is being investigated or the fact that an allegation was received and a complaint was not issued and the allegation was dismissed;
- records of a public body's security measures;
- records or information relating to a civil action to which the requesting party and the public body are both parties;
- information that would disclose the social security number of any individual;
- an application and supporting materials that could be used to identify a candidate for the position of president of an institution of higher education established under section 4, 5 or 6 of Article VIII of the state constitution of 1963 until one or more individuals have been identified as finalists; and
- records designed to protect persons or property relating to ongoing security measures of a public body.

A public body is required to exempt from disclosure information that, if released, would prevent the public body from complying with the family, education, rights and privacy act of 1974. Certain school bodies are also required to exempt certain directory information.

Availability of public records

Any person, except those incarcerated in state or local facilities, may make a written request to the freedom of information act coordinator of a public body to inspect, copy or receive a copy of a public record. There are no qualifications such as residency or age that must be met in order to make a request.

As soon as practical, but not more than five business days after receiving a request, the public body must respond to a request for a public record. The public agency can, under unusual circumstances, notify the requester in writing and extend the time limit by 10 days.

A person also has the right to subscribe to future issuances of public records which are created, issued or disseminated on a regular basis. A subscription is valid for up to six months, at the request of the subscriber, and is renewable.

The public body or agency has a responsibility to provide reasonable facilities so that persons making a request may examine and take notes from public records. The facilities must be available during the normal business hours of the public body.

Salary records

Salary records of employees or other officials of institutions of higher education, school districts, intermediate school districts or community college districts must be made available to the public upon request and under certain conditions.

Fees for public records

A government agency can charge a fee, but it must be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of the search, examination, review and the separation and deletion of exempt from nonexempt information.

A public body may not charge more than the hourly wage of the lowest paid public body employee capable of retrieving information. A fee shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from non-exempt information unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance.

The first \$20 of work must be free for a person who is on welfare or presents facts showing inability to pay because of indigency.

Denial of a record

If a request for a record is denied, written notice of the denial must be provided to the requester within five days, or within 15 days if an extension is requested for unusual circumstances. A failure to respond within the

time limits, or a failure to respond at all, also amounts to a denial.

When a request is denied, the public body must provide the requester with a full explanation of the reasons for the denial and an explanation of the requester's right to either:

- seek judicial review or
- submit to the head of the public body a written appeal that states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial.

Notification of the right to judicial review must include notification of the right to receive attorney's fees and collect damages.

Enforcement

A person has the right to commence action in circuit court to compel disclosure of public records which are denied.

The action may be brought in the county where the requester lives, the county where the requester does business, the county where the public document is located, or a county where the agency has an office.

Penalties for violation of the act

If the circuit court finds that the public body has arbitrarily and capriciously violated the Freedom of Information Act by refusal or delay in disclosing or providing copies of a public record, it may, in addition to any actual or compensatory damages, award punitive damages of \$500 to the person seeking the right to inspect or receive a copy of a public record.