

**SUBSTITUTE FOR
HOUSE BILL NO. 4001**

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending sections 2, 4, 5, and 10 (MCL 15.232, 15.234, 15.235,
and 15.240), as amended by 1996 PA 553, and by adding sections 10a
and 10b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Field name" means the label or identification of an
3 element of a computer data base that contains a specific item of
4 information, and includes but is not limited to a subject heading
5 such as a column header, data dictionary, or record layout.

6 (b) "FOIA coordinator" means either of the following:

7 (i) An individual who is a public body.

1 (ii) An individual designated by a public body in accordance
2 with section 6 to accept and process requests for public records
3 under this act.

4 (c) "Person" means an individual, corporation, limited
5 liability company, partnership, firm, organization, association,
6 governmental entity, or other legal entity. Person does not include
7 an individual serving a sentence of imprisonment in a state or
8 county correctional facility in this state or any other state, or
9 in a federal correctional facility.

10 (d) "Public body" means any of the following:

11 (i) A state officer, employee, agency, department, division,
12 bureau, board, commission, council, authority, or other body in the
13 executive branch of the state government, but does not include the
14 governor or lieutenant governor, the executive office of the
15 governor or lieutenant governor, or employees thereof.

16 (ii) An agency, board, commission, or council in the
17 legislative branch of the state government.

18 (iii) A county, city, township, village, intercounty, intercity,
19 or regional governing body, council, school district, special
20 district, or municipal corporation, or a board, department,
21 commission, council, or agency thereof.

22 (iv) Any other body which is created by state or local
23 authority or which is primarily funded by or through state or local
24 authority.

25 (v) The judiciary, including the office of the county clerk
26 and employees thereof when acting in the capacity of clerk to the
27 circuit court, is not included in the definition of public body.

1 (e) "Public record" **OR "RECORD"** means a writing prepared,
2 owned, used, in the possession of, or retained by a public body in
3 the performance of an official function, from the time it is
4 created. Public record does not include computer software. This act
5 separates public records **OR RECORDS** into the following 2 classes:

6 (i) Those that are exempt from disclosure under section 13.

7 (ii) All public records **OR RECORDS** that are not exempt from
8 disclosure under section 13 and which are subject to disclosure
9 under this act.

10 (f) "Software" means a set of statements or instructions that
11 when incorporated in a machine usable medium is capable of causing
12 a machine or device having information processing capabilities to
13 indicate, perform, or achieve a particular function, task, or
14 result. Software does not include computer-stored information or
15 data, or a field name if disclosure of that field name does not
16 violate a software license.

17 (g) "Unusual circumstances" means any 1 or a combination of
18 the following, but only to the extent necessary for the proper
19 processing of a request:

20 (i) The need to search for, collect, or appropriately examine
21 or review a voluminous amount of separate and distinct public
22 records pursuant to a single request.

23 (ii) The need to collect the requested public records from
24 numerous field offices, facilities, or other establishments which
25 are located apart from the particular office receiving or
26 processing the request.

27 (h) "Writing" means handwriting, typewriting, printing,

1 photostating, photographing, photocopying, and every other means of
2 recording, and includes letters, words, pictures, sounds, or
3 symbols, or combinations thereof, and papers, maps, magnetic or
4 paper tapes, photographic films or prints, microfilm, microfiche,
5 magnetic or punched cards, discs, drums, or other means of
6 recording or retaining meaningful content.

7 (i) "Written request" means a writing that asks for
8 information, and includes a writing transmitted by facsimile,
9 electronic mail, or other electronic means.

