

SUBSTITUTE FOR
HOUSE BILL NO. 4001

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending sections 4, 5, 10, and 11 (MCL 15.234, 15.235, 15.240,
and 15.241), sections 4, 5, and 10 as amended by 1996 PA 553, and
by adding sections 10a and 10b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) A public body may charge a fee for a public record
2 search, **FOR** the necessary copying of a public record for
3 inspection, or for providing a copy of a public record **IF IT HAS**
4 **ESTABLISHED, MAKES PUBLICLY AVAILABLE, AND FOLLOWS PROCEDURES AND**
5 **GUIDELINES TO IMPLEMENT THIS SECTION AS DESCRIBED IN SUBSECTION**
6 **(4)**. Subject to ~~subsections (3) and (4)~~, **SUBDIVISIONS (A) TO (F)**,
7 the fee shall be limited to actual mailing costs, and to the actual
8 incremental cost of duplication or publication including labor, the

1 cost of search, examination, review, and the deletion and
2 separation of exempt from nonexempt information as provided in
3 section 14. EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, IF THE PUBLIC
4 BODY ESTIMATES OR CHARGES A FEE IN ACCORDANCE WITH THIS ACT, THE
5 TOTAL FEE SHALL NOT EXCEED THE SUM OF THE FOLLOWING COMPONENTS:

6 (A) THAT PORTION OF LABOR COSTS DIRECTLY ASSOCIATED WITH THE
7 NECESSARY SEARCHING FOR, LOCATING, AND EXAMINING OF PUBLIC RECORDS
8 IN CONJUNCTION WITH RECEIVING AND FULFILLING A GRANTED WRITTEN
9 REQUEST. THE PUBLIC BODY SHALL NOT CHARGE MORE THAN THE HOURLY
10 WAGE, WHICH DOES NOT INCLUDE THE COST OF BENEFITS, OF ITS LOWEST-
11 PAID EMPLOYEE CAPABLE OF SEARCHING FOR, LOCATING, AND EXAMINING THE
12 PUBLIC RECORDS IN THE PARTICULAR INSTANCE REGARDLESS OF WHETHER
13 THAT PERSON IS AVAILABLE OR WHO ACTUALLY PERFORMS THE LABOR. LABOR
14 COSTS SHALL BE ITEMIZED AND NOTED IN A MANNER THAT EXPRESSES BOTH
15 THE HOURLY WAGE RATE USED AND THE NUMBER OF HOURS CHARGED. OVERTIME
16 WAGES SHALL NOT BE INCLUDED IN THE CALCULATION OF THE LABOR COSTS
17 UNDER THIS SUBDIVISION UNLESS OVERTIME IS SPECIFICALLY STIPULATED
18 BY THE REQUESTOR AND THEREAFTER FULLY NOTED ON THE DETAILED
19 ITEMIZATION DESCRIBED UNDER SUBSECTION (4). LABOR COSTS UNDER THIS
20 SUBDIVISION SHALL BE ESTIMATED AND CHARGED IN INCREMENTS OF 15
21 MINUTES OR MORE, WITH ALL PARTIAL TIME INCREMENTS ROUNDED DOWN.

22 (B) THAT PORTION OF LABOR COSTS, INCLUDING NECESSARY REVIEW,
23 IF ANY, DIRECTLY ASSOCIATED WITH THE SEPARATING AND DELETING OF
24 EXEMPT INFORMATION FROM NONEXEMPT INFORMATION AS PROVIDED IN
25 SECTION 14. THE PUBLIC BODY SHALL NOT CHARGE MORE THAN THE HOURLY
26 WAGE, WHICH DOES NOT INCLUDE THE COST OF BENEFITS, OF ITS LOWEST-
27 PAID EMPLOYEE CAPABLE OF SEPARATING AND DELETING EXEMPT INFORMATION

1 FROM NONEXEMPT INFORMATION IN THE PARTICULAR INSTANCE AS PROVIDED
2 IN SECTION 14, REGARDLESS OF WHETHER THE PERSON IS AVAILABLE OR WHO
3 ACTUALLY PERFORMS THE LABOR. LABOR COSTS SHALL BE ITEMIZED AND
4 NOTED IN A MANNER THAT EXPRESSES BOTH THE HOURLY WAGE RATE USED AND
5 THE NUMBER OF HOURS CHARGED. OVERTIME WAGES SHALL NOT BE INCLUDED
6 IN THE CALCULATION OF THE LABOR COSTS UNDER THIS SUBDIVISION UNLESS
7 OVERTIME IS SPECIFICALLY STIPULATED BY THE REQUESTOR AND THEREAFTER
8 FULLY NOTED ON THE DETAILED ITEMIZATION DESCRIBED UNDER SUBSECTION
9 (4). LABOR COSTS UNDER THIS SUBDIVISION SHALL BE ESTIMATED AND
10 CHARGED IN INCREMENTS OF 15 MINUTES OR MORE, WITH ALL PARTIAL TIME
11 INCREMENTS ROUNDED DOWN. IF A PUBLIC BODY DOES NOT EMPLOY A PERSON
12 CAPABLE OF SEPARATING AND DELETING EXEMPT INFORMATION FROM
13 NONEXEMPT INFORMATION IN THE PARTICULAR INSTANCE AS PROVIDED IN
14 SECTION 14, IT MAY TREAT NECESSARY CONTRACTED LABOR COSTS USED FOR
15 THE SEPARATING AND DELETING OF EXEMPT INFORMATION FROM NONEXEMPT
16 INFORMATION IN THE SAME MANNER AS EMPLOYEE LABOR COSTS WHEN
17 CALCULATING CHARGES UNDER THIS SUBDIVISION IF IT CLEARLY NOTES THE
18 NAME AND ADDRESS OF THE CONTRACTED PERSON OR FIRM ON THE DETAILED
19 ITEMIZATION DESCRIBED UNDER SUBSECTION (4). TOTAL LABOR COSTS
20 CALCULATED UNDER THIS SUBDIVISION FOR CONTRACTED LABOR COSTS SHALL
21 NOT EXCEED AN AMOUNT EQUAL TO 6 TIMES THE STATE MINIMUM HOURLY WAGE
22 RATE DETERMINED UNDER SECTION 4 OF THE MINIMUM WAGE LAW OF 1964,
23 1964 PA 154, MCL 408.384. A PUBLIC BODY SHALL NOT CHARGE FOR
24 EMPLOYEE OR CONTRACT LABOR DIRECTLY ASSOCIATED WITH REDACTION UNDER
25 SECTION 14 IF IT KNOWS OR HAS REASON TO KNOW THAT IT PREVIOUSLY
26 REDACTED THE PUBLIC RECORD IN QUESTION AND THE REDACTED VERSION IS
27 STILL IN THE PUBLIC BODY'S POSSESSION.

