

Michigan's Freedom of Information Act

Public Act No. 442 of 1976, as amended

The following is a general outline of the Freedom of Information Act. When using the Freedom of Information Act, always rely on the specific provisions of the Act, which are republished immediately following this outline.

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:

"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. The term does not include computer software.

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. The Act does not apply to the judicial branch and it does not apply to legislators. 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 exceptions are covered by the Freedom of Information Act. The records covered include working papers and research material, minutes of open and closed meetings, officials' voting records, staff manuals, final orders or decisions in contested cases and the records on which they were made, and promulgated rules. 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, are also included.

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, but not computer software.

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. Among the categories of information that may be withheld under section 13 of the Act are the following:

—Specific information about an individual's private affairs, if their right to have the information protected from public scrutiny is greater than the public's right to the information.

—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 the identity of a confidential source or, if the record is compiled by a criminal law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source;

- disclose law enforcement investigative techniques or procedures; 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 nondisclosure.

—Records which if disclosed would violate the Federal (Buckley) Educational Rights and Privacy Act (primarily student records).

—An exempt public record or exempt 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 subject to attorney-client privilege.

—Information subject to other enunciated privileges such as counselor-client 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.

—Internal communications and notes between and within 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. (Note that 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 nondisclosure.

—Information that would reveal the location of archeological sites.

—Product testing data developed by agencies buying products where only one bidder meets the agency's specifications.

—A student's college academic transcript where the student is delinquent on university payments.

—Records of any campaign committee including any committee that receives moneys from a state campaign fund. (These records are open to the public under Public Act 388 of 1976.)

Records and information pertaining to an investigation or a compliance conference under Article 15 of the Public Health Code, before a complaint is issued. These provisions do not apply to any of the following:

—The fact that an allegation has been received and an investigation is being conducted and the date the allegation was received.

—The fact that the allegation was received by the Department of Consumer and Industry Services; the fact that the department did not issue a complaint for the allegation; and the fact that the allegation was dismissed.

Availability of Public Records:

Any person may ask 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. The reference to "person" in the act does not include those persons incarcerated in state or local correctional facilities.

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 ten 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.

A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions.

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 duplication, mailing and clerical labor costs. 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. A public body may require a good faith deposit at the time of request. The deposit shall not exceed ½ of the total cost.

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 under 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 request or with a full explanation of the reasons for the denial and the requester's right to seek judicial review. 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 an action in circuit court to compel disclosure of public records which are denied. If the request by a person was made verbally, the person must confirm the request in writing not less than five days before commencing the action.

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.

Requesting a Public Record Pursuant to the Freedom of Information Act

The following is a checklist for Freedom of Information Act requests:

- 1) Make sure you are addressing the correspondence to the correct department.
- 2) Make sure the correspondence is addressed to the Freedom of Information Act Administrator of that department.
- 3) Describe the information requested in detail so that it can be located by the Freedom of Information Act Administrator.
- 4) Describe the subject matter of the documents requested and, if possible, the date the documents were created.
- 5) Advise the department that you are requesting documents pursuant to the Freedom of Information Act and refer to the Act as MCL 15.231 et seq.

FREEDOM OF INFORMATION ACT

REQUEST FORM

I, _____, am requesting under The Freedom of Information Act the following information:

I do understand that under The Freedom of Information Act that I have five (5) days in which to get a response from the Fenton Police Department. In these five (5) days the Fenton Police Department will either honor the request from the above person or put in writing the reason they cannot honor the request or extend the amount of time to not more than 10 business days.

Name of Person Making Request

Date

Address of Person Making Request

Phone Number

City, State and Zip Code