10 Sec. 4. (1) A public body may charge a fee for a public record
11 search, the necessary copying of a public record for inspection, or
12 for providing a copy of a public record ~~. Subject to subsections~~
13 ~~(3) and (4), the fee shall be limited to actual mailing costs, and~~
14 ~~to the actual incremental cost of duplication or publication~~
15 ~~including labor, the cost of search, examination, review, and the~~
16 ~~deletion and separation of exempt from nonexempt information as~~
17 ~~provided in section 14. A search for public record may be conducted~~
18 ~~or copies of public records may be furnished without charge or at a~~
19 ~~reduced charge~~ **IF IT HAS ESTABLISHED, MAKES PUBLICLY AVAILABLE, AND**
20 **FOLLOWS PROCEDURES AND GUIDELINES TO IMPLEMENT THIS SECTION AS**
21 **DESCRIBED IN SUBSECTION (4). EXCEPT AS OTHERWISE PROVIDED IN THIS**
22 **ACT, IF THE PUBLIC BODY ESTIMATES OR CHARGES A FEE IN ACCORDANCE**
23 **WITH THIS ACT, THE TOTAL FEE SHALL NOT EXCEED THE SUM OF THE**
24 **FOLLOWING:**

25 (A) **THAT PORTION OF LABOR COSTS DIRECTLY ASSOCIATED WITH**
26 **SEARCHING FOR, LOCATING, AND EXAMINING THE REQUESTED RECORDS. THE**
27 **PUBLIC BODY SHALL NOT CHARGE MORE THAN THE HOURLY WAGE, EXCLUDING**

1 THE COST OF BENEFITS, OF ITS LOWEST-PAID EMPLOYEE CAPABLE OF
2 SEARCHING FOR, LOCATING, AND EXAMINING THE REQUESTED RECORDS
3 REGARDLESS OF WHETHER THAT PERSON IS AVAILABLE OR WHO ACTUALLY
4 PERFORMS THE LABOR. OVERTIME WAGES SHALL NOT BE INCLUDED IN THE
5 CALCULATION OF THE LABOR COSTS UNDER THIS SUBDIVISION UNLESS
6 OVERTIME IS SPECIFICALLY REQUESTED, STIPULATED TO, OR APPROVED BY
7 THE REQUESTOR. LABOR COSTS UNDER THIS SUBDIVISION SHALL BE
8 ESTIMATED AND CHARGED IN INCREMENTS OF 15 MINUTES OR MORE, WITH ALL
9 PARTIAL TIME INCREMENTS ROUNDED DOWN.

10 (B) THAT PORTION OF LABOR COSTS DIRECTLY ASSOCIATED WITH THE
11 NECESSARY SEPARATING AND DELETING OF EXEMPT INFORMATION FROM
12 NONEXEMPT INFORMATION AS PROVIDED IN SECTION 14. THE PUBLIC BODY
13 SHALL NOT CHARGE MORE THAN THE HOURLY WAGE, EXCLUDING THE COST OF
14 BENEFITS, OF ITS LOWEST-PAID EMPLOYEE CAPABLE OF SEPARATING AND
15 DELETING EXEMPT INFORMATION FROM NONEXEMPT INFORMATION AS PROVIDED
16 IN SECTION 14, REGARDLESS OF WHETHER THE PERSON IS AVAILABLE OR WHO
17 ACTUALLY PERFORMS THE LABOR. OVERTIME WAGES SHALL NOT BE INCLUDED
18 IN THE CALCULATION OF THE LABOR COSTS UNDER THIS SUBDIVISION UNLESS
19 OVERTIME IS SPECIFICALLY REQUESTED, STIPULATED TO, OR APPROVED BY
20 THE REQUESTOR. LABOR COSTS UNDER THIS SUBDIVISION SHALL BE
21 ESTIMATED AND CHARGED IN INCREMENTS OF 15 MINUTES OR MORE, WITH ALL
22 PARTIAL TIME INCREMENTS ROUNDED DOWN.