House Bill No. 4001 (H-6) as amended March 19, 2014

1 (C) FOR PUBLIC RECORDS PROVIDED TO THE REQUESTOR ON NONPAPER
2 PHYSICAL MEDIA, THE ACTUAL AND MOST REASONABLY ECONOMICAL COST OF
3 THE COMPUTER DISCS, COMPUTER TAPES, OR OTHER DIGITAL OR SIMILAR
4 MEDIA. THE PUBLIC BODY MAY CHOOSE TO ACCEPT NONPAPER PHYSICAL MEDIA
5 PROVIDED BY THE REQUESTOR TO BE USED IN CONJUNCTION WITH FULFILLING
6 A REQUEST IN LIEU OF CHARGING THE REQUESTOR FOR THAT MEDIA. THE
7 REQUESTOR MAY STIPULATE THAT THE PUBLIC RECORDS BE PROVIDED ON
8 NONPAPER PHYSICAL MEDIA, ELECTRONICALLY MAILED, OR OTHERWISE
9 ELECTRONICALLY PROVIDED TO HIM OR HER IN LIEU OF PAPER COPIES. [THIS
SUBDIVISION DOES NOT APPLY IF A PUBLIC BODY LACKS THE TECHNOLOGICAL
CAPABILITY NECESSARY TO PROVIDE RECORDS ON ANY NONPAPER PHYSICAL MEDIA.]

10 (D) FOR PAPER COPIES OF PUBLIC RECORDS PROVIDED TO THE
11 REQUESTOR, THE ACTUAL TOTAL INCREMENTAL COST OF NECESSARY
12 DUPLICATION OR PUBLICATION, NOT INCLUDING LABOR. THE COST OF PAPER
13 COPIES SHALL BE CALCULATED AS A TOTAL COST PER SHEET OF PAPER AND
14 SHALL BE ITEMIZED AND NOTED IN A MANNER THAT EXPRESSES BOTH THE
15 COST PER SHEET AND THE NUMBER OF SHEETS PROVIDED. THE FEE SHALL NOT
16 EXCEED 10 CENTS PER SHEET OF PAPER FOR COPIES OF PUBLIC RECORDS
17 MADE ON 8-1/2- BY 11-INCH PAPER OR 8-1/2- BY 14-INCH PAPER. THE
18 STATE TREASURER SHALL ADJUST THE MAXIMUM PER-SHEET CHARGE FOR
19 INFLATION BASED ON THE MOST COMPREHENSIVE INDEX OF CONSUMER PRICES
20 AVAILABLE FOR THE DETROIT AREA FROM THE UNITED STATES DEPARTMENT OF
21 LABOR, BUREAU OF LABOR STATISTICS. THE ADJUSTMENT SHALL BE MADE IN
22 JANUARY OF 2020 AND IN JANUARY OF EVERY TENTH YEAR THEREAFTER. A
23 PUBLIC BODY SHALL UTILIZE THE MOST ECONOMICAL MEANS AVAILABLE FOR
24 MAKING COPIES OF PUBLIC RECORDS, INCLUDING USING DOUBLE-SIDED
25 COPYING, WHERE AVAILABLE.

26 (E) THE COST OF LABOR DIRECTLY ASSOCIATED WITH DUPLICATION OR
27 PUBLICATION, INCLUDING MAKING PAPER COPIES, MAKING DIGITAL COPIES,

1 OR TRANSFERRING DIGITAL PUBLIC RECORDS TO BE GIVEN TO THE REQUESTOR
2 ON NONPAPER PHYSICAL MEDIA OR THROUGH THE INTERNET OR OTHER
3 ELECTRONIC MEANS AS STIPULATED BY THE REQUESTOR. THE PUBLIC BODY
4 SHALL NOT CHARGE MORE THAN THE HOURLY WAGE, WHICH DOES NOT INCLUDE
5 THE COST OF BENEFITS, OF ITS LOWEST-PAID EMPLOYEE CAPABLE OF
6 NECESSARY DUPLICATION OR PUBLICATION IN THE PARTICULAR INSTANCE,
7 REGARDLESS OF WHETHER THAT PERSON IS AVAILABLE OR WHO ACTUALLY
8 PERFORMS THE LABOR. LABOR COSTS SHALL BE ITEMIZED AND NOTED IN A
9 MANNER THAT EXPRESSES BOTH THE HOURLY WAGE RATE USED AND THE NUMBER
10 OF HOURS CHARGED. HOWEVER, TOTAL LABOR COSTS CALCULATED UNDER THIS
11 SUBDIVISION SHALL NOT EXCEED AN AMOUNT EQUAL TO 3 TIMES THE STATE
12 MINIMUM HOURLY WAGE RATE DETERMINED UNDER SECTION 4 OF THE MINIMUM
13 WAGE LAW OF 1964, 1964 PA 154, MCL 408.384. OVERTIME WAGES SHALL
14 NOT BE INCLUDED IN THE CALCULATION OF LABOR COSTS UNLESS
15 SPECIFICALLY STIPULATED BY THE REQUESTOR AND FULLY NOTED ON THE
16 DETAILED ITEMIZATION DESCRIBED UNDER SUBSECTION (4). LABOR COSTS
17 UNDER THIS SUBDIVISION MAY BE ESTIMATED AND CHARGED IN TIME
18 INCREMENTS OF THE PUBLIC BODY'S CHOOSING; HOWEVER, ALL PARTIAL TIME
19 INCREMENTS SHALL BE ROUNDED DOWN.

20 (F) THE ACTUAL COST OF POSTAGE, IF ANY, FOR SENDING THE PUBLIC
21 RECORDS IN A REASONABLY ECONOMICAL AND JUSTIFIABLE MANNER. THE
22 PUBLIC BODY SHALL NOT USE OR CHARGE FOR EXPEDITED SHIPPING UNLESS
23 SPECIFICALLY STIPULATED BY THE REQUESTOR, BUT MAY OTHERWISE CHARGE
24 FOR THE LEAST EXPENSIVE FORM OF POSTAL DELIVERY CONFIRMATION WHEN
25 MAILING PUBLIC RECORDS.

26 (2) A search for A public record may be conducted or copies of
27 public records may be furnished without charge or at a reduced

1 charge if the public body determines that a waiver or reduction of
2 the fee is in the public interest because searching for or
3 furnishing copies of the public record can be considered as
4 primarily benefiting the general public. **THE PUBLIC BODY SHALL ALSO**
5 **GIVE DUE CONSIDERATION AS TO WHETHER OR NOT TO FULFILL THE WRITTEN**
6 **REQUEST WITHOUT CHARGE OR AT A LOWER AMOUNT THAN IT WOULD**
7 **ORDINARILY CHARGE, PARTICULARLY IN A SITUATION DEALING WITH PUBLIC**
8 **SAFETY AND PHYSICAL WELFARE.** A public record search shall be made
9 and a copy of a public record shall be furnished without charge for
10 the first ~~\$20.00~~ **\$50.00** of the fee for each request ~~to an~~ **BY EITHER**
11 **OF THE FOLLOWING:**

