



# HOUSE BILL No. 4849

May 16, 1995, Introduced by Reps. Kaza, Freeman, Hanley, Martinez, Gubow, Baird, Wetters, Voorhees, LaForge, Brewer, Brater, Jersevic, Goschka, Pitoniak, Ciaramitaro, Olshove, Gagliardi, Berman, Bobier, Anthony, Gire, Vaughn, Scott, Hood, Varga, Cropsey, Wallace, Parks, Tesanovich, Jaye, Whyman, Harder, Curtis, Lowe, Ryan and Law and referred to the Committee on Judiciary and Civil Rights.

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

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 5 and 10 of Act No. 442 of the Public  
2 Acts of 1976, being sections 15.235 and 15.240 of the Michigan  
3 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~~ UPON RECEIVING a request  
8 for a public record, ~~it shall~~ A PUBLIC BODY SHALL RESPOND TO  
9 THE REQUEST BY DOING 1 OF THE FOLLOWING immediately, but not more  
10 than 5 business days after the day the request is received unless

1 otherwise agreed to in writing by the person making the request:

2 ~~respond to the request by 1 of the following:~~

3 (a) Grant the request.

4 (b) Issue a written notice to the requesting person denying  
5 the request.

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

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

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

23 (4) A written notice denying a request for a public record  
24 in whole or in part shall constitute a final determination by the  
25 public body to deny the request or portion ~~thereof~~ OF THAT  
26 REQUEST and shall contain:

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 THAT PUBLIC RECORD, is exempt from disclo-  
4 sure, if that is the reason for denying the request or a portion  
5 ~~thereof~~ OF THAT 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 THAT REQUEST.

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

13 (d) A full explanation of the requesting person's right to  
14 seek judicial OR ADMINISTRATIVE review under section 10.  
15 Notification of the right to ~~judicial review~~ AN ACTION UNDER  
16 SECTION 10(1)(A) OR (B) shall include notification of the right  
17 to receive attorneys' fees and damages as provided in section  
18 ~~10~~ 10(4).

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

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

26 (a) Grant the request.

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

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

5 (7) If a public body makes a final determination to deny in  
6 whole or in part a request to inspect or receive a copy of a  
7 public record or portion ~~thereof~~ OF THAT PUBLIC RECORD, the  
8 requesting person may commence an action ~~in circuit court,~~ as  
9 provided in section 10.

10 Sec. 10. (1) If a public body makes a final determination  
11 to deny a request FOR A PUBLIC RECORD or a portion ~~thereof~~ OF  
12 THAT REQUEST, the requesting person may commence ~~an~~ 1 OF THE  
13 FOLLOWING, AS APPLICABLE:

14 (A) AN action in the circuit court to compel THE PUBLIC  
15 BODY'S disclosure of the public records, IF THAT PUBLIC BODY IS  
16 NOT A STATE AGENCY. If the court determines that the public  
17 records are not exempt from disclosure, the court shall order the  
18 public body to cease withholding or to produce a public record or  
19 a portion ~~thereof~~ OF THAT PUBLIC RECORD wrongfully withheld,  
20 regardless of the location of the public record. The circuit  
21 court for the county in which the complainant resides or has his  
22 principal place of business, or the circuit court for the county  
23 in which the public record or an office of the public body is  
24 located shall have jurisdiction to issue the order. The court  
25 shall determine the matter de novo and the burden is on the  
26 public body to sustain its denial. The court, on its own motion,  
27 may view the public record in controversy in private before

1 reaching a decision. Failure to comply with an order of the  
2 court may be punished as contempt of court.

3 (B) A CONTESTED CASE HEARING UNDER CHAPTER 4 OF THE ADMINIS-  
4 TRATIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF  
5 1969, BEING SECTIONS 24.271 TO 24.287 OF THE MICHIGAN COMPILED  
6 LAWS, IF THE PUBLIC BODY IS A STATE AGENCY. IF THE STATE AGENCY  
7 DETERMINES THAT THE PUBLIC RECORDS ARE NOT EXEMPT FROM DISCLO-  
8 SURE, THE STATE AGENCY SHALL ORDER THE PUBLIC BODY TO CEASE WITH-  
9 HOLDING OR TO PRODUCE THE PUBLIC RECORD OR THE PORTION OF THAT  
10 PUBLIC RECORD WRONGFULLY WITHHELD.

11 (2) An action under ~~this section~~ SUBSECTION (1)(A) OR (B)  
12 arising from the denial of an oral request may not be commenced  
13 unless the requesting person confirms the oral request in writing  
14 not less than 5 days before commencement of the action.

15 (3) An action commenced pursuant to ~~this section~~  
16 SUBSECTION (1)(A) OR (B) and appeals ~~therefrom~~ FROM ACTIONS  
17 COMMENCED UNDER SUBSECTION (1)(A) OR (B) shall be assigned for  
18 hearing and trial or for argument at the earliest practicable  
19 date and expedited in every way.

20 (4) If a person asserting the right to inspect or to receive  
21 a copy of a public record or a portion ~~thereof~~ OF THAT PUBLIC  
22 RECORD prevails in an action commenced pursuant to ~~this section~~  
23 SUBSECTION (1)(A) OR (B), the court OR STATE AGENCY shall award  
24 reasonable attorneys' fees, costs, and disbursements. If the  
25 person prevails in part, the court OR STATE AGENCY may, in its  
26 discretion, award reasonable attorneys' fees, costs, and  
27 disbursements or an appropriate portion ~~thereof~~ OF THOSE FEES,

1 COSTS, AND DISBURSEMENTS. The award shall be assessed against  
2 the public body liable for damages under subsection (5).

3 (5) In an action commenced pursuant to ~~this section~~  
4 SUBSECTION (1)(A) OR (B), if the circuit court OR STATE AGENCY  
5 finds that the public body has arbitrarily and capriciously vio-  
6 lated this act by refusal or delay in disclosing or providing  
7 copies of a public record, the court OR STATE AGENCY shall, in  
8 addition to any actual or compensatory damages, award punitive  
9 damages in the amount of \$500.00 to the person seeking the right  
10 to inspect or receive a copy of a public record. The damages  
11 shall not be assessed against an individual, but shall be  
12 assessed against the next succeeding public body, not an individ-  
13 ual, pursuant to whose public function the public record was kept  
14 or maintained.

15 (6) AS USED IN THIS SECTION, "STATE AGENCY" MEANS A DEPART-  
16 MENT, BUREAU, DIVISION, SECTION, BOARD, COMMISSION, OR AUTHORITY  
17 OF THIS STATE CREATED BY THE STATE CONSTITUTION OF 1963, STATUTE,  
18 OR AGENCY ACTION.