

SENATE 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 **(2)**, **(3)**, ~~and (4)~~, **(5)**, **AND (9)**, the
7 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 WAGE
10 OF ITS LOWEST-PAID EMPLOYEE CAPABLE OF SEARCHING FOR, LOCATING, AND
11 EXAMINING THE PUBLIC RECORDS IN THE PARTICULAR INSTANCE REGARDLESS
12 OF WHETHER THAT PERSON IS AVAILABLE OR WHO ACTUALLY PERFORMS THE
13 LABOR. LABOR COSTS UNDER THIS SUBDIVISION SHALL BE ESTIMATED AND
14 CHARGED IN INCREMENTS OF 15 MINUTES OR MORE, WITH ALL PARTIAL TIME
15 INCREMENTS ROUNDED DOWN.

16 (B) THAT PORTION OF LABOR COSTS, INCLUDING NECESSARY REVIEW,
17 IF ANY, DIRECTLY ASSOCIATED WITH THE SEPARATING AND DELETING OF
18 EXEMPT INFORMATION FROM NONEXEMPT INFORMATION AS PROVIDED IN
19 SECTION 14. FOR SERVICES PERFORMED BY AN EMPLOYEE OF THE PUBLIC
20 BODY, THE PUBLIC BODY SHALL NOT CHARGE MORE THAN THE HOURLY WAGE OF
21 ITS LOWEST-PAID EMPLOYEE CAPABLE OF SEPARATING AND DELETING EXEMPT
22 INFORMATION FROM NONEXEMPT INFORMATION IN THE PARTICULAR INSTANCE
23 AS PROVIDED IN SECTION 14, REGARDLESS OF WHETHER THAT PERSON IS
24 AVAILABLE OR WHO ACTUALLY PERFORMS THE LABOR. IF A PUBLIC BODY DOES
25 NOT EMPLOY A PERSON CAPABLE OF SEPARATING AND DELETING EXEMPT
26 INFORMATION FROM NONEXEMPT INFORMATION IN THE PARTICULAR INSTANCE
27 AS PROVIDED IN SECTION 14 AS DETERMINED BY THE PUBLIC BODY'S FOIA

1 COORDINATOR ON A CASE-BY-CASE BASIS, IT MAY TREAT NECESSARY
2 CONTRACTED LABOR COSTS USED FOR THE SEPARATING AND DELETING OF
3 EXEMPT INFORMATION FROM NONEXEMPT INFORMATION IN THE SAME MANNER AS
4 EMPLOYEE LABOR COSTS WHEN CALCULATING CHARGES UNDER THIS
5 SUBDIVISION IF IT CLEARLY NOTES THE NAME OF THE CONTRACTED PERSON
6 OR FIRM ON THE DETAILED ITEMIZATION DESCRIBED UNDER SUBSECTION (4).
7 TOTAL LABOR COSTS CALCULATED UNDER THIS SUBDIVISION FOR CONTRACTED
8 LABOR COSTS SHALL NOT EXCEED AN AMOUNT EQUAL TO 6 TIMES THE STATE
9 MINIMUM HOURLY WAGE RATE DETERMINED UNDER SECTION 4 OF THE
10 WORKFORCE OPPORTUNITY WAGE ACT, 2014 PA 138, MCL 408.411 TO
11 408.424. LABOR COSTS UNDER THIS SUBDIVISION SHALL BE ESTIMATED AND
12 CHARGED IN INCREMENTS OF 15 MINUTES OR MORE, WITH ALL PARTIAL TIME
13 INCREMENTS ROUNDED DOWN. A PUBLIC BODY SHALL NOT CHARGE FOR LABOR
14 DIRECTLY ASSOCIATED WITH REDACTION UNDER SECTION 14 IF IT KNOWS OR
15 HAS REASON TO KNOW THAT IT PREVIOUSLY REDACTED THE PUBLIC RECORD IN
16 QUESTION AND THE REDACTED VERSION IS STILL IN THE PUBLIC BODY'S
17 POSSESSION.

18 (C) FOR PUBLIC RECORDS PROVIDED TO THE REQUESTOR ON NONPAPER
19 PHYSICAL MEDIA, THE ACTUAL AND MOST REASONABLY ECONOMICAL COST OF
20 THE COMPUTER DISCS, COMPUTER TAPES, OR OTHER DIGITAL OR SIMILAR
21 MEDIA. THE REQUESTOR MAY STIPULATE THAT THE PUBLIC RECORDS BE
22 PROVIDED ON NONPAPER PHYSICAL MEDIA, ELECTRONICALLY MAILED, OR
23 OTHERWISE ELECTRONICALLY PROVIDED TO HIM OR HER IN LIEU OF PAPER
24 COPIES. THIS SUBDIVISION DOES NOT APPLY IF A PUBLIC BODY LACKS THE
25 TECHNOLOGICAL CAPABILITY NECESSARY TO PROVIDE RECORDS ON THE
26 PARTICULAR NONPAPER PHYSICAL MEDIA STIPULATED IN THE PARTICULAR
27 INSTANCE.

1 (D) FOR PAPER COPIES OF PUBLIC RECORDS PROVIDED TO THE
2 REQUESTOR, THE ACTUAL TOTAL INCREMENTAL COST OF NECESSARY
3 DUPLICATION OR PUBLICATION, NOT INCLUDING LABOR. THE COST OF PAPER
4 COPIES SHALL BE CALCULATED AS A TOTAL COST PER SHEET OF PAPER AND
5 SHALL BE ITEMIZED AND NOTED IN A MANNER THAT EXPRESSES BOTH THE
6 COST PER SHEET AND THE NUMBER OF SHEETS PROVIDED. THE FEE SHALL NOT
7 EXCEED 10 CENTS PER SHEET OF PAPER FOR COPIES OF PUBLIC RECORDS
8 MADE ON 8-1/2- BY 11-INCH PAPER OR 8-1/2- BY 14-INCH PAPER. A
9 PUBLIC BODY SHALL UTILIZE THE MOST ECONOMICAL MEANS AVAILABLE FOR
10 MAKING COPIES OF PUBLIC RECORDS, INCLUDING USING DOUBLE-SIDED
11 PRINTING, IF COST SAVING AND AVAILABLE.