12 (A) AN individual who is entitled to information under this
13 act and who submits an affidavit stating that the individual is
14 ~~then receiving~~ **INDIGENT AND RECEIVING SPECIFIC** public assistance
15 or, if not receiving public assistance, stating facts showing
16 inability to pay the cost because of indigency. **IF THE REQUESTOR IS**
17 **ELIGIBLE FOR A REQUESTED DISCOUNT, THE PUBLIC BODY SHALL FULLY NOTE**
18 **THE DISCOUNT ON THE DETAILED ITEMIZATION DESCRIBED UNDER SUBSECTION**
19 **(4). IF A REQUEST IS INELIGIBLE FOR THE DISCOUNT, THE PUBLIC BODY**
20 **WILL INFORM THE REQUESTOR SPECIFICALLY OF THE REASON FOR**
21 **INELIGIBILITY IN THE PUBLIC BODY'S WRITTEN RESPONSE. AN INDIVIDUAL**
22 **IS INELIGIBLE FOR THIS FEE REDUCTION IF ANY OF THE FOLLOWING APPLY:**

23 (i) THE INDIVIDUAL HAS PREVIOUSLY RECEIVED DISCOUNTED COPIES OF
24 PUBLIC RECORDS UNDER THIS SUBSECTION FROM THE SAME PUBLIC BODY
25 TWICE DURING THAT CALENDAR YEAR.

26 (ii) THE INDIVIDUAL REQUESTS THE INFORMATION IN CONJUNCTION
27 WITH OUTSIDE PARTIES WHO ARE OFFERING OR PROVIDING PAYMENT OR OTHER

1 REMUNERATION TO THE INDIVIDUAL TO MAKE THE REQUEST. A PUBLIC BODY
2 MAY REQUIRE A STATEMENT BY THE REQUESTOR IN THE AFFIDAVIT THAT THE
3 REQUEST IS NOT BEING MADE IN CONJUNCTION WITH OUTSIDE PARTIES IN
4 EXCHANGE FOR PAYMENT OR OTHER REMUNERATION.

5 (B) A NONPROFIT ORGANIZATION FORMALLY DESIGNATED BY THE STATE
6 TO CARRY OUT ACTIVITIES UNDER SUBTITLE C OF THE DEVELOPMENTAL
7 DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT OF 2000, PUBLIC LAW
8 106-402, AND THE PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH
9 MENTAL ILLNESS ACT, PUBLIC LAW 99-319, OR THEIR SUCCESSORS, IF THE
10 REQUEST MEETS ALL OF THE FOLLOWING REQUIREMENTS:

11 (i) IS MADE DIRECTLY ON BEHALF OF THE ORGANIZATION OR ITS
12 CLIENTS.

13 (ii) IS MADE FOR A REASON WHOLLY CONSISTENT WITH THE MISSION
14 AND PROVISIONS OF THOSE LAWS UNDER SECTION 931 OF THE MENTAL HEALTH
15 CODE, 1974 PA 258, MCL 330.1931.

16 (iii) IS ACCOMPANIED BY DOCUMENTATION OF ITS DESIGNATION BY THE
17 STATE, IF REQUESTED BY THE PUBLIC BODY.

18 ~~—— (2) A public body may require at the time a request is made a~~
19 ~~good faith deposit from the person requesting the public record or~~
20 ~~series of public records, if the fee authorized under this section~~
21 ~~exceeds \$50.00. The deposit shall not exceed 1/2 of the total fee.~~

22 ~~(3) In calculating the cost of labor incurred in duplication~~
23 ~~and mailing and the cost of examination, review, separation, and~~
24 ~~deletion under subsection (1), a public body may not charge more~~
25 ~~than the hourly wage of the lowest paid public body employee~~
26 ~~capable of retrieving the information necessary to comply with a~~
27 ~~request under this act. Fees shall be uniform and not dependent~~

1 ~~upon the identity of the requesting person. A public body shall~~
2 ~~utilize the most economical means available for making copies of~~
3 ~~public records. A fee AS DESCRIBED IN SUBSECTION (1) shall not be~~
4 charged for the cost of search, examination, review, and the
5 deletion and separation of exempt from nonexempt information as
6 provided in section 14 unless failure to charge a fee would result
7 in unreasonably high costs to the public body because of the nature
8 of the request in the particular instance, and the public body
9 specifically identifies the nature of these unreasonably high
10 costs. ~~A public body shall establish and publish procedures and~~
11 ~~guidelines to implement this subsection.~~

12 (4) A PUBLIC BODY SHALL ESTABLISH PROCEDURES AND GUIDELINES TO
13 IMPLEMENT THIS ACT AND SHALL CREATE A WRITTEN PUBLIC SUMMARY OF THE
14 SPECIFIC PROCEDURES AND GUIDELINES RELEVANT TO THE GENERAL PUBLIC
15 REGARDING HOW TO SUBMIT WRITTEN REQUESTS TO THE PUBLIC BODY AND
16 EXPLAINING HOW TO UNDERSTAND PUBLIC BODY RESPONSES, FEE
17 CALCULATIONS, AND AVENUES FOR CHALLENGE AND APPEAL. THE WRITTEN
18 PUBLIC SUMMARY SHALL BE WRITTEN IN A MANNER SO AS TO BE EASILY
19 UNDERSTOOD BY THE GENERAL PUBLIC. IF THE PUBLIC BODY DIRECTLY OR
20 INDIRECTLY ADMINISTERS OR MAINTAINS AN OFFICIAL INTERNET PRESENCE,
21 IT SHALL POST AND MAINTAIN THE PROCEDURES AND GUIDELINES AND ITS
22 WRITTEN PUBLIC SUMMARY ON ITS WEBSITE. A PUBLIC BODY SHALL MAKE THE
23 PROCEDURES AND GUIDELINES PUBLICLY AVAILABLE BY PROVIDING FREE
24 COPIES OF THE PROCEDURES AND GUIDELINES AND ITS WRITTEN PUBLIC
25 SUMMARY BOTH IN THE PUBLIC BODY'S RESPONSE TO A WRITTEN REQUEST AND
26 UPON REQUEST BY VISITORS AT THE PUBLIC BODY'S OFFICE. A PUBLIC BODY
27 THAT POSTS AND MAINTAINS PROCEDURES AND GUIDELINES AND ITS WRITTEN

