

THE FREEDOM OF INFORMATION ACT (FOIA): A SUMMARY

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As a summary, this document does not include every subsection of the FOIA. It is intended to be used as a quick reference. The FOIA should be read and reviewed in full. Use of this document is not a substitute for consulting with your Department's FOIA Coordinator. Emphasis has been added throughout this summary. Any comments herein are given at the division level and are not the opinion of the Attorney General.

Section 1, MCL 15.231 - Core purpose.

“It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are *entitled to full and complete information* regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may *fully participate in the democratic process.*” MCL 15.231(2).

Section 2, MCL 15.232 - Some definitions.

“Public body’ means . . . (i) 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. (ii) An agency, board, commission, or council in the legislative branch of the state government. (iii) 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. (iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority.” MCL 15.232(h).

“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 . . . This act separates public records into the following 2 classes: (i) Those that are exempt from disclosure under section 13. (ii) All public records that are not exempt from disclosure under section 13 and which are subject to disclosure under the act.” MCL 15.232(i).

“Writing’ means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic

or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other *means of recording or retaining meaningful content.*” MCL 15.232(l).

Section 3, MCL 15.233 - The requester’s right of access.

“[U]pon providing a public body’s FOIA coordinator with a written request that describes a public record sufficiently to enable the public body to find the public record, a person has a right to *inspect, copy, or receive* copies of the requested public record of the public body. A request from a person, other than an individual who qualifies as indigent under section 4(2)(a), *must include the requesting person’s complete name, address, and contact information*, and, if the request is made by a person other than an individual, the complete name, address, and contact information of the person's agent who is an individual. An address must be written in compliance with United States Postal Service addressing standards. Contact information must include a valid telephone number or electronic mail address. A person has a *right to subscribe to future issuances* of public records that are created, issued, or disseminated on a regular basis . . . An employee of a public body who receives a request for a public record shall promptly forward that request to the [FOIA] coordinator.” MCL 15.233(1).

“A public body shall furnish a requesting person a reasonable *opportunity for inspection and examination* of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. 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. A public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction.” MCL 15.233(3).

“This act *does not require* a public body to make a compilation, summary, or report of information [or] to create a new public record.” MCL 15.233(4) and (5).

Section 4, MCL 15.234 – Fees.

“A public body *may charge a fee* for a public record search, for the necessary copying of a public record for inspection, or for providing a copy of a public record if it has established, makes publicly available, and follows procedures and guidelines to implement this section . . . the *fee shall be limited* to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information . . .” MCL 15.234(1).

“[I]f the public body estimates or charges a fee in accordance with this act . . . (a) . . . The public body *shall not charge more* than the hourly wage of its lowest-paid employee capable of searching for, locating, and examining the public records in the particular instance regardless of whether that person is available or who actually performs the labor . . . (b) . . . A public body *shall not charge for* labor directly associated with redaction under section 14 if it knows or has reason to know that it previously redacted the public record in question and the redacted version is still in the public body’s possession.” MCL 15.234(1).

“A search for a public record may be conducted or copies of public records may be furnished *without charge or at a reduced charge* if the public body determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public. A public record search shall be made and a copy of a public record *shall be furnished without charge* for the first \$20.00 of the fee for each request by . . . (a) An individual who is entitled to information under this act and who submits an affidavit stating that the individual is indigent and receiving specific public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency . . . (b) A nonprofit organization formally designated by the state to carry out activities under subtitle C of the developmental disabilities assistance and bill of rights act of 2000 Public Law 106-402 . . .” MCL 15.234(2).

“A fee . . . shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt 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, and the public body specifically identifies the nature of these unreasonably high costs.” MCL 15.234(3).

A public body *shall establish procedures and guidelines* to implement this act and shall create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests . . . A public body’s procedures and guidelines shall include the use of a standard form for *detailed itemization* of any fee amount . . .” MCL 15.234(4).

“If the FOIA coordinator knows or has reason to know that all or a portion of the requested information is *available on its website*, the public body shall notify the requestor in its written response that all or a portion of the requested information is available on its website. The written response, to the degree practicable in the specific instance, shall include a specific webpage address where the requested information is available.” MCL 15.234(5).

“[T]he public body *may require a good-faith deposit* from the person requesting information before providing the public records to the requestor if the entire fee estimate or charge authorized under this section exceeds \$50.00, based on a good-faith calculation of the total fee . . . the deposit shall not exceed 1/2 of the total estimated fee . . . [t]he response *shall also contain a best efforts estimate* by the public body regarding the time frame it will take the public body to comply with the law in providing the public records to the requestor.” MCL 15.234(8).

“This section does not apply to public records prepared under an act or statute *specifically authorizing the sale of those public records* to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.” MCL 15.234(10).