12 (E) THE COST OF LABOR DIRECTLY ASSOCIATED WITH DUPLICATION OR
13 PUBLICATION, INCLUDING MAKING PAPER COPIES, MAKING DIGITAL COPIES,
14 OR TRANSFERRING DIGITAL PUBLIC RECORDS TO BE GIVEN TO THE REQUESTOR
15 ON NONPAPER PHYSICAL MEDIA OR THROUGH THE INTERNET OR OTHER
16 ELECTRONIC MEANS AS STIPULATED BY THE REQUESTOR. THE PUBLIC BODY
17 SHALL NOT CHARGE MORE THAN THE HOURLY WAGE OF ITS LOWEST-PAID
18 EMPLOYEE CAPABLE OF NECESSARY DUPLICATION OR PUBLICATION IN THE
19 PARTICULAR INSTANCE, REGARDLESS OF WHETHER THAT PERSON IS AVAILABLE
20 OR WHO ACTUALLY PERFORMS THE LABOR. LABOR COSTS UNDER THIS
21 SUBDIVISION MAY BE ESTIMATED AND CHARGED IN TIME INCREMENTS OF THE
22 PUBLIC BODY'S CHOOSING; HOWEVER, ALL PARTIAL TIME INCREMENTS SHALL
23 BE ROUNDED DOWN.

24 (F) THE ACTUAL COST OF MAILING, IF ANY, FOR SENDING THE PUBLIC
25 RECORDS IN A REASONABLY ECONOMICAL AND JUSTIFIABLE MANNER. THE
26 PUBLIC BODY SHALL NOT CHARGE MORE FOR EXPEDITED SHIPPING OR
27 INSURANCE UNLESS SPECIFICALLY STIPULATED BY THE REQUESTOR, BUT MAY

1 OTHERWISE CHARGE FOR THE LEAST EXPENSIVE FORM OF POSTAL DELIVERY
2 CONFIRMATION WHEN MAILING PUBLIC RECORDS.

3 (2) WHEN CALCULATING LABOR COSTS UNDER SUBSECTION (1) (A), (B),
4 OR (E), FEE COMPONENTS SHALL BE ITEMIZED IN A MANNER THAT EXPRESSES
5 BOTH THE HOURLY WAGE AND THE NUMBER OF HOURS CHARGED. THE PUBLIC
6 BODY MAY ALSO ADD UP TO 50% TO THE APPLICABLE LABOR CHARGE AMOUNT
7 TO COVER OR PARTIALLY COVER THE COST OF FRINGE BENEFITS IF IT
8 CLEARLY NOTES THE PERCENTAGE MULTIPLIER USED TO ACCOUNT FOR
9 BENEFITS IN THE DETAILED ITEMIZATION DESCRIBED IN SUBSECTION (4).
10 SUBJECT TO THE 50% LIMITATION, THE PUBLIC BODY SHALL NOT CHARGE
11 MORE THAN THE ACTUAL COST OF FRINGE BENEFITS, AND OVERTIME WAGES
12 SHALL NOT BE USED IN CALCULATING THE COST OF FRINGE BENEFITS.
13 OVERTIME WAGES SHALL NOT BE INCLUDED IN THE CALCULATION OF LABOR
14 COSTS UNLESS OVERTIME IS SPECIFICALLY STIPULATED BY THE REQUESTOR
15 AND CLEARLY NOTED ON THE DETAILED ITEMIZATION DESCRIBED IN
16 SUBSECTION (4). A search for a public record may be conducted or
17 copies of public records may be furnished without charge or at a
18 reduced charge if the public body determines that a waiver or
19 reduction of the fee is in the public interest because searching
20 for or furnishing copies of the public record can be considered as
21 primarily benefiting the general public. A public record search
22 shall be made and a copy of a public record shall be furnished
23 without charge for the first \$20.00 of the fee for each request ~~to~~
24 ~~an~~ BY EITHER OF THE FOLLOWING:

25 (A) AN individual who is entitled to information under this
26 act and who submits an affidavit stating that the individual is
27 ~~then receiving~~ INDIGENT AND RECEIVING SPECIFIC public assistance

1 or, if not receiving public assistance, stating facts showing
2 inability to pay the cost because of indigency. IF THE REQUESTOR IS
3 ELIGIBLE FOR A REQUESTED DISCOUNT, THE PUBLIC BODY SHALL FULLY NOTE
4 THE DISCOUNT ON THE DETAILED ITEMIZATION DESCRIBED UNDER SUBSECTION
5 (4). IF A REQUESTOR IS INELIGIBLE FOR THE DISCOUNT, THE PUBLIC BODY
6 SHALL INFORM THE REQUESTOR SPECIFICALLY OF THE REASON FOR
7 INELIGIBILITY IN THE PUBLIC BODY'S WRITTEN RESPONSE. AN INDIVIDUAL
8 IS INELIGIBLE FOR THIS FEE REDUCTION IF ANY OF THE FOLLOWING APPLY:

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

12 (ii) THE INDIVIDUAL REQUESTS THE INFORMATION IN CONJUNCTION
13 WITH OUTSIDE PARTIES WHO ARE OFFERING OR PROVIDING PAYMENT OR OTHER
14 REMUNERATION TO THE INDIVIDUAL TO MAKE THE REQUEST. A PUBLIC BODY
15 MAY REQUIRE A STATEMENT BY THE REQUESTOR IN THE AFFIDAVIT THAT THE
16 REQUEST IS NOT BEING MADE IN CONJUNCTION WITH OUTSIDE PARTIES IN
17 EXCHANGE FOR PAYMENT OR OTHER REMUNERATION.