1 PUBLIC SUMMARY ON ITS WEBSITE MAY INCLUDE THE WEBSITE LINK TO THE
2 DOCUMENTS IN LIEU OF PROVIDING PAPER COPIES IN ITS RESPONSE TO A
3 WRITTEN REQUEST. A PUBLIC BODY'S PROCEDURES AND GUIDELINES SHALL
4 INCLUDE THE USE OF A STANDARD FORM FOR DETAILED ITEMIZATION OF ANY
5 FEE AMOUNT IN ITS RESPONSES TO WRITTEN REQUESTS UNDER THIS ACT. THE
6 DETAILED ITEMIZATION SHALL CLEARLY LIST AND EXPLAIN THE ALLOWABLE
7 CHARGES FOR EACH OF THE 6 FEE COMPONENTS LISTED UNDER SUBSECTION
8 (1) THAT COMPOSE THE TOTAL FEE USED FOR ESTIMATING OR CHARGING
9 PURPOSES. A PUBLIC BODY THAT HAS NOT ESTABLISHED PROCEDURES AND
10 GUIDELINES, HAS NOT CREATED A WRITTEN PUBLIC SUMMARY, OR HAS NOT
11 MADE THEM PUBLICLY AVAILABLE WITHOUT CHARGE AS REQUIRED IN THIS
12 SUBSECTION IS NOT RELIEVED OF ITS DUTY TO COMPLY WITH ANY
13 REQUIREMENT OF THIS ACT AND SHALL NOT REQUIRE DEPOSITS OR CHARGE
14 FEES OTHERWISE PERMITTED UNDER THIS ACT UNTIL IT IS IN COMPLIANCE
15 WITH THIS SUBSECTION. NOTWITHSTANDING THIS SUBSECTION AND DESPITE
16 ANY LAW TO THE CONTRARY, A PUBLIC BODY'S PROCEDURES AND GUIDELINES
17 UNDER THIS ACT ARE NOT EXEMPT PUBLIC RECORDS UNDER SECTION 13.

18 (5) IF THE PUBLIC BODY DIRECTLY OR INDIRECTLY ADMINISTERS OR
19 MAINTAINS AN OFFICIAL INTERNET PRESENCE, ANY PUBLIC RECORDS
20 AVAILABLE TO THE GENERAL PUBLIC ON THAT INTERNET SITE AT THE TIME
21 THE REQUEST IS MADE ARE EXEMPT FROM ANY CHARGES UNDER SUBSECTION
22 (1) (B). IF THE FOIA COORDINATOR KNOWS OR HAS REASON TO KNOW THAT
23 ALL OR A PORTION OF THE REQUESTED INFORMATION IS AVAILABLE ON ITS
24 WEBSITE, THE PUBLIC BODY SHALL NOTIFY THE REQUESTOR IN ITS WRITTEN
25 RESPONSE THAT ALL OR A PORTION OF THE REQUESTED INFORMATION IS
26 AVAILABLE ON ITS WEBSITE. THE WRITTEN RESPONSE, TO THE DEGREE
27 PRACTICABLE IN THE SPECIFIC INSTANCE, SHALL INCLUDE A SPECIFIC

1 WEBPAGE ADDRESS WHERE THE REQUESTED INFORMATION IS AVAILABLE. ON
2 THE DETAILED ITEMIZATION DESCRIBED IN SUBSECTION (4), THE PUBLIC
3 BODY SHALL SEPARATE THE REQUESTED PUBLIC RECORDS THAT ARE AVAILABLE
4 ON ITS WEBSITE FROM THOSE THAT ARE NOT AVAILABLE ON THE WEBSITE AND
5 SHALL INFORM THE REQUESTOR OF THE ADDITIONAL CHARGE TO RECEIVE
6 COPIES OF THE PUBLIC RECORDS THAT ARE AVAILABLE ON ITS WEBSITE. IF
7 THE PUBLIC BODY HAS INCLUDED THE WEBSITE ADDRESS FOR A RECORD IN
8 ITS WRITTEN RESPONSE TO THE REQUESTOR AND THE REQUESTOR THEREAFTER
9 STIPULATES THAT THE PUBLIC RECORD BE PROVIDED TO HIM OR HER IN A
10 PAPER FORMAT OR OTHER FORM AS DESCRIBED UNDER SUBSECTION (1) (C),
11 THE PUBLIC BODY SHALL PROVIDE THE PUBLIC RECORDS IN THE SPECIFIED
12 FORMAT BUT MAY CHARGE FOR FULL LABOR COSTS AND BENEFITS UNDER
13 SUBSECTION (1) (E).

14 (6) A PUBLIC BODY MAY PROVIDE REQUESTED INFORMATION AVAILABLE
15 IN PUBLIC RECORDS WITHOUT RECEIPT OF A WRITTEN REQUEST. IF A VERBAL
16 REQUEST IS FOR INFORMATION THAT A PUBLIC EMPLOYEE BELIEVES IS
17 AVAILABLE ON THE PUBLIC BODY'S PUBLIC WEBSITE, THE PUBLIC EMPLOYEE
18 SHALL, WHERE PRACTICABLE AND TO THE BEST OF THE PUBLIC EMPLOYEE'S
19 GENERAL ABILITY, INFORM THE REQUESTOR ABOUT THE PUBLIC BODY'S
20 PERTINENT WEBSITE ADDRESSES.

21 (7) IN EITHER THE PUBLIC BODY'S INITIAL RESPONSE OR SUBSEQUENT
22 RESPONSE AS DESCRIBED UNDER SECTION 5(2) (D), THE PUBLIC BODY MAY
23 REQUIRE A GOOD-FAITH DEPOSIT FROM THE PERSON REQUESTING INFORMATION
24 BEFORE PROVIDING THE PUBLIC RECORDS TO THE REQUESTOR IF THE ENTIRE
25 FEE ESTIMATE OR CHARGE AUTHORIZED UNDER THIS SECTION EXCEEDS
26 \$100.00, BASED ON A GOOD-FAITH CALCULATION OF THE TOTAL FEE
27 DESCRIBED IN SUBSECTION (4). SUBJECT TO SUBSECTION (10), THE

1 DEPOSIT SHALL NOT EXCEED 1/2 OF THE TOTAL ESTIMATED FEE, AND A
2 PUBLIC BODY'S REQUEST FOR A DEPOSIT SHALL INCLUDE A DETAILED
3 ITEMIZATION AS REQUIRED UNDER SUBSECTION (4). THE RESPONSE SHALL
4 ALSO CONTAIN A BEST EFFORTS ESTIMATE BY THE PUBLIC BODY REGARDING
5 THE TIME FRAME IT WILL TAKE THE PUBLIC BODY TO COMPLY WITH THE LAW
6 IN PROVIDING THE PUBLIC RECORDS TO THE REQUESTOR. THE TIME FRAME
7 ESTIMATE IS NONBINDING UPON THE PUBLIC BODY, BUT THE PUBLIC BODY
8 SHALL PROVIDE THE ESTIMATE IN GOOD FAITH AND STRIVE TO BE
9 REASONABLY ACCURATE AND TO PROVIDE THE PUBLIC RECORDS IN A MANNER
10 BASED ON THIS STATE'S PUBLIC POLICY UNDER SECTION 1 AND THE NATURE
11 OF THE REQUEST IN THE PARTICULAR INSTANCE. IF A PUBLIC BODY DOES
12 NOT RESPOND IN A TIMELY MANNER AS DESCRIBED UNDER SECTION 5(2), IT
13 IS NOT RELIEVED FROM ITS REQUIREMENTS TO PROVIDE PROPER FEE
14 CALCULATIONS AND TIME FRAME ESTIMATES IN ANY TARDY RESPONSES.
15 PROVIDING AN ESTIMATED TIME FRAME DOES NOT RELIEVE A PUBLIC BODY
16 FROM ANY OF THE OTHER REQUIREMENTS OF THIS ACT.