“If a deposit that is required . . . is not received by the public body within 45 days from receipt by the requesting person of the notice that a deposit is required, and if the requesting person has not filed an appeal of the deposit amount pursuant to section 10a, the request shall be considered abandoned by the requesting person and the public body is no longer required to fulfill the request. Notice of a deposit requirement . . . is considered received 3 days after it is sent. Notice of a deposit requirement . . . must include notice of the date by which the deposit must be received, which date is 48 days after the date the notice is sent.” MCL 15.234(14)

Section 5, MCL 15.235 - The public body’s response to a request.

“[A] public body *shall respond to a request for a public record within 5 business days* after the public body receives the request by doing 1 of the following: (a) Granting the request. (b) Issuing a written notice to the requesting person denying the request. (c) Granting the request in part and issuing a written notice to the requesting person denying the request in part. (d) Issuing a notice extending for not more than 10 business days the period during which the public body shall respond to the request . . .” MCL 15.235(2).

“*Failure to respond* to a request . . . constitutes a public body’s final determination to deny the request if either of the following applies: (a) The failure was willful and intentional. (b) The written request included language that conveyed a request for information within the first 250 words . . . or specifically included the words, characters, or abbreviations for ‘freedom of information’, ‘information’, ‘FOIA’, ‘copy’ . . .” MCL 15.235(3).

“A written notice denying a request for a public record in whole or in part . . . *must contain*: (a) An explanation of the basis under this act or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure . . . (b) A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public

body . . . (c) A description of a public record or information on a public record that is separated or deleted . . . (d) A full explanation of the requesting person's [remedial rights.]" MCL 15.235(5).

Section 6, MCL 15.236 - The FOIA coordinator.

"A public body . . . shall designate an individual as the public body's FOIA coordinator. The FOIA coordinator *shall be responsible for accepting and processing requests* for the public body's public records under this act and *shall be responsible for approving a denial* . . . An FOIA coordinator may designate another individual to act on his or her behalf . . ." MCL 15.236(1) and (3).

Section 10, MCL 15.240 - Remedies as to disclosure denials.

"If a public body makes a final determination to deny all or a portion of a request, *the requesting person may* . . . (a) Submit to the head of the public body a written appeal that specifically states the word 'appeal' and identifies the reason or reasons for reversal of the denial. (b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request." MCL 15.240(1).

"Within 10 business days after receiving a written appeal . . . the head of a public body shall do 1 of the following: (a) Reverse the disclosure denial. (b) Issue a written notice . . . upholding the disclosure denial. (c) Reverse the disclosure denial in part and issue a written notice . . . upholding the disclosure denial in part. (d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal . . ." MCL 15.240(2).

"If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements." MCL 15.240(6).

"If the court determines . . . that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court *shall order the public body to pay a civil fine* of \$1,000.00, which shall be deposited into the general fund of the state treasury. The court *shall award*, in addition to any actual or compensatory damages, punitive *damages* in the amount of \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record." MCL 15.240(7)

Section 10a and b, MCL 15.240(a) and (b) - Remedies as to fees charged; remedies as to willful violation of the act.

“If a public body requires a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4, *the requesting person may . . .* (a) If the public body provides for fee appeals . . . submit to the head of the public body a written appeal for a fee reduction that specifically states the word ‘appeal’ and identifies how the required fee exceeds the amount permitted under the public body’s available procedures and guidelines or section 4. (b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, in the court of claims, for a fee reduction . . . within 45 days after receiving the notice of the required fee or a determination of an appeal to the head of a public body. If a civil action is commenced against the public body under this subdivision, the public body is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.” MCL 15.240a(1).

“Within 10 business days after receiving a written appeal . . . the head of a public body shall do 1 of the following: (a) Waive the fee. (b) Reduce the fee and issue a written determination . . . indicating the specific basis under section 4 that supports the remaining fee. The determination shall include a certification . . . that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and section 4. (c) Uphold the fee and issue a written determination . . . indicating the specific basis under section 4 that supports the required fee. The determination shall include a certification . . . that the statements in the determination are accurate and that the fee amount complies with the public body’s publicly available procedures and guidelines and section 4. (d) Issue a notice extending for not more than 10 business days the period during which the head of the public body must respond to the written appeal . . .” MCL 15.240a(2).

“If the requesting person prevails in an action commenced under this section by receiving a reduction of 50% or more of the total fee, the *court may*, in its discretion, award all or an appropriate portion of reasonable attorneys’ fees, costs, and disbursements.” MCL 15.240a(6).

“If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by charging an excessive fee, the court *shall order* the public body to pay a civil fine of \$500.00, which shall be deposited in the general fund of the state treasury. The court *may also award*, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the fee reduction.” MCL 15.240a(7).

“If the court determines, in an action commenced under this section, that a public body *willfully and intentionally* failed to comply with this act . . . the court *shall order* the public body . . . to pay a civil fine of not less than \$2,500.00 or more than \$7,500.00 for each occurrence . . .” MCL 15.240b.