18 (B) A NONPROFIT ORGANIZATION FORMALLY DESIGNATED BY THE STATE
19 TO CARRY OUT ACTIVITIES UNDER SUBTITLE C OF THE DEVELOPMENTAL
20 DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT OF 2000, PUBLIC LAW
21 106-402, AND THE PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH
22 MENTAL ILLNESS ACT, PUBLIC LAW 99-319, OR THEIR SUCCESSORS, IF THE
23 REQUEST MEETS ALL OF THE FOLLOWING REQUIREMENTS:

24 (i) IS MADE DIRECTLY ON BEHALF OF THE ORGANIZATION OR ITS
25 CLIENTS.

26 (ii) IS MADE FOR A REASON WHOLLY CONSISTENT WITH THE MISSION
27 AND PROVISIONS OF THOSE LAWS UNDER SECTION 931 OF THE MENTAL HEALTH

1 CODE, 1974 PA 258, MCL 330.1931.

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

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

8 (3) ~~In calculating the cost of labor incurred in duplication~~
9 ~~and mailing and the cost of examination, review, separation, and~~
10 ~~deletion under subsection (1), a public body may not charge more~~
11 ~~than the hourly wage of the lowest paid public body employee~~
12 ~~capable of retrieving the information necessary to comply with a~~
13 ~~request under this act. Fees shall be uniform and not dependent~~
14 ~~upon the identity of the requesting person. A public body shall~~
15 ~~utilize the most economical means available for making copies of~~
16 ~~public records. A fee AS DESCRIBED IN SUBSECTION (1) shall not be~~
17 ~~charged for the cost of search, examination, review, and the~~
18 ~~deletion and separation of exempt from nonexempt information as~~
19 ~~provided in section 14 unless failure to charge a fee would result~~
20 ~~in unreasonably high costs to the public body because of the nature~~
21 ~~of the request in the particular instance, and the public body~~
22 ~~specifically identifies the nature of these unreasonably high~~
23 ~~costs. A public body shall establish and publish procedures and~~
24 ~~guidelines to implement this subsection.~~

25 (4) A PUBLIC BODY SHALL ESTABLISH PROCEDURES AND GUIDELINES TO
26 IMPLEMENT THIS ACT AND SHALL CREATE A WRITTEN PUBLIC SUMMARY OF THE
27 SPECIFIC PROCEDURES AND GUIDELINES RELEVANT TO THE GENERAL PUBLIC

1 REGARDING HOW TO SUBMIT WRITTEN REQUESTS TO THE PUBLIC BODY AND
2 EXPLAINING HOW TO UNDERSTAND A PUBLIC BODY'S WRITTEN RESPONSES,
3 DEPOSIT REQUIREMENTS, FEE CALCULATIONS, AND AVENUES FOR CHALLENGE
4 AND APPEAL. THE WRITTEN PUBLIC SUMMARY SHALL BE WRITTEN IN A MANNER
5 SO AS TO BE EASILY UNDERSTOOD BY THE GENERAL PUBLIC. IF THE PUBLIC
6 BODY DIRECTLY OR INDIRECTLY ADMINISTERS OR MAINTAINS AN OFFICIAL
7 INTERNET PRESENCE, IT SHALL POST AND MAINTAIN THE PROCEDURES AND
8 GUIDELINES AND ITS WRITTEN PUBLIC SUMMARY ON ITS WEBSITE. A PUBLIC
9 BODY SHALL MAKE THE PROCEDURES AND GUIDELINES PUBLICLY AVAILABLE BY
10 PROVIDING FREE COPIES OF THE PROCEDURES AND GUIDELINES AND ITS
11 WRITTEN PUBLIC SUMMARY BOTH IN THE PUBLIC BODY'S RESPONSE TO A
12 WRITTEN REQUEST AND UPON REQUEST BY VISITORS AT THE PUBLIC BODY'S
13 OFFICE. A PUBLIC BODY THAT POSTS AND MAINTAINS PROCEDURES AND
14 GUIDELINES AND ITS WRITTEN PUBLIC SUMMARY ON ITS WEBSITE MAY
15 INCLUDE THE WEBSITE LINK TO THE DOCUMENTS IN LIEU OF PROVIDING
16 PAPER COPIES IN ITS RESPONSE TO A WRITTEN REQUEST. A PUBLIC BODY'S
17 PROCEDURES AND GUIDELINES SHALL INCLUDE THE USE OF A STANDARD FORM
18 FOR DETAILED ITEMIZATION OF ANY FEE AMOUNT IN ITS RESPONSES TO
19 WRITTEN REQUESTS UNDER THIS ACT. THE DETAILED ITEMIZATION SHALL
20 CLEARLY LIST AND EXPLAIN THE ALLOWABLE CHARGES FOR EACH OF THE 6
21 FEE COMPONENTS LISTED UNDER SUBSECTION (1) THAT COMPOSE THE TOTAL
22 FEE USED FOR ESTIMATING OR CHARGING PURPOSES. OTHER PUBLIC BODIES
23 MAY USE A FORM CREATED BY THE DEPARTMENT OF TECHNOLOGY, MANAGEMENT,
24 AND BUDGET OR CREATE A FORM OF THEIR OWN THAT COMPLIES WITH THIS
25 SUBSECTION. A PUBLIC BODY THAT HAS NOT ESTABLISHED PROCEDURES AND
26 GUIDELINES, HAS NOT CREATED A WRITTEN PUBLIC SUMMARY, OR HAS NOT
27 MADE THOSE ITEMS PUBLICLY AVAILABLE WITHOUT CHARGE AS REQUIRED IN

1 THIS SUBSECTION IS NOT RELIEVED OF ITS DUTY TO COMPLY WITH ANY
2 REQUIREMENT OF THIS ACT AND SHALL NOT REQUIRE DEPOSITS OR CHARGE
3 FEES OTHERWISE PERMITTED UNDER THIS ACT UNTIL IT IS IN COMPLIANCE
4 WITH THIS SUBSECTION. NOTWITHSTANDING THIS SUBSECTION AND DESPITE
5 ANY LAW TO THE CONTRARY, A PUBLIC BODY'S PROCEDURES AND GUIDELINES
6 UNDER THIS ACT ARE NOT EXEMPT PUBLIC RECORDS UNDER SECTION 13.

