



# HOUSE BILL No. 5244

December 16, 1993, Introduced by Reps. Rivers, Barns, Yokich, Joe Young, Jr., Jaye, Stallworth, Jersevic, Freeman, Willard, Pitoniak, DeMars and Palamara and referred to the Committee on Judiciary.

A bill to amend sections 5, 10, and 11 of Act No. 442 of the Public Acts of 1976, entitled "Freedom of information act," being sections 15.235, 15.240, and 15.241 of the Michigan Compiled Laws.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. Sections 5, 10, and 11 of Act No. 442 of the  
2 Public Acts of 1976, being sections 15.235, 15.240, and 15.241 of  
3 the Michigan Compiled Laws, are amended to read as follows:

4 Sec. 5. (1) A person desiring to inspect or receive a copy  
5 of a public record may make an oral or written request for the  
6 public record to the public body.

7 (2) When a public body receives a request for a public  
8 record, it shall ~~immediately, but~~ RESPOND TO THE REQUEST not  
9 more than 5 business days after the day the request is received

1 unless otherwise agreed to in writing by the person making the  
2 request. ~~7~~ THE PUBLIC BODY SHALL respond to the request by  
3 DOING 1 of the following:

4 (a) ~~Grant~~ GRANTING the request.

5 (b) ~~Issue~~ ISSUING a written notice to the requesting  
6 person denying the request.

7 (c) ~~Grant~~ GRANTING the request in part and ~~issue~~ ISSUING  
8 a written notice to the requesting person denying the request in  
9 part.

10 (d) Under unusual circumstances, ~~issue~~ ISSUING a notice  
11 extending for not more than 10 business days the period during  
12 which the public body shall respond to the request. A public  
13 body shall not issue more than 1 notice of extension for a par-  
14 ticular request.

15 (3) Failure to respond to a request as provided in subsec-  
16 tion (2) constitutes a final decision by the public body to deny  
17 the request. If a ~~circuit~~ court, upon an action commenced pur-  
18 suant to section 10, finds that a public body has failed to  
19 respond as provided in subsection (2), and if the court orders  
20 the public body to disclose or provide copies of the public  
21 record or a portion ~~thereof~~ OF THE PUBLIC RECORD, then the  
22 ~~circuit~~ court shall assess damages against the public body as  
23 provided in section 10(5).

24 (4) A written notice denying a request for a public record  
25 in whole or in part ~~shall constitute~~ CONSTITUTES a final deter-  
26 mination by the public body to deny the request or portion  
27 thereof and shall contain THE FOLLOWING, AS APPLICABLE:

1 (a) An explanation of the basis under this act or other  
2 statute for the determination that the public record, or ~~the~~  
3 ~~portion thereof~~ OF THE PUBLIC RECORD, is exempt from disclo-  
4 sure, if that is the reason for denying the request or a portion  
5 ~~thereof~~ OF THE REQUEST.

6 (b) A certificate that the public record does not exist  
7 under the name given by the requester or by another name reason-  
8 ably known to the public body, if that is the reason for denying  
9 the request or a portion ~~thereof~~ OF THE REQUEST.

10 (c) A description of a public record or information on a  
11 public record ~~which~~ THAT is separated or deleted as provided in  
12 section 14, if a separation or deletion is made.

13 (d) A full explanation of the requesting person's right to  
14 seek judicial review under section 10. Notification of the right  
15 to judicial review shall include notification of the right to  
16 receive attorneys' fees and damages as provided in section 10.

17 (5) The individual designated in section 6 as responsible  
18 for the denial of the request shall sign the written notice of  
19 denial.

20 (6) If a public body issues a notice extending the period  
21 for a response to the request, the notice shall set forth the  
22 reasons for the extension and the date by which the public body  
23 shall do 1 of the following:

24 (a) Grant the request.

25 (b) Issue a written notice to the requesting person denying  
26 the request.

1 (c) Grant the request in part and issue a written notice to  
2 the requesting person denying the request in part.

3 (7) If a public body makes a final determination to deny in  
4 whole or in part a request to inspect or receive a copy of a  
5 public record or portion thereof, the requesting person may com-  
6 mence an action in ~~circuit~~ court, as provided in section 10.