Section 11, MCL 15.241 - Matters to be published and made available.

“A state agency *shall publish and make publicly available* . . . (a) Final orders or decisions in contested cases and the records on which they were made. (b) Promulgated rules. (c) Other written statements that implement or interpret laws, rules, or policy . . .” MCL 15.241(1).

Section 13(1)(a) through (aa), MCL 15.243(1)(a) through (aa) - Exemptions from disclosure.

A public body *may exempt* certain information:

Records fall under four general categories of exemption:

- Records of a personal nature, the release of which, would constitute a clearly unwarranted invasion of an individual’s privacy.
- Records, the release of which would impair the safety or security of a public institution or the safe and efficient operation of a police or military authority.
- Records exempted on the basis of public policy.
- Records exempted by other statutes.

Exemptions for records of a personal nature:

(a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual’s privacy.

(l) Medical, counseling, or psychological facts or evaluations concerning an individual if the individual’s identity would be revealed by a disclosure of those facts or evaluation.

(w) Information or records that would disclose the social security number of any individual.

Exemptions for records related to security:

- (c) Records related to maintaining the physical security of custodial or penal institutions.
- (n) Records of law enforcement communication codes or plans of law enforcement deployment.
- (s) Other law enforcement agency records.
- (u) Records of security measures, security plans, and security codes.
- (y) Records related to the ongoing security measures for responding to a violation of the Michigan Anti-Terrorism Act.
- (z) Information that would identify or provide a means of identifying a person that may, as a result of disclosure of the information, become a victim of a cybersecurity incident or that would disclose a person's cybersecurity plans or cybersecurity-related practices, procedures, methods, results, organizational information system infrastructure, hardware, or software.
- (aa) Research data on road and attendant infrastructure collected, measured, recorded, processed, or disseminated by a public agency or private entity, or information about software or hardware created or used by the private entity for such purposes.

Exemptions for records related to public policy:

- (b) Investigating records compiled for law enforcement purposes.
- (f) Trade secrets or commercial or financial information.
- (g) Information or records subject to the attorney-client privilege.
- (h) Information or records subject to the physician-patient privilege or other privilege recognized by statute or court rule.
- (i) A bid or proposal to enter into a contract or agreement.
- (j) Appraisals of real property acquired by the public body.

(k) Test questions and answers, and other examination instruments used to administer a license, public employment, or academic examination.

(m) Communications within a public body or between public bodies of an advisory nature.

(v) Records relating to a civil action between the requester and the public body.

Exemptions for records protected under other statutes, state or federal, and under federal regulations.¹

(d) Records or information specifically described and exempted from disclosure by statute.

(e) A record, which is received by a public body from another public body that considers the record as otherwise legally exempt from public disclosure, may remain exempt when the considerations originally giving rise to the exempt nature of the public record remain applicable.

Section 13(2), MCL 15.243(2) Records regulated by the Family Educational Rights and Privacy Act.

Other exemptions fitting into one or more general categories.

(o) Information that would reveal the exact location of archeological sites.

(p) Testing data re: bidders' products meeting specifications for purchase.

(q) Academic transcripts of an institution of higher education.

(r) Records of a campaign committee.

(t) Records re: investigations by the Michigan Department of Licensing and Regulatory Affairs under the Public Health Code.

(x) Records re: application for president of an institution of higher education.

¹ This is to ensure the confidentiality of records exempted from public disclosure under other Michigan statutes, as well as by federal statutes and regulations. The other statutes are too numerous to include in this summary.

Exemptions with conditions:

- a) *If* public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.
- (b) Investigating records compiled for law enforcement purposes, *but only* to the extent that . . .
- (f) Trade secrets, or commercial or financial information voluntarily provided to an agency for use in developing governmental policy *if* . . .

Exemptions based on a balancing test:

The balanced interests: "Unless the public interest in disclosure under this act outweighs the public interest in nondisclosure."

- (c) Records of custodial or penal institutions. Records related to maintaining the physical security of custodial or penal institutions.
- (k) Test questions and answers, and other examination instruments used to administer a license, public employment, or academic examination.
- (m) Communications within a public body or between public bodies of an advisory nature.
- (n) Records of law enforcement communication codes or plans of law enforcement deployment.
- (s) Other law enforcement records.
- (y) Records related to the ongoing security measures for responding to a violation of the Michigan Anti-Terrorism Act.

Section 14, MCL 15.244 - A public body shall separate exempt and nonexempt material.

"If a public record contains material which is not exempt under section 13, as well as material which is exempt from disclosure under section 13, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying." MCL 15.244(1).

"When designing a public record, a public body shall, to the extent practicable, facilitate a separation of exempt from nonexempt information. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, the public body shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption." MCL 15.244(2).