7 (5) IF THE PUBLIC BODY DIRECTLY OR INDIRECTLY ADMINISTERS OR
8 MAINTAINS AN OFFICIAL INTERNET PRESENCE, ANY PUBLIC RECORDS
9 AVAILABLE TO THE GENERAL PUBLIC ON THAT INTERNET SITE AT THE TIME
10 THE REQUEST IS MADE ARE EXEMPT FROM ANY CHARGES UNDER SUBSECTION
11 (1) (B). IF THE FOIA COORDINATOR KNOWS OR HAS REASON TO KNOW THAT
12 ALL OR A PORTION OF THE REQUESTED INFORMATION IS AVAILABLE ON ITS
13 WEBSITE, THE PUBLIC BODY SHALL NOTIFY THE REQUESTOR IN ITS WRITTEN
14 RESPONSE THAT ALL OR A PORTION OF THE REQUESTED INFORMATION IS
15 AVAILABLE ON ITS WEBSITE. THE WRITTEN RESPONSE, TO THE DEGREE
16 PRACTICABLE IN THE SPECIFIC INSTANCE, SHALL INCLUDE A SPECIFIC
17 WEBPAGE ADDRESS WHERE THE REQUESTED INFORMATION IS AVAILABLE. ON
18 THE DETAILED ITEMIZATION DESCRIBED IN SUBSECTION (4), THE PUBLIC
19 BODY SHALL SEPARATE THE REQUESTED PUBLIC RECORDS THAT ARE AVAILABLE
20 ON ITS WEBSITE FROM THOSE THAT ARE NOT AVAILABLE ON THE WEBSITE AND
21 SHALL INFORM THE REQUESTOR OF THE ADDITIONAL CHARGE TO RECEIVE
22 COPIES OF THE PUBLIC RECORDS THAT ARE AVAILABLE ON ITS WEBSITE. IF
23 THE PUBLIC BODY HAS INCLUDED THE WEBSITE ADDRESS FOR A RECORD IN
24 ITS WRITTEN RESPONSE TO THE REQUESTOR AND THE REQUESTOR THEREAFTER
25 STIPULATES THAT THE PUBLIC RECORD BE PROVIDED TO HIM OR HER IN A
26 PAPER FORMAT OR OTHER FORM AS DESCRIBED UNDER SUBSECTION (1) (C),
27 THE PUBLIC BODY SHALL PROVIDE THE PUBLIC RECORDS IN THE SPECIFIED

1 FORMAT BUT MAY USE A FRINGE BENEFIT MULTIPLIER GREATER THAN THE 50%
2 LIMITATION IN SUBSECTION (2), NOT TO EXCEED THE ACTUAL COSTS OF
3 PROVIDING THE INFORMATION IN THE SPECIFIED FORMAT.

4 (6) A PUBLIC BODY MAY PROVIDE REQUESTED INFORMATION AVAILABLE
5 IN PUBLIC RECORDS WITHOUT RECEIPT OF A WRITTEN REQUEST.

6 (7) IF A VERBAL REQUEST FOR INFORMATION IS FOR INFORMATION
7 THAT A PUBLIC BODY BELIEVES IS AVAILABLE ON THE PUBLIC BODY'S
8 WEBSITE, THE PUBLIC EMPLOYEE SHALL, WHERE PRACTICABLE AND TO THE
9 BEST OF THE PUBLIC EMPLOYEE'S KNOWLEDGE, INFORM THE REQUESTOR ABOUT
10 THE PUBLIC BODY'S PERTINENT WEBSITE ADDRESS.

11 (8) IN EITHER THE PUBLIC BODY'S INITIAL RESPONSE OR SUBSEQUENT
12 RESPONSE AS DESCRIBED UNDER SECTION 5(2)(D), THE PUBLIC BODY MAY
13 REQUIRE A GOOD-FAITH DEPOSIT FROM THE PERSON REQUESTING INFORMATION
14 BEFORE PROVIDING THE PUBLIC RECORDS TO THE REQUESTOR IF THE ENTIRE
15 FEE ESTIMATE OR CHARGE AUTHORIZED UNDER THIS SECTION EXCEEDS
16 \$50.00, BASED ON A GOOD-FAITH CALCULATION OF THE TOTAL FEE
17 DESCRIBED IN SUBSECTION (4). SUBJECT TO SUBSECTION (10), THE
18 DEPOSIT SHALL NOT EXCEED 1/2 OF THE TOTAL ESTIMATED FEE, AND A
19 PUBLIC BODY'S REQUEST FOR A DEPOSIT SHALL INCLUDE A DETAILED
20 ITEMIZATION AS REQUIRED UNDER SUBSECTION (4). THE RESPONSE SHALL
21 ALSO CONTAIN A BEST EFFORTS ESTIMATE BY THE PUBLIC BODY REGARDING
22 THE TIME FRAME IT WILL TAKE THE PUBLIC BODY TO COMPLY WITH THE LAW
23 IN PROVIDING THE PUBLIC RECORDS TO THE REQUESTOR. THE TIME FRAME
24 ESTIMATE IS NONBINDING UPON THE PUBLIC BODY, BUT THE PUBLIC BODY
25 SHALL PROVIDE THE ESTIMATE IN GOOD FAITH AND STRIVE TO BE
26 REASONABLY ACCURATE AND TO PROVIDE THE PUBLIC RECORDS IN A MANNER
27 BASED ON THIS STATE'S PUBLIC POLICY UNDER SECTION 1 AND THE NATURE

1 OF THE REQUEST IN THE PARTICULAR INSTANCE. IF A PUBLIC BODY DOES
2 NOT RESPOND IN A TIMELY MANNER AS DESCRIBED UNDER SECTION 5(2), IT
3 IS NOT RELIEVED FROM ITS REQUIREMENTS TO PROVIDE PROPER FEE
4 CALCULATIONS AND TIME FRAME ESTIMATES IN ANY TARDY RESPONSES.
5 PROVIDING AN ESTIMATED TIME FRAME DOES NOT RELIEVE A PUBLIC BODY
6 FROM ANY OF THE OTHER REQUIREMENTS OF THIS ACT.

