

Appendix 3

Overview of the Michigan Freedom of Information Act

1976 PA 442

Public Act 563 of 2014 made significant changes to FOIA concerning fees; the receipt, processing, and denial of requests; and civil actions and appeals brought under the Act. The new law goes into effect on July 1, 2015. Please visit mml.org for our One Pager *Plus* Fact Sheet detailing these numerous changes.

Basic Intent

The Freedom of Information Act 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, intercounty, 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:

- specific information about an individual's private affairs, 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;
- a public record or information which 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 or records subject to attorney-client privilege;
- information or records subject to other enunciated privileges such as physician-patient and those recognized by statute or court rule;
- A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the deadline for submission of bids or proposals has expired.;
- appraisals of real property to be acquired by a public body until either of the following occurs:
 - An agreement is entered into.
 - Three years have elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.
- test questions and answers, scoring keys and other examination instruments or data used to administer a license, public employment, or academic examination;
- medical counseling or psychological facts which would reveal an individual's identity;
- internal 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 shall 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. (Factual materials in such memoranda are open records and must be separated out and made available upon request even if the other material is not.);

- law enforcement communication codes and deployment plans unless the public interest in disclosure outweighs the public interest in non-disclosure;
- 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, Act No. 368 of the Public Acts of 1978. 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; and
- information that would disclose the social security number of any individual.

Availability of Public Records

This section of the Act has changed significantly. Please refer to the *One Pager Plus* Fact Sheet for details.

Fees for Public Records

This section of the Act has changed significantly. Please refer to the *One Pager Plus* Fact Sheet for details.

Denial of a Record

This section of the Act has changed significantly. Please refer to the *One Pager Plus* Fact Sheet for details.