23 (C) FOR RECORDS PROVIDED TO THE REQUESTOR ON NONPAPER PHYSICAL
24 MEDIA, THE ACTUAL AND MOST REASONABLY ECONOMICAL COST OF THE
25 COMPUTER DISCS, COMPUTER TAPES, OR OTHER DIGITAL OR SIMILAR MEDIA.
26 THE PUBLIC BODY MAY CHOOSE TO ACCEPT NONPAPER PHYSICAL MEDIA
27 PROVIDED BY THE REQUESTOR TO BE USED IN CONJUNCTION WITH FULFILLING

1 A REQUEST IN LIEU OF CHARGING THE REQUESTOR FOR THAT MEDIA. THE
2 REQUESTOR MAY STIPULATE THAT THE REQUESTED RECORDS BE PROVIDED ON
3 DIGITAL MEDIA, ELECTRONICALLY MAILED, OR OTHERWISE ELECTRONICALLY
4 PROVIDED TO HIM OR HER IN LIEU OF PAPER COPIES.

5 (D) FOR PAPER COPIES OF RECORDS PROVIDED TO THE REQUESTOR, THE
6 ACTUAL TOTAL INCREMENTAL COST OF DUPLICATION OR PUBLICATION, NOT
7 INCLUDING LABOR. THE FEE SHALL NOT EXCEED 10 CENTS PER PAGE FOR
8 COPIES OF RECORDS MADE ON 8-1/2- BY 11-INCH PAPER OR 8-1/2- BY 14-
9 INCH PAPER. THE STATE TREASURER SHALL ADJUST THE PER-PAGE CHARGE
10 FOR INFLATION BASED ON THE MOST COMPREHENSIVE INDEX OF CONSUMER
11 PRICES AVAILABLE FOR THE DETROIT AREA FROM THE UNITED STATES
12 DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS. THE ADJUSTMENT
13 SHALL BE MADE IN 2020 AND EVERY TENTH YEAR THEREAFTER. A PUBLIC
14 BODY SHALL UTILIZE THE MOST ECONOMICAL MEANS AVAILABLE FOR MAKING
15 COPIES OF PUBLIC RECORDS, INCLUDING USING DOUBLE-SIDED COPYING,
16 WHERE AVAILABLE.

17 (E) THE COST OF LABOR DIRECTLY ASSOCIATED WITH MAKING PAPER
18 COPIES, MAKING DIGITAL COPIES, OR TRANSFERRING DIGITAL RECORDS TO
19 BE GIVEN TO THE REQUESTOR ON NONPAPER MEDIA OR THROUGH THE INTERNET
20 OR OTHER ELECTRONIC MEANS AS REQUESTED, STIPULATED TO, OR APPROVED
21 BY THE REQUESTOR. THE PUBLIC BODY SHALL NOT CHARGE MORE THAN THE
22 HOURLY WAGE, EXCLUDING THE COST OF BENEFITS, OF ITS LOWEST-PAID
23 EMPLOYEE CAPABLE OF REPLICATING THE RECORDS NECESSARY TO COMPLY
24 WITH A REQUEST UNDER THIS ACT, REGARDLESS OF WHETHER THAT PERSON IS
25 AVAILABLE OR WHO ACTUALLY PERFORMS THE LABOR. HOWEVER, TOTAL LABOR
26 COSTS CALCULATED UNDER THIS SUBDIVISION SHALL NOT EXCEED AN AMOUNT
27 EQUAL TO 3 TIMES THE STATE MINIMUM HOURLY WAGE RATE DETERMINED

1 UNDER SECTION 4 OF THE MINIMUM WAGE LAW OF 1964, 1964 PA 154, MCL
2 408.384. OVERTIME WAGES SHALL NOT BE INCLUDED IN THE CALCULATION OF
3 LABOR COSTS UNLESS SPECIFICALLY REQUESTED, STIPULATED, OR APPROVED
4 BY THE REQUESTOR. LABOR COSTS UNDER THIS SUBDIVISION MAY BE
5 ESTIMATED AND CHARGED IN TIME INCREMENTS OF THE PUBLIC BODY'S
6 CHOOSING; HOWEVER, ALL PARTIAL TIME INCREMENTS SHALL BE ROUNDED
7 DOWN.