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

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

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

15 (ii) THE WRITTEN REQUEST INCLUDED LANGUAGE THAT CONVEYED A
16 REQUEST FOR INFORMATION WITHIN THE FIRST 250 WORDS OF THE BODY OF A
17 LETTER, FACSIMILE, ELECTRONIC MAIL, OR ELECTRONIC MAIL ATTACHMENT,
18 OR SPECIFICALLY INCLUDED THE WORDS, CHARACTERS, OR ABBREVIATIONS
19 FOR "FREEDOM OF INFORMATION", "INFORMATION", "FOIA", "COPY", OR A
20 RECOGNIZABLE MISSPELLING OF SUCH, OR APPROPRIATE LEGAL CODE
21 REFERENCE FOR THIS ACT, ON THE FRONT OF AN ENVELOPE, OR IN THE
22 SUBJECT LINE OF AN ELECTRONIC MAIL, LETTER, OR FACSIMILE COVER
23 PAGE.

24 (B) IF A CHARGE REDUCTION IS REQUIRED UNDER SUBDIVISION (A),
25 FULLY NOTE THE CHARGE REDUCTION ON THE DETAILED ITEMIZATION
26 DESCRIBED UNDER SUBSECTION (4).

27 (10) ~~(4)~~—This section does not apply to public records

1 prepared under an act or statute specifically authorizing the sale
2 of those public records to the public, or if the amount of the fee
3 for providing a copy of the public record is otherwise specifically
4 provided by an act or statute.

5 (11) SUBJECT TO SUBSECTION (12), AFTER A PUBLIC BODY HAS
6 GRANTED AND FULFILLED A WRITTEN REQUEST FROM AN INDIVIDUAL UNDER
7 THIS ACT, IF THE PUBLIC BODY HAS NOT BEEN PAID IN FULL THE TOTAL
8 AMOUNT UNDER SUBSECTION (1) FOR THE COPIES OF PUBLIC RECORDS THAT
9 THE PUBLIC BODY MADE AVAILABLE TO THE INDIVIDUAL AS A RESULT OF
10 THAT WRITTEN REQUEST, THE PUBLIC BODY MAY REQUIRE A DEPOSIT OF UP
11 TO 100% OF THE ESTIMATED FEE BEFORE IT BEGINS A FULL PUBLIC RECORD
12 SEARCH FOR ANY SUBSEQUENT WRITTEN REQUEST FROM THAT INDIVIDUAL IF
13 ALL OF THE FOLLOWING APPLY:

14 (A) THE FINAL FEE FOR THE PRIOR WRITTEN REQUEST WAS NOT MORE
15 THAN 105% OF THE ESTIMATED FEE.

16 (B) THE PUBLIC RECORDS MADE AVAILABLE CONTAINED THE
17 INFORMATION BEING SOUGHT IN THE PRIOR WRITTEN REQUEST AND ARE STILL
18 IN THE PUBLIC BODY'S POSSESSION.

19 (C) THE PUBLIC RECORDS WERE MADE AVAILABLE TO THE INDIVIDUAL,
20 SUBJECT TO PAYMENT, WITHIN THE TIME FRAME ESTIMATE DESCRIBED UNDER
21 SUBSECTION (7).

22 (D) NINETY DAYS HAVE PASSED SINCE THE PUBLIC BODY NOTIFIED THE
23 INDIVIDUAL IN WRITING THAT THE PUBLIC RECORDS WERE AVAILABLE FOR
24 PICKUP OR MAILING.

25 (E) THE INDIVIDUAL IS UNABLE TO SHOW PROOF OF PRIOR PAYMENT TO
26 THE PUBLIC BODY.

27 (F) THE PUBLIC BODY CALCULATES A DETAILED ITEMIZATION, AS

1 REQUIRED UNDER SUBSECTION (4), THAT IS THE BASIS FOR THE CURRENT
2 WRITTEN REQUEST'S INCREASED ESTIMATED FEE DEPOSIT.

3 (12) A PUBLIC BODY SHALL NO LONGER REQUIRE AN INCREASED
4 ESTIMATED FEE DEPOSIT FROM AN INDIVIDUAL AS DESCRIBED UNDER
5 SUBSECTION (11) IF ANY OF THE FOLLOWING APPLY:

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

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

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

13 (13) A DEPOSIT REQUIRED BY A PUBLIC BODY UNDER THIS ACT IS A
14 FEE.

15 Sec. 5. (1) Except as provided in section 3, a person desiring
16 to inspect or receive a copy of a public record shall make a
17 written request for the public record to the FOIA coordinator of a
18 public body. A written request made by facsimile, electronic mail,
19 or other electronic transmission is not received by a public body's
20 FOIA coordinator until 1 business day after the electronic
21 transmission is made. HOWEVER, IF A WRITTEN REQUEST IS SENT BY
22 ELECTRONIC MAIL AND DELIVERED TO THE PUBLIC BODY'S SPAM OR JUNK-
23 MAIL FOLDER, THE REQUEST IS NOT RECEIVED UNTIL 1 DAY AFTER THE
24 PUBLIC BODY FIRST BECOMES AWARE OF THE WRITTEN REQUEST. THE PUBLIC
25 BODY SHALL NOTE IN ITS RECORDS BOTH THE TIME A WRITTEN REQUEST IS
26 DELIVERED TO ITS SPAM OR JUNK-MAIL FOLDER AND THE TIME THE PUBLIC
27 BODY FIRST BECOMES AWARE OF THAT REQUEST.

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

5 (a) Granting the request.

6 (b) Issuing a written notice to the requesting person denying
7 the request.

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

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

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

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

17 (A) THE FAILURE WAS WILLFUL AND INTENTIONAL.

