

HOUSE BILL NO. 4468

April 17, 2019, Introduced by Reps. Steven Johnson, Robinson and Reilly and referred to the Committee on Oversight.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending section 5 (MCL 15.235), as amended by 2018 PA 105.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5. (1) Except as provided in section 3, a person desiring
2 to inspect or receive a copy of a public record shall make a
3 written request for the public record to the FOIA coordinator of a
4 public body. A written request made by facsimile, electronic mail,
5 or other electronic transmission is not received by a public body's
6 FOIA coordinator until 1 business day after the electronic

1 transmission is made. However, if a written request is sent by
2 electronic mail and delivered to the public body's spam or junk-
3 mail folder, the request is not received until 1 day after the
4 public body first becomes aware of the written request. The public
5 body shall note in its records both the time a written request is
6 delivered to its spam or junk-mail folder and the time the public
7 body first becomes aware of that request.

8 (2) Unless otherwise agreed to in writing by the person making
9 the request, a public body shall, **subject to subsection (10)**,
10 respond to a request for a public record within 5 business days
11 after the public body receives the request by doing 1 of the
12 following:

13 (a) Granting the request.

14 (b) Issuing a written notice to the requesting person denying
15 the request.

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

18 (d) Issuing a notice extending for not more than 10 business
19 days the period during which the public body shall respond to the
20 request. A public body shall not issue more than 1 notice of
21 extension for a particular request.

22 (3) Failure to respond to a request ~~pursuant to~~ **under**
23 subsection (2) constitutes a public body's final determination to
24 deny the request if either of the following applies:

25 (a) The failure was willful and intentional.

26 (b) The written request included language that conveyed a
27 request for information within the first 250 words of the body of a
28 letter, facsimile, electronic mail, or electronic mail attachment,
29 or specifically included the words, characters, or abbreviations

1 for "freedom of information", "information", "FOIA", "copy", or a
2 recognizable misspelling of such, or appropriate legal code
3 reference to this act, on the front of an envelope or in the
4 subject line of an electronic mail, letter, or facsimile cover
5 page.

6 (4) In a civil action to compel a public body's disclosure of
7 a public record under section 10, the court shall assess damages
8 against the public body ~~pursuant to~~**under** section 10(7) if the
9 court has done both of the following:

10 (a) Determined that the public body has not complied with
11 subsection (2).

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

14 (5) A written notice denying a request for a public record in
15 whole or in part is a public body's final determination to deny the
16 request or portion of that request. The written notice must
17 contain:

18 (a) An explanation of the basis under this act or other
19 statute for the determination that the public record, or portion of
20 that public record, is exempt from disclosure, if that is the
21 reason for denying all or a portion of the request.

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

26 (c) A description of a public record or information on a
27 public record that is separated or deleted ~~pursuant to~~**under**
28 section 14, if a separation or deletion is made.

29 (d) A full explanation of the requesting person's right to do

1 either of the following:

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

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

6 (e) Notice of the right to receive attorneys' fees and damages
7 as provided in section 10 if, after judicial review, the court
8 determines that the public body has not complied with this section
9 and orders disclosure of all or a portion of a public record.

10 (6) The individual designated in section 6 as responsible for
11 the denial of the request shall sign the written notice of denial.

12 (7) If a public body issues a notice extending the period for
13 a response to the request, the notice must specify the reasons for
14 the extension and the date by which the public body will do 1 of
15 the following:

16 (a) Grant the request.

17 (b) Issue a written notice to the requesting person denying
18 the request.

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

21 (8) If a public body makes a final determination to deny in
22 whole or in part a request to inspect or receive a copy of a public
23 record or portion of that public record, the requesting person may
24 do either of the following:

25 (a) Appeal the denial to the head of the public body pursuant
26 ~~to~~**under** section 10.

27 (b) Commence a civil action, ~~pursuant to~~**under** section 10.

28 (9) Notwithstanding any other provision of this act to the
29 contrary, a public body that maintains a law enforcement records

1 management system and stores public records for another public body
2 that subscribes to the law enforcement records management system is
3 not in possession of, retaining, or the custodian of, a public
4 record stored on behalf of the subscribing public body. If the
5 public body that maintains a law enforcement records management
6 system receives a written request for a public record that is
7 stored on behalf of a subscribing public body, the public body that
8 maintains the law enforcement records management system shall,
9 within 10 business days after receipt of the request, give written
10 notice to the requesting person identifying the subscribing public
11 body and stating that the requesting person shall submit the
12 request to the subscribing public body. As used in this subsection,
13 "law enforcement records management system" means a data storage
14 system that may be used voluntarily by subscribers, including any
15 subscribing public bodies, to share information and facilitate
16 intergovernmental collaboration in the provision of law enforcement
17 services.

18 **(10) A person making a request under subsection (1) may**
19 **stipulate that the public body's response under subsection (2) be**
20 **electronically mailed, delivered by facsimile, or delivered by**
21 **first-class mail. This subsection does not apply if the public body**
22 **lacks the technological capability to provide an electronically**
23 **mailed response.**