17 (8) IF A PUBLIC BODY DOES NOT RESPOND TO A WRITTEN REQUEST IN
18 A TIMELY MANNER AS REQUIRED UNDER SECTION 5(2), THE PUBLIC BODY
19 SHALL DO THE FOLLOWING:

20 (A) REDUCE THE CHARGES FOR LABOR COSTS OTHERWISE PERMITTED
21 UNDER SECTION 4 BY 10% FOR EACH DAY THE PUBLIC BODY EXCEEDS THE
22 TIME PERMITTED UNDER SECTION 5(2) FOR A RESPONSE TO THE REQUEST,
23 WITH A MAXIMUM 50% REDUCTION, IF EITHER OF THE FOLLOWING APPLIES:

24 (i) THE LATE RESPONSE WAS WILLFUL AND INTENTIONAL.

25 (ii) THE WRITTEN REQUEST INCLUDED LANGUAGE THAT CONVEYED A
26 REQUEST FOR INFORMATION WITHIN THE FIRST 500 WORDS OF THE BODY OF A
27 LETTER, FACSIMILE, ELECTRONIC MAIL, OR ELECTRONIC MAIL ATTACHMENT,

1 OR SPECIFICALLY INCLUDED THE WORDS, CHARACTERS, OR ABBREVIATIONS
2 FOR "FREEDOM OF INFORMATION", "INFORMATION", "FOIA", "COPY", OR A
3 RECOGNIZABLE MISSPELLING OF SUCH, OR APPROPRIATE LEGAL CODE
4 REFERENCE FOR THIS ACT, ON THE FRONT OF AN ENVELOPE, OR IN THE
5 SUBJECT LINE OF AN ELECTRONIC MAIL, LETTER, OR FACSIMILE COVER
6 PAGE.

7 (B) IF A CHARGE REDUCTION IS REQUIRED UNDER SUBDIVISION (A),
8 FULLY NOTE THE CHARGE REDUCTION ON THE DETAILED ITEMIZATION
9 DESCRIBED UNDER SUBSECTION (4).

10 (9) ~~(4)~~—This section does not apply to public records prepared
11 under an act or statute specifically authorizing the sale of those
12 public records to the public, or if the amount of the fee for
13 providing a copy of the public record is otherwise specifically
14 provided by an act or statute.

15 (10) SUBJECT TO SUBSECTION (11), AFTER A PUBLIC BODY HAS
16 GRANTED AND FULFILLED A WRITTEN REQUEST FROM AN INDIVIDUAL UNDER
17 THIS ACT, IF THE PUBLIC BODY HAS NOT BEEN PAID IN FULL THE TOTAL
18 AMOUNT UNDER SUBSECTION (1) (A) TO (F) FOR THE COPIES OF PUBLIC
19 RECORDS THAT THE PUBLIC BODY MADE AVAILABLE TO THE INDIVIDUAL AS A
20 RESULT OF THAT WRITTEN REQUEST, THE PUBLIC BODY MAY REQUIRE A
21 DEPOSIT OF UP TO 100% OF THE ESTIMATED FEE BEFORE IT BEGINS A FULL
22 PUBLIC RECORD SEARCH FOR ANY SUBSEQUENT WRITTEN REQUEST FROM THAT
23 INDIVIDUAL IF ALL OF THE FOLLOWING APPLY:

24 (A) THE INDIVIDUAL HAD AGREED IN WRITING TO PAY THE FEE AFTER
25 HE OR SHE WAS PRESENTED WITH A DETAILED ITEMIZATION OF THE TOTAL
26 ESTIMATED FEE IN THE PUBLIC BODY'S PRIOR RESPONSE AS REQUIRED UNDER
27 SUBSECTION (4).

1 (B) THE FINAL FEE FOR THE PRIOR WRITTEN REQUEST WAS NOT MORE
2 THAN 105% OF THE ESTIMATED FEE.

3 (C) THE PUBLIC RECORDS MADE AVAILABLE CONTAINED THE
4 INFORMATION BEING SOUGHT IN THE PRIOR WRITTEN REQUEST AND ARE STILL
5 IN THE PUBLIC BODY'S POSSESSION.

6 (D) THE PUBLIC RECORDS WERE MADE AVAILABLE TO THE INDIVIDUAL,
7 SUBJECT TO PAYMENT, WITHIN THE TIME FRAME ESTIMATE DESCRIBED UNDER
8 SUBSECTION (7).

9 (E) NINETY DAYS HAVE PASSED SINCE THE PUBLIC BODY NOTIFIED THE
10 INDIVIDUAL IN WRITING THAT THE PUBLIC RECORDS WERE AVAILABLE FOR
11 PICKUP OR MAILING.

12 (F) THE INDIVIDUAL IS UNABLE TO SHOW PROOF OF PRIOR PAYMENT TO
13 THE PUBLIC BODY.

14 (G) THE PUBLIC BODY CALCULATES A DETAILED ITEMIZATION, AS
15 REQUIRED UNDER SUBSECTION (4), THAT IS THE BASIS FOR THE CURRENT
16 WRITTEN REQUEST'S INCREASED ESTIMATED FEE DEPOSIT.

17 (11) A PUBLIC BODY SHALL NO LONGER REQUIRE AN INCREASED
18 ESTIMATED FEE DEPOSIT FROM AN INDIVIDUAL AS DESCRIBED UNDER
19 SUBSECTION (10) IF ANY OF THE FOLLOWING APPLY:

20 (A) THE INDIVIDUAL IS ABLE TO SHOW PROOF OF PRIOR PAYMENT IN
21 FULL TO THE PUBLIC BODY.

22 (B) THE PUBLIC BODY IS SUBSEQUENTLY PAID IN FULL FOR THE
23 APPLICABLE PRIOR WRITTEN REQUEST.

24 (C) THREE HUNDRED SIXTY-FIVE DAYS HAVE PASSED SINCE THE
25 INDIVIDUAL MADE THE WRITTEN REQUEST FOR WHICH FULL PAYMENT WAS NOT
26 REMITTED TO THE PUBLIC BODY.

27 (12) A DEPOSIT REQUIRED BY A PUBLIC BODY UNDER THIS ACT IS A

1 **FEE.**

2 Sec. 5. (1) Except as provided in section 3, a person desiring
3 to inspect or receive a copy of a public record shall make a
4 written request for the public record to the FOIA coordinator of a
5 public body. A written request made by facsimile, electronic mail,
6 or other electronic transmission is not received by a public body's
7 FOIA coordinator until 1 business day after the electronic
8 transmission is made. **HOWEVER, IF A WRITTEN REQUEST IS SENT BY
9 ELECTRONIC MAIL AND DELIVERED TO THE PUBLIC BODY'S SPAM OR JUNK-
10 MAIL FOLDER, THE REQUEST IS NOT RECEIVED UNTIL 1 DAY AFTER THE
11 PUBLIC BODY FIRST BECOMES AWARE OF THE WRITTEN REQUEST. THE PUBLIC
12 BODY SHALL NOTE IN ITS RECORDS BOTH THE TIME A WRITTEN REQUEST IS
13 DELIVERED TO ITS SPAM OR JUNK-MAIL FOLDER AND THE TIME THE PUBLIC
14 BODY FIRST BECOMES AWARE OF THAT REQUEST.**

15 (2) Unless otherwise agreed to in writing by the person making
16 the request, a public body shall respond to a request for a public
17 record within 5 business days after the public body receives the
18 request by doing 1 of the following:

19 (a) Granting the request.