18 (B) THE WRITTEN REQUEST INCLUDED LANGUAGE THAT CONVEYED A
19 REQUEST FOR INFORMATION WITHIN THE FIRST 250 WORDS OF THE BODY OF A
20 LETTER, FACSIMILE, ELECTRONIC MAIL, OR ELECTRONIC MAIL ATTACHMENT,
21 OR SPECIFICALLY INCLUDED THE WORDS, CHARACTERS, OR ABBREVIATIONS
22 FOR "FREEDOM OF INFORMATION", "INFORMATION", "FOIA", "COPY", OR A
23 RECOGNIZABLE MISSPELLING OF SUCH, OR APPROPRIATE LEGAL CODE
24 REFERENCE TO THIS ACT, ON THE FRONT OF AN ENVELOPE OR IN THE
25 SUBJECT LINE OF AN ELECTRONIC MAIL, LETTER, OR FACSIMILE COVER
26 PAGE.

27 (4) In a ~~circuit court~~ CIVIL action to compel a public body's

1 disclosure of a public record under section 10, the ~~circuit~~ court
2 shall assess damages against the public body pursuant to section
3 ~~10(8)~~ 10(7) if the ~~circuit~~ court has done both of the following:

4 (a) Determined that the public body has not complied with
5 subsection (2).

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

8 (5) ~~(4)~~ A written notice denying a request for a public record
9 in whole or in part is a public body's final determination to deny
10 the request or portion of that request. The written notice shall
11 contain:

12 (a) An explanation of the basis under this act or other
13 statute for the determination that the public record, or portion of
14 that public record, is exempt from disclosure, if that is the
15 reason for denying all or a portion of the request.

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

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

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

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

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

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

7 (6) ~~(5)~~—The individual designated in section 6 as responsible
8 for the denial of the request shall sign the written notice of
9 denial.

10 (7) ~~(6)~~—If a public body issues a notice extending the period
11 for a response to the request, the notice shall specify the reasons
12 for the extension and the date by which the public body will do 1
13 of the following:

14 (a) Grant the request.

15 (b) Issue a written notice to the requesting person denying
16 the request.

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

19 (8) ~~(7)~~—If a public body makes a final determination to deny
20 in whole or in part a request to inspect or receive a copy of a
21 public record or portion of that public record, the requesting
22 person may do either of the following:

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

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

27 Sec. 10. (1) If a public body makes a final determination to

1 deny all or a portion of a request, the requesting person may do 1
2 of the following at his or her option:

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

6 (b) Commence ~~an~~ **A CIVIL** action in the circuit court, **OR IF THE**
7 **DECISION OF A STATE PUBLIC BODY IS AT ISSUE, THE COURT OF CLAIMS,**
8 to compel the public body's disclosure of the public records within
9 180 days after a public body's final determination to deny a
10 request.

11 (2) Within 10 **BUSINESS** days after receiving a written appeal
12 pursuant to subsection (1)(a), the head of a public body shall do 1
13 of the following:

14 (a) Reverse the disclosure denial.

15 (b) Issue a written notice to the requesting person upholding
16 the disclosure denial.

17 (c) Reverse the disclosure denial in part and issue a written
18 notice to the requesting person upholding the disclosure denial in
19 part.

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

25 (3) A board or commission that is the head of a public body is
26 not considered to have received a written appeal under subsection
27 (2) until the first regularly scheduled meeting of that board or

1 commission following submission of the written appeal under
2 subsection (1)(a). If the head of the public body fails to respond
3 to a written appeal pursuant to subsection (2), or if the head of
4 the public body upholds all or a portion of the disclosure denial
5 that is the subject of the written appeal, the requesting person
6 may seek judicial review of the nondisclosure by commencing ~~an~~
7 ~~action in circuit court~~ **A CIVIL ACTION** under subsection (1)(b).

8 (4) In an action commenced under subsection (1)(b), a court
9 that determines a public record is not exempt from disclosure shall
10 order the public body to cease withholding or to produce all or a
11 portion of a public record wrongfully withheld, regardless of the
12 location of the public record. ~~The~~ **VENUE FOR AN ACTION AGAINST A**
13 **LOCAL PUBLIC BODY IS PROPER IN THE** circuit court for the county in
14 which the ~~complainant resides or has his or her principal place of~~
15 ~~business, or the circuit court for the county in which the public~~
16 record or an office of the public body is located has venue over
17 the action. The court shall determine the matter de novo and the
18 burden is on the public body to sustain its denial. The court, on
19 its own motion, may view the public record in controversy in
20 private before reaching a decision. Failure to comply with an order
21 of the court may be punished as contempt of court.

22 (5) An action commenced under this section and an appeal from
23 an action commenced under this section shall be assigned for
24 hearing and trial or for argument at the earliest practicable date
25 and expedited in every way.

26 (6) If a person asserting the right to inspect, copy, or
27 receive a copy of all or a portion of a public record prevails in

1 an action commenced under this section, the court shall award
2 reasonable attorneys' fees, costs, and disbursements. If the person
3 or public body prevails in part, the court may, in its discretion,
4 award all or an appropriate portion of reasonable attorneys' fees,
5 costs, and disbursements. The award shall be assessed against the
6 public body liable for damages under subsection (7).

7 (7) If the ~~circuit~~ court determines in an action commenced
8 under this section that the public body has arbitrarily and
9 capriciously violated this act by refusal or delay in disclosing or
10 providing copies of a public record, the court shall **ORDER THE**
11 **PUBLIC BODY TO PAY A CIVIL FINE OF \$1,000.00, WHICH SHALL BE**
12 **DEPOSITED INTO THE GENERAL FUND OF THE STATE TREASURY. THE COURT**
13 **SHALL** award, in addition to any actual or compensatory damages,
14 punitive damages in the amount of ~~\$500.00~~ **\$1,000.00** to the person
15 seeking the right to inspect or receive a copy of a public record.
16 The damages shall not be assessed against an individual, but shall
17 be assessed against the next succeeding public body that is not an
18 individual and that kept or maintained the public record as part of
19 its public function.