8 (F) THE ACTUAL COST OF POSTAGE FOR SENDING THE REQUESTED
9 RECORDS IN A REASONABLY ECONOMICAL AND JUSTIFIABLE MANNER. THE
10 PUBLIC BODY SHALL NOT USE OR CHARGE FOR EXPEDITED SHIPPING UNLESS
11 SPECIFICALLY REQUESTED, STIPULATED TO, OR APPROVED BY THE
12 REQUESTOR, BUT MAY CHARGE FOR CONFIRMATION OF RECEIPT OF DELIVERY.

13 (2) A PUBLIC BODY MAY PROVIDE RECORDS, FOR WHICH A FEE MAY
14 ORDINARILY BE CHARGED, WITHOUT CHARGE OR AT A REDUCED RATE if the
15 public body determines that a waiver or reduction of the fee is in
16 the public interest because searching for or furnishing copies of
17 the public record can be considered as primarily benefiting the
18 general public. A public record search shall be made and a copy of
19 a public record shall be furnished without charge for the first
20 ~~\$20.00~~ \$50.00 of the fee for each request ~~to an~~ BY EITHER OF THE
21 FOLLOWING:

22 (A) UP TO 2 TIMES IN ANY CALENDAR YEAR PER PUBLIC BODY, AN
23 individual who is entitled to information under this act and who
24 submits an affidavit stating that the individual is ~~then receiving~~
25 INDIGENT AND RECEIVING SPECIFIC public assistance or, if not
26 receiving public assistance, stating facts showing inability to pay
27 the cost because of indigency IF THE INDIVIDUAL REQUEST IS FOR

1 RECORDS PERTAINING TO THE INDIVIDUAL OR IS FOR OTHER PURPOSES THAT
2 ARE STATED IN THE AFFIDAVIT. AN INDIVIDUAL IS INELIGIBLE FOR THIS
3 CHARGE REDUCTION IF HE OR SHE REQUESTS THE RECORD IN CONJUNCTION
4 WITH OUTSIDE PARTIES WHO ARE OFFERING OR PROVIDING PAYMENT OR OTHER
5 REMUNERATION TO THE INDIVIDUAL TO MAKE THE REQUEST. IF THE
6 AFFIDAVIT DOES NOT CONTAIN A STATEMENT BY THE REQUESTOR THAT THE
7 REQUEST IS NOT BEING MADE IN CONJUNCTION WITH OUTSIDE PARTIES WHO
8 ARE OFFERING OR PROVIDING PAYMENT OR OTHER REMUNERATION TO THE
9 INDIVIDUAL FOR MAKING THE REQUEST, THE PUBLIC BODY MAY REDUCE THE
10 CHARGE CONTINGENT ON RECEIVING AN AFFIDAVIT CONTAINING THAT
11 STATEMENT.

12 (B) A NONPROFIT ORGANIZATION FORMALLY DESIGNATED BY THE STATE
13 TO CARRY OUT ACTIVITIES UNDER PART C OF THE DEVELOPMENTAL
14 DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT, PUBLIC LAW 106-402,
15 AND THE PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS
16 ACT, PUBLIC LAW 99-319, OR THEIR SUCCESSORS, FOR REQUESTS BEING
17 DONE DIRECTLY ON BEHALF OF THE ORGANIZATION OR ITS CLIENTS THAT ARE
18 ALL OF THE FOLLOWING:

19 (i) MADE FOR A REASON WHOLLY CONSISTENT WITH THE MISSION AND
20 PROVISIONS OF THOSE LAWS UNDER SECTION 931 OF THE MENTAL HEALTH
21 CODE, 1974 PA 258, MCL 330.1931.

22 (ii) REQUESTED FROM THE PUBLIC BODY IN A MANNER THAT REASONABLY
23 SEEKS TO LOWER THE PUBLIC BODY'S COSTS.

24 (iii) ACCOMPANIED BY DOCUMENTATION OF ITS DESIGNATION BY THE
25 STATE.

