

SUMMARY OF MICHIGAN'S FREEDOM OF INFORMATION ACT (FOIA)

The following is an updated summary of the basic provisions of the Freedom of Information Act (FOIA) as amended by 1996 PA 553. The actual text of the statute follows in Section II.

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. It also includes: an agency, board, commission, or council in the legislative branch of the state government; a county, city, township, village, inter county, inter city, 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. It does not include private non-profit corporations.

"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 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.

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 minutes of open 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 policies, 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 covered. 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. It does not include 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. The following public records are exempt from disclosure under this act:

*Specific personal information about an individual if the release would constitute a clearly unwarranted invasion of that individual'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 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 Family Educational Rights and Privacy Act of 1974 (primarily student records).

- *Records specifically exempted from disclosure by another statute.
- *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 subject to attorney-client privilege.
- *Information subject to other 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.
- *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 communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.
- *Law enforcement communication codes and employment plans unless the public interest in disclosure outweighs the public interest in nondisclosure.
- *Information which 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 loans.
- *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).
- *Public records of a police or sheriff's agency where disclosure would identify an informer, or undercover agent, or reveal the home address, telephone number of an officer or agent, or disclose personnel records of law enforcement agencies.
- *Records pertaining to an investigation of a health care professional conducted by the Department of Consumer and Industry Services pursuant to the Public Health Code before a complaint is issued.
- *Records of a public body's security measures.
- *Records relating to a civil action in which the requesting person and the public body are parties.
- *Records that would disclose the social security number of an individual.
- *Applications, including letters of recommendation and references, for president of an institution of higher learning if the records could be used to identify the candidate. However, records pertaining to persons identified as finalists, except letters of recommendation and references, are not exempt.

Availability of Public Records:

A request must be made in writing and provided to the FOIA coordinator of the public body. A FOIA coordinator may designate another individual to act on his or her behalf to accept requests for processing. A 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. However, prisoners in state, county or federal correctional facilities are not entitled to make requests.

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, notify the requester in writing and extend the time for an additional ten business 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.

Fees for Public Records:

A government agency may charge a fee for the necessary copying of a public record for inspection or providing a copy of a public record to a requestor. A public body may also charge for search, examination and review and the separation of exempt information in those instances where failure to charge a fee would result in unreasonably high costs to the public body. The fee must be limited to actual duplication, mailing and labor costs. The first \$20 of a fee must be waived 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 business days, or within 15 business days if an extension is taken. A failure to respond at all, constitutes 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 the requester's right to submit an appeal to the head of the public body or to seek judicial review. Notification of the right to judicial review must include notification of the right to receive attorney fees and collect damages.

Enforcement:

A person may appeal a final decision to deny a request to the head of the public body. The head of the public body has 10 days to respond to the appeal. Under unusual circumstances, an additional 10 days may be taken. A person also has the right to commence an action in circuit court to compel disclosure of public records. The suit must be filed within 180 days after the public body's final decision to deny a request.

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.

Effective Date: April 13, 1977.