20 **SEC. 10A. (1) IF A PUBLIC BODY REQUIRES A FEE THAT EXCEEDS THE**
21 **AMOUNT PERMITTED UNDER ITS PUBLICLY AVAILABLE PROCEDURES AND**
22 **GUIDELINES OR SECTION 4, THE REQUESTING PERSON MAY DO ANY OF THE**
23 **FOLLOWING:**

24 **(A) IF THE PUBLIC BODY PROVIDES FOR FEE APPEALS TO THE HEAD OF**
25 **THE PUBLIC BODY IN ITS PUBLICLY AVAILABLE PROCEDURES AND**
26 **GUIDELINES, SUBMIT TO THE HEAD OF THE PUBLIC BODY A WRITTEN APPEAL**
27 **FOR A FEE REDUCTION THAT SPECIFICALLY STATES THE WORD "APPEAL" AND**

1 IDENTIFIES HOW THE REQUIRED FEE EXCEEDS THE AMOUNT PERMITTED UNDER
2 THE PUBLIC BODY'S AVAILABLE PROCEDURES AND GUIDELINES OR SECTION 4.

3 (B) COMMENCE A CIVIL ACTION IN THE CIRCUIT COURT, OR IF THE
4 DECISION OF A STATE PUBLIC BODY IS AT ISSUE, IN THE COURT OF
5 CLAIMS, FOR A FEE REDUCTION. THE ACTION MUST BE FILED WITHIN 45
6 DAYS AFTER RECEIVING THE NOTICE OF THE REQUIRED FEE OR A
7 DETERMINATION OF AN APPEAL TO THE HEAD OF A PUBLIC BODY. IF A CIVIL
8 ACTION IS COMMENCED AGAINST THE PUBLIC BODY UNDER THIS SUBDIVISION,
9 THE PUBLIC BODY IS NOT OBLIGATED TO COMPLETE THE PROCESSING OF THE
10 WRITTEN REQUEST FOR THE PUBLIC RECORD AT ISSUE UNTIL THE COURT
11 RESOLVES THE FEE DISPUTE. AN ACTION SHALL NOT BE FILED UNDER THIS
12 SUBDIVISION UNLESS 1 OF THE FOLLOWING APPLIES:

13 (i) THE PUBLIC BODY DOES NOT PROVIDE FOR APPEALS UNDER
14 SUBDIVISION (A).

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

17 (iii) THE HEAD OF THE PUBLIC BODY ISSUED A DETERMINATION TO A
18 WRITTEN APPEAL AS REQUIRED UNDER SUBSECTION (2).

19 (2) WITHIN 10 BUSINESS DAYS AFTER RECEIVING A WRITTEN APPEAL
20 UNDER SUBSECTION (1) (A), THE HEAD OF A PUBLIC BODY SHALL DO 1 OF
21 THE FOLLOWING:

22 (A) WAIVE THE FEE.

23 (B) REDUCE THE FEE AND ISSUE A WRITTEN DETERMINATION TO THE
24 REQUESTING PERSON INDICATING THE SPECIFIC BASIS UNDER SECTION 4
25 THAT SUPPORTS THE REMAINING FEE. THE DETERMINATION SHALL INCLUDE A
26 CERTIFICATION FROM THE HEAD OF THE PUBLIC BODY THAT THE STATEMENTS
27 IN THE DETERMINATION ARE ACCURATE AND THAT THE REDUCED FEE AMOUNT

1 COMPLIES WITH ITS PUBLICLY AVAILABLE PROCEDURES AND GUIDELINES AND
2 SECTION 4.

3 (C) UPHOLD THE FEE AND ISSUE A WRITTEN DETERMINATION TO THE
4 REQUESTING PERSON INDICATING THE SPECIFIC BASIS UNDER SECTION 4
5 THAT SUPPORTS THE REQUIRED FEE. THE DETERMINATION SHALL INCLUDE A
6 CERTIFICATION FROM THE HEAD OF THE PUBLIC BODY THAT THE STATEMENTS
7 IN THE DETERMINATION ARE ACCURATE AND THAT THE FEE AMOUNT COMPLIES
8 WITH THE PUBLIC BODY'S PUBLICLY AVAILABLE PROCEDURES AND GUIDELINES
9 AND SECTION 4.

10 (D) ISSUE A NOTICE EXTENDING FOR NOT MORE THAN 10 BUSINESS
11 DAYS THE PERIOD DURING WHICH THE HEAD OF THE PUBLIC BODY MUST
12 RESPOND TO THE WRITTEN APPEAL. THE NOTICE OF EXTENSION SHALL
13 INCLUDE A DETAILED REASON OR REASONS WHY THE EXTENSION IS
14 NECESSARY. THE HEAD OF A PUBLIC BODY SHALL NOT ISSUE MORE THAN 1
15 NOTICE OF EXTENSION FOR A PARTICULAR WRITTEN APPEAL.

16 (3) A BOARD OR COMMISSION THAT IS THE HEAD OF A PUBLIC BODY IS
17 NOT CONSIDERED TO HAVE RECEIVED A WRITTEN APPEAL UNDER SUBSECTION
18 (2) UNTIL THE FIRST REGULARLY SCHEDULED MEETING OF THAT BOARD OR
19 COMMISSION FOLLOWING SUBMISSION OF THE WRITTEN APPEAL UNDER
20 SUBSECTION (1) (A).