26 ~~—— (2) A public body may require at the time a request is made a~~
27 ~~good faith deposit from the person requesting the public record or~~

1 ~~series of public records, if the fee authorized under this section~~
2 ~~exceeds \$50.00. The deposit shall not exceed 1/2 of the total fee.~~

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

20 (4) **A PUBLIC BODY SHALL ESTABLISH PROCEDURES AND GUIDELINES TO**
21 **IMPLEMENT THIS SECTION AND SECTIONS 5, 10, AND 10A. A PUBLIC BODY**
22 **SHALL MAKE THE PROCEDURES AND GUIDELINES PUBLICLY AVAILABLE,**
23 **PROVIDE A PAPER COPY AT THE PUBLIC BODY'S OFFICE WITHOUT CHARGE ON**
24 **REQUEST, AND INCLUDE A COPY OF THE PROCEDURES AND GUIDELINES WITH**
25 **ITS INITIAL RESPONSE TO A REQUEST FOR INFORMATION. IF THE PUBLIC**
26 **BODY DIRECTLY OR INDIRECTLY ADMINISTERS OR MAINTAINS AN OFFICIAL**
27 **INTERNET PRESENCE, IT SHALL ALSO PUBLISH THE PROCEDURES AND**

1 GUIDELINES ON ITS WEBSITE. A PUBLIC BODY'S PROCEDURES AND
2 GUIDELINES SHALL INCLUDE THE USE OF A STANDARD FORM FOR DETAILED
3 ITEMIZATION OF ANY FEE AMOUNTS IN ITS RESPONSES TO REQUESTS UNDER
4 THIS ACT. THE DETAILED ITEMIZATION SHALL CLEARLY LIST AND EXPLAIN
5 THE ALLOWABLE CHARGES FOR EACH OF THE 6 FEE CATEGORIES LISTED UNDER
6 SUBSECTION (1) THAT COMPOSE THE TOTAL FEE USED FOR ESTIMATING OR
7 CHARGING PURPOSES. A PUBLIC BODY THAT HAS NOT ESTABLISHED
8 PROCEDURES AND GUIDELINES OR THAT DOES NOT MAKE THEM PUBLICLY
9 AVAILABLE WITHOUT CHARGE SHALL NOT CHARGE A FEE FOR A REQUEST IT
10 RECEIVES UNDER THIS ACT.

11 (5) IF THE PUBLIC BODY DIRECTLY OR INDIRECTLY ADMINISTERS OR
12 MAINTAINS AN OFFICIAL INTERNET PRESENCE, ANY RECORDS AVAILABLE TO
13 THE GENERAL PUBLIC ON THAT INTERNET SITE ARE NONEXEMPT RECORDS
14 UNDER SECTION 14 AND ARE EXEMPT FROM ANY FEE CHARGES UNDER
15 SUBSECTION (1) (B). WHEN PRACTICABLE, THE PUBLIC BODY SHALL, FREE OF
16 CHARGE, INCLUDE THE SPECIFIC WEBSITE ADDRESS FOR OBTAINING
17 REQUESTED RECORDS THAT ARE AVAILABLE ON ITS WEBSITE IN THE WRITTEN
18 RESPONSE TO THE REQUESTOR. IF A PORTION OF REQUESTED RECORDS IS
19 AVAILABLE ON THE PUBLIC BODY'S WEBSITE, THE PUBLIC BODY SHALL
20 SEPARATE THOSE RECORDS FROM RECORDS THAT ARE NOT AVAILABLE ON THE
21 WEBSITE ON THE DETAILED ITEMIZATION DESCRIBED IN SUBSECTION (4) SO
22 THAT THE REQUESTOR HAS THE OPTION TO NOT PAY A FEE UNDER SUBSECTION
23 (1) (C), (D), OR (E) FOR THOSE RECORDS AVAILABLE ON THE INTERNET.
24 THIS SUBSECTION DOES NOT PROHIBIT A REQUEST FOR A COPY OF A PUBLIC
25 RECORD THAT IS AVAILABLE ON THE INTERNET IN PAPER OR OTHER
26 SPECIFIED FORMAT. HOWEVER, IF THE PUBLIC BODY HAS INCLUDED THE
27 WEBSITE ADDRESS FOR A RECORD IN ITS WRITTEN RESPONSE TO THE