20 (b) Issuing a written notice to the requesting person denying
21 the request.

22 (c) Granting the request in part and issuing a written notice
23 to the requesting person denying the request in part.

24 (d) Issuing a notice extending for not more than 10 business
25 days the period during which the public body shall respond to the
26 request. A public body shall not issue more than 1 notice of
27 extension for a particular request.

1 (3) Failure to respond to a request pursuant to subsection (2)
2 constitutes a public body's final determination to deny the request

3 ~~—IF EITHER OF THE FOLLOWING APPLIES:~~

4 (A) THE FAILURE WAS WILLFUL AND INTENTIONAL.

5 (B) THE WRITTEN REQUEST INCLUDED LANGUAGE THAT CONVEYED A
6 REQUEST FOR INFORMATION WITHIN THE FIRST 500 WORDS OF THE BODY OF A
7 LETTER, FACSIMILE, ELECTRONIC MAIL, OR ELECTRONIC MAIL ATTACHMENT,
8 OR SPECIFICALLY INCLUDED THE WORDS, CHARACTERS, OR ABBREVIATIONS
9 FOR "FREEDOM OF INFORMATION", "INFORMATION", "FOIA", "COPY", OR A
10 RECOGNIZABLE MISSPELLING OF SUCH, OR APPROPRIATE LEGAL CODE
11 REFERENCE TO THIS ACT, ON THE FRONT OF AN ENVELOPE OR IN THE
12 SUBJECT LINE OF AN ELECTRONIC MAIL, LETTER, OR FACSIMILE COVER
13 PAGE.

14 (4) In a ~~circuit court~~ CIVIL action to compel a public body's
15 disclosure of a public record under section 10, the ~~circuit court~~
16 shall assess damages against the public body pursuant to section
17 ~~10(8)~~ 10(7) if the ~~circuit court~~ has done both of the following:

18 (a) Determined that the public body has not complied with
19 subsection (2).

20 (b) Ordered the public body to disclose or provide copies of
21 all or a portion of the public record.

22 (5) ~~(4)~~ A written notice denying a request for a public record
23 in whole or in part is a public body's final determination to deny
24 the request or portion of that request. The written notice shall
25 contain:

26 (a) An explanation of the basis under this act or other
27 statute for the determination that the public record, or portion of

1 that public record, is exempt from disclosure, if that is the
2 reason for denying all or a portion of the request.

3 (b) A certificate that the public record does not exist under
4 the name given by the requester or by another name reasonably known
5 to the public body, if that is the reason for denying the request
6 or a portion of the request.

7 (c) A description of a public record or information on a
8 public record that is separated or deleted pursuant to section 14,
9 if a separation or deletion is made.

10 (d) A full explanation of the requesting person's right to do
11 either of the following:

12 (i) Submit to the head of the public body a written appeal that
13 specifically states the word "appeal" and identifies the reason or
14 reasons for reversal of the disclosure denial.

15 (ii) Seek judicial review of the denial under section 10.

16 (e) Notice of the right to receive attorneys' fees and damages
17 as provided in section 10 if, after judicial review, the ~~circuit~~
18 court determines that the public body has not complied with this
19 section and orders disclosure of all or a portion of a public
20 record.

21 (6) ~~(5)~~—The individual designated in section 6 as responsible
22 for the denial of the request shall sign the written notice of
23 denial.

24 (7) ~~(6)~~—If a public body issues a notice extending the period
25 for a response to the request, the notice shall specify the reasons
26 for the extension and the date by which the public body will do 1
27 of the following:

1 (a) Grant the request.

2 (b) Issue a written notice to the requesting person denying
3 the request.

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

6 (8) ~~(7)~~—If a public body makes a final determination to deny
7 in whole or in part a request to inspect or receive a copy of a
8 public record or portion of that public record, the requesting
9 person may do either of the following:

10 (a) Appeal the denial to the head of the public body pursuant
11 to section 10.

12 (b) Commence ~~an action in circuit court,~~ **A CIVIL ACTION,**
13 pursuant to section 10.

14 Sec. 10. (1) If a public body makes a final determination to
15 deny all or a portion of a request, the requesting person may do 1
16 of the following at his or her option:

17 (a) Submit to the head of the public body a written appeal
18 that specifically states the word "appeal" and identifies the
19 reason or reasons for reversal of the denial.

20 (b) Commence ~~an~~ **A CIVIL** action in the circuit court, **OR IF THE**
21 **DECISION OF A STATE PUBLIC BODY IS AT ISSUE, THE COURT OF CLAIMS,**
22 to compel the public body's disclosure of the public records within
23 180 days after a public body's final determination to deny a
24 request.

25 (2) Within 10 days after receiving a written appeal pursuant
26 to subsection (1)(a), the head of a public body shall do 1 of the
27 following:

1 (a) Reverse the disclosure denial.

2 (b) Issue a written notice to the requesting person upholding
3 the disclosure denial.

4 (c) Reverse the disclosure denial in part and issue a written
5 notice to the requesting person upholding the disclosure denial in
6 part.

7 (d) Under unusual circumstances, issue a notice extending for
8 not more than 10 business days the period during which the head of
9 the public body shall respond to the written appeal. The head of a
10 public body shall not issue more than 1 notice of extension for a
11 particular written appeal.

12 (3) A board or commission that is the head of a public body is
13 not considered to have received a written appeal under subsection
14 (2) until the first regularly scheduled meeting of that board or
15 commission following submission of the written appeal under
16 subsection (1)(a). If the head of the public body fails to respond
17 to a written appeal pursuant to subsection (2), or if the head of
18 the public body upholds all or a portion of the disclosure denial
19 that is the subject of the written appeal, the requesting person
20 may seek judicial review of the nondisclosure by commencing ~~an~~
21 ~~action in circuit court~~ **A CIVIL ACTION** under subsection (1)(b).