21 (4) IN AN ACTION COMMENCED UNDER SUBSECTION (1) (B), A COURT
22 THAT DETERMINES THE PUBLIC BODY REQUIRED A FEE THAT EXCEEDS THE
23 AMOUNT PERMITTED UNDER ITS PUBLICLY AVAILABLE PROCEDURES AND
24 GUIDELINES OR SECTION 4 SHALL REDUCE THE FEE TO A PERMISSIBLE
25 AMOUNT. VENUE FOR AN ACTION AGAINST A LOCAL PUBLIC BODY IS PROPER
26 IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE PUBLIC RECORD OR
27 AN OFFICE OF THE PUBLIC BODY IS LOCATED. THE COURT SHALL DETERMINE

1 THE MATTER DE NOVO, AND THE BURDEN IS ON THE PUBLIC BODY TO
2 ESTABLISH THAT THE REQUIRED FEE COMPLIES WITH ITS PUBLICLY
3 AVAILABLE PROCEDURES AND GUIDELINES AND SECTION 4. FAILURE TO
4 COMPLY WITH AN ORDER OF THE COURT MAY BE PUNISHED AS CONTEMPT OF
5 COURT.

6 (5) AN ACTION COMMENCED UNDER THIS SECTION AND AN APPEAL FROM
7 AN ACTION COMMENCED UNDER THIS SECTION SHALL BE ASSIGNED FOR
8 HEARING AND TRIAL OR FOR ARGUMENT AT THE EARLIEST PRACTICABLE DATE
9 AND EXPEDITED IN EVERY WAY.

10 (6) IF THE REQUESTING PERSON PREVAILS IN AN ACTION COMMENCED
11 UNDER THIS SECTION BY RECEIVING A REDUCTION OF 50% OR MORE OF THE
12 TOTAL FEE, THE COURT MAY, IN ITS DISCRETION, AWARD ALL OR AN
13 APPROPRIATE PORTION OF REASONABLE ATTORNEYS' FEES, COSTS, AND
14 DISBURSEMENTS. THE AWARD SHALL BE ASSESSED AGAINST THE PUBLIC BODY
15 LIABLE FOR DAMAGES UNDER SUBSECTION (7).

16 (7) IF THE COURT DETERMINES IN AN ACTION COMMENCED UNDER THIS
17 SECTION THAT THE PUBLIC BODY HAS ARBITRARILY AND CAPRICIOUSLY
18 VIOLATED THIS ACT BY CHARGING AN EXCESSIVE FEE, THE COURT SHALL
19 ORDER THE PUBLIC BODY TO PAY A CIVIL FINE OF \$500.00, WHICH SHALL
20 BE DEPOSITED IN THE GENERAL FUND OF THE STATE TREASURY. THE COURT
21 MAY ALSO AWARD, IN ADDITION TO ANY ACTUAL OR COMPENSATORY DAMAGES,
22 PUNITIVE DAMAGES IN THE AMOUNT OF \$500.00 TO THE PERSON SEEKING THE
23 FEE REDUCTION. THE FINE AND ANY DAMAGES SHALL NOT BE ASSESSED
24 AGAINST AN INDIVIDUAL, BUT SHALL BE ASSESSED AGAINST THE NEXT
25 SUCCEEDING PUBLIC BODY THAT IS NOT AN INDIVIDUAL AND THAT KEPT OR
26 MAINTAINED THE PUBLIC RECORD AS PART OF ITS PUBLIC FUNCTION.

27 (8) AS USED IN THIS SECTION, "FEE" MEANS THE TOTAL FEE OR ANY

1 COMPONENT OF THE TOTAL FEE CALCULATED UNDER SECTION 4, INCLUDING
2 ANY DEPOSIT.

3 SEC. 10B. IF THE COURT DETERMINES, IN AN ACTION COMMENCED
4 UNDER THIS ACT, THAT A PUBLIC BODY WILLFULLY AND INTENTIONALLY
5 FAILED TO COMPLY WITH THIS ACT OR OTHERWISE ACTED IN BAD FAITH, THE
6 COURT SHALL ORDER THE PUBLIC BODY TO PAY, IN ADDITION TO ANY OTHER
7 AWARD OR SANCTION, A CIVIL FINE OF NOT LESS THAN \$2,500.00 OR MORE
8 THAN \$7,500.00 FOR EACH OCCURRENCE. IN DETERMINING THE AMOUNT OF
9 THE CIVIL FINE, THE COURT SHALL CONSIDER THE BUDGET OF THE PUBLIC
10 BODY AND WHETHER THE PUBLIC BODY HAS PREVIOUSLY BEEN ASSESSED
11 PENALTIES FOR VIOLATIONS OF THIS ACT. THE CIVIL FINE SHALL BE
12 DEPOSITED IN THE GENERAL FUND OF THE STATE TREASURY.

13 Sec. 11. (1) A state agency shall publish and make available
14 to the public all of the following:

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

17 (b) Promulgated rules.

18 (c) Other written statements ~~which~~ **THAT** implement or interpret
19 laws, rules, or policy, including but not limited to guidelines,
20 manuals, and forms with instructions, adopted or used by the agency
21 in the discharge of its functions.

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

24 (3) Except to the extent that a person has actual and timely
25 notice of the terms thereof, a person ~~shall not in any manner be~~ **IS**
26 **NOT** required to resort to, ~~or~~ **AND SHALL NOT** be adversely affected
27 by, a matter required to be published and made available, if the

1 matter is not so published and made available.

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

4 (5) A person may commence an action in the ~~circuit~~ court **OF**
5 **CLAIMS** to compel a state agency to comply with this section. If the
6 court determines that the state agency has failed to comply, the
7 court shall order the state agency to comply and shall award
8 reasonable attorneys' fees, costs, and disbursements to the person
9 commencing the action. The ~~circuit court for the county in which~~
10 ~~the state agency is located shall have~~ **COURT OF CLAIMS HAS**
11 **EXCLUSIVE** jurisdiction to issue the order.

12 (6) As used in this section, "state agency", "contested case",
13 and ~~"rules"~~ shall have the same meanings as ascribed to **"RULE" MEAN**
14 **"AGENCY", "CONTESTED CASE", AND "RULE" AS** those terms **ARE DEFINED**
15 in ~~Act No. 306 of the Public Acts of 1969, as amended, being~~
16 ~~sections 24.201 to 24.315 of the Michigan Compiled Laws.~~**THE**
17 **ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO**
18 **24.328.**

19 Enacting section 1. This amendatory act takes effect July 1,
20 2015.