1 REQUESTOR AND THE REQUESTOR SPECIFICALLY REQUESTS A COPY IN A
2 DIFFERENT FORMAT, THE PUBLIC BODY MAY CHARGE FOR THE FULL AMOUNT OF
3 EMPLOYEE FRINGE BENEFITS ASSOCIATED WITH THE LABOR COST FEES
4 DESCRIBED IN SUBSECTION (1) (E) .

5 (6) A PUBLIC BODY MAY RELEASE A PUBLIC RECORD TO A REQUESTING
6 PERSON WITHOUT RECEIPT OF A WRITTEN REQUEST. IF THE REQUESTED
7 RECORD IS PUBLICLY AVAILABLE ON THE PUBLIC BODY'S WEBSITE, THE
8 PUBLIC BODY SHALL, TO THE BEST OF ITS GENERAL ABILITY, ATTEMPT TO
9 HELP, AID, OR FACILITATE A REQUESTOR'S EFFORTS TO LOCATE THE RECORD
10 WITHOUT THE NEED FOR A WRITTEN REQUEST.

11 (7) 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 PUBLIC
14 RECORDS BEFORE PROVIDING THE 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 FEES
17 DESCRIBED IN SUBSECTION (4) . THE DEPOSIT SHALL NOT EXCEED 1/2 OF
18 THE TOTAL ESTIMATED FEE, AND A PUBLIC BODY'S REQUEST FOR A DEPOSIT
19 SHALL INCLUDE A DETAILED ITEMIZATION AS REQUIRED UNDER SUBSECTION
20 (4) . THE RESPONSE SHALL ALSO CONTAIN A BEST EFFORTS ESTIMATE BY THE
21 PUBLIC BODY REGARDING THE TIME FRAME IT WILL TAKE THE PUBLIC BODY
22 TO PROVIDE THE RECORDS TO THE REQUESTOR. THE TIME FRAME ESTIMATE IS
23 NONBINDING UPON THE PUBLIC BODY, BUT THE PUBLIC BODY SHALL PROVIDE
24 THE ESTIMATE IN GOOD FAITH AND STRIVE TO BE REASONABLY ACCURATE AND
25 TO PROVIDE THE RECORDS IN A REASONABLE LENGTH OF TIME BASED ON THE
26 NATURE OF THE REQUEST IN THE PARTICULAR INSTANCE. IF A PUBLIC BODY
27 DOES NOT RESPOND IN A TIMELY MANNER AS DESCRIBED UNDER SECTION

1 5(2), IT IS NOT RELIEVED FROM ITS REQUIREMENTS TO PROVIDE PROPER
2 FEE CALCULATIONS AND TIME FRAME ESTIMATES IN ANY TARDY RESPONSES.
3 PROVIDING AN ESTIMATED TIME FRAME DOES NOT RELIEVE A PUBLIC BODY
4 FROM ANY OF THE OTHER REQUIREMENTS OF THIS ACT.

5 (8) IF A PUBLIC BODY DOES NOT RESPOND TO A WRITTEN REQUEST IN
6 A TIMELY MANNER AS REQUIRED UNDER SECTION 5(2), THE PUBLIC BODY
7 SHALL REDUCE THE FEES FOR LABOR COSTS OTHERWISE PERMITTED UNDER
8 SECTION 4 BY 10% FOR EACH DAY THE PUBLIC BODY EXCEEDS THE TIME
9 PERMITTED UNDER SECTION 5(2) FOR A RESPONSE TO THE REQUEST, WITH A
10 MAXIMUM 50% REDUCTION, IF EITHER OF THE FOLLOWING APPLIES:

11 (A) THE LATE RESPONSE WAS WILLFUL AND INTENTIONAL.