22 (4) In an action commenced under subsection (1)(b), a court
23 that determines a public record is not exempt from disclosure shall
24 order the public body to cease withholding or to produce all or a
25 portion of a public record wrongfully withheld, regardless of the
26 location of the public record. ~~The~~ **IN AN ACTION AGAINST A LOCAL**
27 **PUBLIC BODY, THE** circuit court for the county in which the

1 complainant resides or has his or her principal place of business,
2 or the circuit court for the county in which the public record or
3 an office of the public body is located has venue over the action.
4 **UNLESS IT CAN SHOW GOOD CAUSE, THE PUBLIC BODY SHALL NOT ASSERT AN**
5 **EXEMPTION UNDER SECTION 13 THAT IT DID NOT ASSERT IN EITHER A**
6 **WRITTEN DENIAL OF THE REQUEST UNDER SECTION 5 OR AN APPEAL UNDER**
7 **SUBSECTION (1) (A). IF THE COURT FINDS THAT THE LEGAL BASIS FOR A**
8 **NEWLY ASSERTED EXEMPTION IS CLEARLY ERRONEOUS, THE COURT SHALL**
9 **REQUIRE THE PUBLIC BODY TO REDUCE ANY FEE OTHERWISE PERMITTED UNDER**
10 **SECTION 4 FOR PROVIDING THE PUBLIC RECORD BY 50%.** The court shall
11 determine the matter de novo and the burden is on the public body
12 to sustain its denial. The court, on its own motion, may view the
13 public record in controversy in private before reaching a decision.
14 Failure to comply with an order of the court may be punished as
15 contempt of court.

16 (5) An action commenced under this section and an appeal from
17 an action commenced under this section shall be assigned for
18 hearing and trial or for argument at the earliest practicable date
19 and expedited in every way.

20 (6) If a person asserting the right to inspect, copy, or
21 receive a copy of all or a portion of a public record prevails in
22 an action commenced under this section, the court shall award
23 reasonable attorneys' fees, costs, and disbursements. If the person
24 or public body prevails in part, the court may, in its discretion,
25 award all or an appropriate portion of reasonable attorneys' fees,
26 costs, and disbursements. The award shall be assessed against the
27 public body liable for damages under subsection (7).

1 (7) If the ~~circuit~~ court determines in an action commenced
2 under this section that the public body has arbitrarily and
3 capriciously violated this act by refusal or delay in disclosing or
4 providing copies of a public record, the court shall award, in
5 addition to any actual or compensatory damages, punitive damages in
6 the amount of ~~\$500.00~~-\$2,000.00 to the person seeking the right to
7 inspect or receive a copy of a public record. The damages shall not
8 be assessed against an individual, but shall be assessed against
9 the next succeeding public body that is not an individual and that
10 kept or maintained the public record as part of its public
11 function.

12 **SEC. 10A. (1) IF THE REQUESTING PERSON HAS A GOOD-FAITH BELIEF**
13 **THAT THE FEE THE PUBLIC BODY REQUIRES FOR THE PUBLIC RECORDS IS AN**
14 **UNREASONABLE FEE, THE REQUESTING PERSON MAY DO ANY OF THE**
15 **FOLLOWING:**

16 **(A) IF THE PUBLIC BODY PROVIDES FOR FEE APPEALS TO THE HEAD OF**
17 **THE PUBLIC BODY IN ITS PUBLICLY AVAILABLE PROCEDURES AND**
18 **GUIDELINES, SUBMIT TO THE HEAD OF THE PUBLIC BODY A WRITTEN APPEAL**
19 **THAT SPECIFICALLY STATES THE WORD "APPEAL" AND IDENTIFIES THE**
20 **REASON OR REASONS THAT THE REQUIRED FEE IS AN UNREASONABLE FEE.**

21 **(B) COMMENCE A CIVIL ACTION IN THE CIRCUIT COURT, OR IF THE**
22 **DECISION OF A STATE PUBLIC BODY IS AT ISSUE, THE COURT OF CLAIMS,**
23 **FOR A FEE REDUCTION NOT LATER THAN 180 DAYS AFTER RECEIVING THE**
24 **NOTICE OF THE REQUIRED FEE OR A DETERMINATION OF AN APPEAL TO THE**
25 **HEAD OF THE PUBLIC BODY, BUT ONLY IF 1 OF THE FOLLOWING APPLIES:**

26 **(i) THE PUBLIC BODY DOES NOT PROVIDE FOR APPEALS UNDER**
27 **SUBDIVISION (A).**

1 (ii) THE HEAD OF THE PUBLIC BODY FAILED TO RESPOND TO A WRITTEN
2 APPEAL AS REQUIRED UNDER SUBSECTION (2).

3 (iii) AFTER PURSUING AN APPEAL UNDER SUBDIVISION (A), THE
4 REQUESTING PERSON HAS A GOOD-FAITH BELIEF THAT THE REQUIRED FEE
5 REMAINS AN UNREASONABLE FEE.

6 (2) WITHIN 10 DAYS AFTER RECEIVING A WRITTEN APPEAL UNDER
7 SUBSECTION (1) (A), THE HEAD OF A PUBLIC BODY SHALL DO 1 OF THE
8 FOLLOWING:

9 (A) WAIVE THE FEE.

10 (B) REDUCE THE FEE AND ISSUE A WRITTEN DETERMINATION TO THE
11 REQUESTING PERSON INDICATING THE SPECIFIC BASIS UNDER SECTION 4
12 THAT SUPPORTS THE REDUCED FEE. THE DETERMINATION SHALL INCLUDE A
13 CERTIFICATION FROM THE HEAD OF THE PUBLIC BODY THAT THE STATEMENTS
14 CONTAINED THEREIN ARE ACCURATE AND THAT THE REDUCED FEE AMOUNT IS
15 NOT AN UNREASONABLE FEE.

16 (C) UPHOLD THE FEE AND ISSUE A WRITTEN DETERMINATION TO THE
17 REQUESTING PERSON INDICATING THE SPECIFIC BASIS UNDER SECTION 4
18 THAT SUPPORTS THE REQUIRED FEE. THE DETERMINATION SHALL INCLUDE A
19 CERTIFICATION FROM THE HEAD OF THE PUBLIC BODY THAT THE STATEMENTS
20 CONTAINED THEREIN ARE ACCURATE AND THAT THE PERMITTED FEE IS NOT AN
21 UNREASONABLE FEE.

22 (D) UNDER UNUSUAL CIRCUMSTANCES, ISSUE A NOTICE EXTENDING FOR
23 NOT MORE THAN 10 BUSINESS DAYS THE PERIOD DURING WHICH THE HEAD OF
24 THE PUBLIC BODY SHALL RESPOND TO THE WRITTEN APPEAL. THE HEAD OF A
25 PUBLIC BODY SHALL NOT ISSUE MORE THAN 1 NOTICE OF EXTENSION FOR A
26 PARTICULAR WRITTEN APPEAL.

27 (3) A BOARD OR COMMISSION THAT IS THE HEAD OF A PUBLIC BODY IS

1 NOT CONSIDERED TO HAVE RECEIVED A WRITTEN APPEAL FOR PURPOSES OF
2 THE TIME LIMIT IN SUBSECTION (2) UNTIL THE FIRST REGULARLY
3 SCHEDULED MEETING OF THAT BOARD OR COMMISSION FOLLOWING SUBMISSION
4 OF THE WRITTEN APPEAL UNDER SUBSECTION (1) (A) .