7 Sec. 10. (1) If a public body makes a final determination  
8 to deny a request or a portion ~~thereof~~ OF A REQUEST, the  
9 requesting person may commence an action in the ~~circuit~~  
10 DISTRICT court OR THE SMALL CLAIMS DIVISION OF THE DISTRICT COURT  
11 to compel disclosure of the public records. If the court deter-  
12 mines that the public records are not exempt from disclosure, the  
13 court shall order the public body to cease withholding or to  
14 produce a public record or a portion ~~thereof~~ OF A PUBLIC RECORD  
15 wrongfully withheld, regardless of the location of the public  
16 record. The ~~circuit~~ DISTRICT court OR THE SMALL CLAIMS DIVI-  
17 SION OF THE DISTRICT COURT for the ~~county~~ JUDICIAL DISTRICT in  
18 which the complainant resides or has his OR HER principal place  
19 of business, or the ~~circuit~~ DISTRICT court OR THE SMALL CLAIMS  
20 DIVISION OF THE DISTRICT COURT for the ~~county~~ JUDICIAL DISTRICT  
21 in which the public record or an office of the public body is  
22 located ~~shall have~~ HAS jurisdiction to issue the order. The  
23 court shall determine the matter de novo and the burden is on the  
24 public body to sustain its denial. The court, on its own motion,  
25 may view the public record in controversy in private before  
26 reaching a decision. Failure to comply with an order of the  
27 court may be punished as contempt of court.

1 (2) An action under this section arising from the denial of  
2 an oral request may not be commenced unless the requesting person  
3 confirms the oral request in writing not less than 5 days before  
4 commencement of the action.

5 (3) An action commenced pursuant to this section ~~and~~  
6 ~~appeals therefrom~~ OR AN APPEAL FROM AN ACTION COMMENCED PURSUANT  
7 TO THIS SECTION shall be assigned for hearing and trial or for  
8 argument at the earliest practicable date and expedited in every  
9 way.

10 (4) If a person asserting the right to inspect or to receive  
11 a copy of a public record or a portion ~~thereof~~ OF A PUBLIC  
12 RECORD prevails in an action commenced pursuant to this section,  
13 the court shall award reasonable attorneys' fees, costs, and  
14 disbursements. If the person prevails in part, the court may ~~in~~  
15 ~~its discretion~~ award reasonable attorneys' fees, costs, and dis-  
16 bursements or an appropriate portion thereof. The award shall be  
17 assessed against the public body liable for damages under subsec-  
18 tion (5).

19 (5) In an action commenced pursuant to this section, if the  
20 ~~circuit~~ court finds that the public body has arbitrarily and  
21 capriciously violated this act by refusal or delay in disclosing  
22 or providing copies of a public record, the court, ~~shall,~~ in  
23 addition to any actual or compensatory damages, SHALL award puni-  
24 tive damages in the amount of \$500.00 to the person seeking the  
25 right to inspect or receive a copy of a public record. The dam-  
26 ages shall not be assessed against an individual, but shall be  
27 assessed against the next succeeding public body, not an

1 individual, pursuant to whose public function the public record  
2 was kept or maintained.

3       Sec. 11. (1) A state agency shall publish and make avail-  
4 able to the public all of the following:

5       (a) Final orders or decisions in contested cases and the  
6 records on which they were made.

7       (b) Promulgated rules.

8       (c) Other written statements which implement or interpret  
9 laws, rules, or policy, including but not limited to guidelines,  
10 manuals, and forms with instructions, adopted or used by the  
11 agency in the discharge of its functions.

12       (2) Publications may be in pamphlet, loose-leaf, or other  
13 appropriate form in printed, mimeographed, or other written  
14 matter.

15       (3) Except to the extent that a person has actual and timely  
16 notice of the terms ~~thereof~~ OF A MATTER REQUIRED TO BE PUB-  
17 LISHED AND MADE AVAILABLE, a person shall not in any manner be  
18 required to resort to, or be adversely affected by, a matter  
19 required to be published and made available, if the matter is not  
20 so published and made available.

21       (4) This section does not apply to public records ~~which~~  
22 THAT are exempt from disclosure under section 13.

23       (5) A person may commence an action in the ~~circuit~~  
24 DISTRICT court OR THE SMALL CLAIMS DIVISION OF THE DISTRICT COURT  
25 to compel a state agency to comply with this section. If the  
26 court determines that the state agency has failed to comply, the  
27 court shall order the state agency to comply and shall award

1 reasonable attorneys' fees, costs, and disbursements to the  
2 person commencing the action. The ~~circuit~~ DISTRICT court OR  
3 THE SMALL CLAIMS DIVISION OF THE DISTRICT COURT for the ~~county~~  
4 JUDICIAL DISTRICT in which the state agency is located ~~shall~~  
5 ~~have~~ HAS jurisdiction to issue the order.

6 (6) As used in this section, "state agency", "contested  
7 case", and "rules" shall have the same meanings as ascribed to  
8 those terms in THE ADMINISTRATIVE PROCEDURES ACT OF 1969, Act  
9 No. 306 of the Public Acts of 1969, as amended, being sections  
10 24.201 to ~~24.315~~ 24.328 of the Michigan Compiled Laws.

11 Section 2. This amendatory act shall not take effect unless  
12 Senate Bill No. \_\_\_\_\_ or House Bill No. 5243 (request  
13 no. 03522'93) of the 87th Legislature is enacted into law.