12 (B) THE WRITTEN REQUEST INCLUDED LANGUAGE THAT CONVEYED A
13 REQUEST FOR RECORDS WITHIN THE FIRST 500 WORDS OF THE BODY OF A
14 LETTER, FACSIMILE, ELECTRONIC MAIL, OR ELECTRONIC MAIL ATTACHMENT,
15 OR SPECIFICALLY INCLUDED THE WORDS, CHARACTERS, OR ABBREVIATIONS
16 FOR "FREEDOM OF INFORMATION", "INFORMATION", "FOIA", "COPY", OR A
17 RECOGNIZABLE MISSPELLING OF SUCH, OR APPROPRIATE LEGAL CODE
18 REFERENCE FOR THIS ACT, ON THE FRONT OF AN ENVELOPE, OR IN THE
19 SUBJECT LINE OF AN ELECTRONIC MAIL, LETTER, OR FACSIMILE COVER
20 PAGE.

21 (9) ~~(4)~~—This section does not apply to public records prepared
22 under an act or statute specifically authorizing the sale of those
23 public records to the public, or if the amount of the fee for
24 providing a copy of the public record is otherwise specifically
25 provided by an act or statute.

26 Sec. 5. (1) Except as provided in section 3, a person desiring
27 to inspect or receive a copy of a public record shall make a

1 written request for the public record to the FOIA coordinator of a
2 public body. A written request made by facsimile, electronic mail,
3 or other electronic transmission is not received by a public body's
4 FOIA coordinator until 1 business day after the electronic
5 transmission is made.

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

10 (a) Granting the request.

11 (b) Issuing a written notice to the requesting person denying
12 the request.

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

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

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

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

22 (A) THE FAILURE WAS WILLFUL AND INTENTIONAL.

23 (B) THE WRITTEN REQUEST INCLUDED LANGUAGE THAT CONVEYED A
24 REQUEST FOR RECORDS WITHIN THE FIRST 500 WORDS OF THE BODY OF A
25 LETTER, FACSIMILE, ELECTRONIC MAIL, OR ELECTRONIC MAIL ATTACHMENT,
26 OR SPECIFICALLY INCLUDED THE WORDS, CHARACTERS, OR ABBREVIATIONS
27 FOR "FREEDOM OF INFORMATION", "INFORMATION", "FOIA", "COPY", OR A

1 RECOGNIZABLE MISSPELLING OF SUCH, OR APPROPRIATE LEGAL CODE
2 REFERENCE TO THIS ACT, ON THE FRONT OF AN ENVELOPE OR IN THE
3 SUBJECT LINE OF AN ELECTRONIC MAIL, LETTER, OR FACSIMILE COVER
4 PAGE.

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

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

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

13 (5) ~~(4)~~ A written notice denying a request for a public record
14 in whole or in part is a public body's final determination to deny
15 the request or portion of that request. The written notice shall
16 contain:

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

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

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

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

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

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

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

12 (6) ~~(5)~~—The individual designated in section 6 as responsible
13 for the denial of the request shall sign the written notice of
14 denial.

15 (7) ~~(6)~~—If a public body issues a notice extending the period
16 for a response to the request, the notice shall specify the reasons
17 for the extension and the date by which the public body will do 1
18 of the following:

19 (a) Grant the request.

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

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

24 (8) ~~(7)~~—If a public body makes a final determination to deny
25 in whole or in part a request to inspect or receive a copy of a
26 public record or portion of that public record, the requesting
27 person may do either of the following:

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

3 (b) Commence an action in circuit court, pursuant to section
4 10.

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

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

11 (b) Commence an action in the circuit court to compel the
12 public body's disclosure of the public records within 180 days
13 after a public body's final determination to deny a request.

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

17 (a) Reverse the disclosure denial.

18 (b) Issue a written notice to the requesting person upholding
19 the disclosure denial.

20 (c) Reverse the disclosure denial in part and issue a written
21 notice to the requesting person upholding the disclosure denial in
22 part.