5 (4) IN AN ACTION AGAINST A LOCAL PUBLIC BODY COMMENCED UNDER
6 SUBSECTION (1) (B) , IF A COURT DETERMINES THAT THE PUBLIC BODY
7 REQUIRED AN UNREASONABLE FEE, IT SHALL REDUCE THE FEE TO AN AMOUNT
8 SUPPORTED UNDER SECTION 4. THE CIRCUIT COURT FOR THE COUNTY IN
9 WHICH THE COMPLAINANT RESIDES OR HAS HIS OR HER PRINCIPAL PLACE OF
10 BUSINESS, OR THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE PUBLIC
11 RECORD OR AN OFFICE OF THE PUBLIC BODY IS LOCATED, HAS VENUE OVER
12 THE ACTION. THE COURT SHALL DETERMINE THE MATTER DE NOVO, AND THE
13 BURDEN IS ON THE PUBLIC BODY TO ESTABLISH THAT THE REQUIRED FEE IS
14 NOT AN UNREASONABLE FEE. FAILURE TO COMPLY WITH AN ORDER OF THE
15 COURT MAY BE PUNISHED AS CONTEMPT OF COURT.

16 (5) AN ACTION COMMENCED UNDER THIS SECTION AND AN APPEAL FROM
17 AN ACTION COMMENCED UNDER THIS SECTION SHALL BE ASSIGNED FOR
18 HEARING AND TRIAL OR FOR ARGUMENT AT THE EARLIEST PRACTICABLE DATE
19 AND EXPEDITED IN EVERY WAY.

20 (6) IF A PERSON ASSERTING THE RIGHT TO A REDUCTION IN FEES
21 PREVAILS IN AN ACTION COMMENCED UNDER SUBSECTION (1) (B) (i) , THE
22 COURT MAY, IN ITS DISCRETION, AWARD ALL OR AN APPROPRIATE PORTION
23 OF REASONABLE ATTORNEY FEES, COSTS, AND DISBURSEMENTS. IF THE
24 PERSON ASSERTING THE RIGHT TO A REDUCTION IN FEES PREVAILS IN AN
25 ACTION COMMENCED UNDER SUBSECTION (1) (B) (ii) , THE COURT SHALL AWARD
26 REASONABLE ATTORNEY FEES, COSTS, AND DISBURSEMENTS. IF THE PERSON
27 ASSERTING THE RIGHT TO A REDUCTION IN FEES PREVAILS IN AN ACTION

1 COMMENCED UNDER SUBSECTION (1) (B) (iii) AND THE COURT FINDS THAT THE
2 HEAD OF THE PUBLIC BODY'S BASIS FOR IMPOSING THE FEE CONTAINED IN
3 THE WRITTEN NOTICE WAS UNSUPPORTED OR WAS CLEARLY ERRONEOUS, THE
4 COURT SHALL AWARD REASONABLE ATTORNEY FEES, COSTS, AND
5 DISBURSEMENTS. AN AWARD UNDER THIS SUBSECTION SHALL BE ASSESSED
6 AGAINST THE PUBLIC BODY LIABLE FOR DAMAGES UNDER SUBSECTION (7).

7 (7) IF THE COURT DETERMINES IN AN ACTION COMMENCED UNDER THIS
8 SECTION THAT THE PUBLIC BODY HAS ARBITRARILY AND CAPRICIOUSLY
9 VIOLATED THIS ACT BY CHARGING AN UNREASONABLE FEE, THE COURT SHALL
10 AWARD, IN ADDITION TO ANY ACTUAL OR COMPENSATORY DAMAGES, PUNITIVE
11 DAMAGES IN THE AMOUNT OF \$1,000.00 TO THE PERSON SEEKING THE RIGHT
12 TO INSPECT OR RECEIVE A COPY OF A PUBLIC RECORD. THE DAMAGES SHALL
13 NOT BE ASSESSED AGAINST AN INDIVIDUAL, BUT SHALL BE ASSESSED
14 AGAINST THE NEXT SUCCEEDING PUBLIC BODY THAT IS NOT AN INDIVIDUAL
15 AND THAT KEPT OR MAINTAINED THE PUBLIC RECORD AS PART OF ITS PUBLIC
16 FUNCTION.

17 (8) AS USED IN THIS SECTION, "UNREASONABLE FEE" MEANS A FEE OR
18 ANY COMPONENT OF A FEE THAT UNREASONABLY EXCEEDS THE AMOUNT
19 PROPERLY CALCULATED UNDER SECTION 4.

20 SEC. 10B. IF THE COURT DETERMINES, IN AN ACTION COMMENCED
21 UNDER THIS ACT, THAT A PUBLIC BODY WILLFULLY AND INTENTIONALLY
22 FAILED TO COMPLY WITH THIS ACT OR OTHERWISE ACTED IN BAD FAITH, THE
23 COURT SHALL IMPOSE UPON THE PUBLIC BODY, IN ADDITION TO ANY OTHER
24 AWARD OR SANCTION, A CIVIL FINE OF NOT LESS THAN \$2,500.00 OR MORE
25 THAN \$7,500.00 FOR EACH OCCURRENCE. IN DETERMINING THE AMOUNT OF
26 THE CIVIL FINE, THE COURT SHALL CONSIDER THE BUDGET OF THE PUBLIC
27 BODY AND WHETHER THE PUBLIC BODY HAS PREVIOUSLY BEEN ASSESSED

1 **PENALTIES FOR VIOLATIONS OF THIS ACT. THE CIVIL FINE SHALL BE**
2 **DEPOSITED IN THE GENERAL FUND OF THE STATE TREASURY.**

3 Sec. 11. (1) A state agency shall publish and make available
4 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~~**THAT** 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 agency
11 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 matter.

14 (3) Except to the extent that a person has actual and timely
15 notice of the terms thereof, a person ~~shall not in any manner be~~**IS**
16 **NOT** required to resort to, ~~or~~**AND SHALL NOT** be adversely affected
17 by, a matter required to be published and made available, if the
18 matter is not so published and made available.

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

21 (5) A person may commence an action in the ~~circuit~~ court **OF**
22 **CLAIMS** to compel a state agency to comply with this section. If the
23 court determines that the state agency has failed to comply, the
24 court shall order the state agency to comply and shall award
25 reasonable attorneys' fees, costs, and disbursements to the person
26 commencing the action. The ~~circuit court for the county in which~~
27 ~~the state agency is located shall have~~**COURT OF CLAIMS HAS**

House Bill No. 4001 (H-6) as amended March 20, 2014

1 **EXCLUSIVE** jurisdiction to issue the order.

2 (6) As used in this section, "state agency", "contested case",
3 and "rules" ~~shall have the same meanings as ascribed to those terms~~
4 in ~~Act No. 306 of the Public Acts of 1969, as amended, being~~

5 ~~sections 24.201 to 24.315 of the Michigan Compiled Laws.~~**THE**

6 **ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO**

7 **24.328.**

[Enacting section 1. This amendatory act takes effect January 1,
2015.]