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

1 (3) A board or commission that is the head of a public body is
2 not considered to have received a written appeal under subsection
3 (2) until the first regularly scheduled meeting of that board or
4 commission following submission of the written appeal under
5 subsection (1)(a). If the head of the public body fails to respond
6 to a written appeal pursuant to subsection (2), or if the head of
7 the public body upholds all or a portion of the disclosure denial
8 that is the subject of the written appeal, the requesting person
9 may seek judicial review of the nondisclosure by commencing an
10 action in circuit court under subsection (1)(b).

11 (4) In an action commenced under subsection (1)(b), a court
12 that determines a public record is not exempt from disclosure shall
13 order the public body to cease withholding or to produce all or a
14 portion of a public record wrongfully withheld, regardless of the
15 location of the public record. The circuit court for the county in
16 which the complainant resides or has his or her principal place of
17 business, or the circuit court for the county in which the public
18 record or an office of the public body is located has venue over
19 the action. **UNLESS IT CAN SHOW GOOD CAUSE, THE PUBLIC BODY SHALL**
20 **NOT ASSERT AN EXEMPTION UNDER SECTION 13 THAT IT DID NOT ASSERT IN**
21 **EITHER A WRITTEN DENIAL OF THE REQUEST UNDER SECTION 5 OR AN APPEAL**
22 **UNDER SUBSECTION (1)(A). IF THE COURT FINDS THAT THE LEGAL BASIS**
23 **FOR AN ASSERTED EXEMPTION IS CLEARLY ERRONEOUS, THE COURT SHALL**
24 **REQUIRE THE PUBLIC BODY TO REDUCE ANY FEE OTHERWISE PERMITTED UNDER**
25 **SECTION 4 FOR PROVIDING THE RECORD BY 50%.** The court shall
26 determine the matter de novo and the burden is on the public body
27 to sustain its denial. The court, on its own motion, may view the

1 public record in controversy in private before reaching a decision.
2 Failure to comply with an order of the court may be punished as
3 contempt of court.

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

8 (6) If a person asserting the right to inspect, copy, or
9 receive a copy of all or a portion of a public record prevails in
10 an action commenced under this section, the court shall award
11 reasonable attorneys' fees, costs, and disbursements. If the person
12 or public body prevails in part, the court may, in its discretion,
13 award all or an appropriate portion of reasonable attorneys' fees,
14 costs, and disbursements. The award shall be assessed against the
15 public body liable for damages under subsection (7).

16 (7) If the circuit court determines in an action commenced
17 under this section that the public body has arbitrarily and
18 capriciously violated this act by refusal or delay in disclosing or
19 providing copies of a public record, the court shall award, in
20 addition to any actual or compensatory damages, punitive damages in
21 the amount of ~~\$500.00~~ **\$2,000.00** to the person seeking the right to
22 inspect or receive a copy of a public record. The damages shall not
23 be assessed against an individual, but shall be assessed against
24 the next succeeding public body that is not an individual and that
25 kept or maintained the public record as part of its public
26 function.

27 **SEC. 10A. (1) IF THE REQUESTING PERSON HAS A GOOD-FAITH BELIEF**

1 THAT THE FEE THE PUBLIC BODY REQUIRES FOR THE REQUESTED INFORMATION
2 IS AN UNREASONABLE FEE, THE REQUESTING PERSON MAY DO ANY OF THE
3 FOLLOWING:

4 (A) IF THE PUBLIC BODY PROVIDES FOR FEE APPEALS TO THE HEAD OF
5 THE PUBLIC BODY IN ITS PUBLICLY AVAILABLE PROCEDURES AND
6 GUIDELINES, SUBMIT TO THE HEAD OF THE PUBLIC BODY A WRITTEN APPEAL
7 THAT SPECIFICALLY STATES THE WORD "APPEAL" AND IDENTIFIES THE
8 REASON OR REASONS THAT THE REQUIRED FEE IS AN UNREASONABLE FEE.

9 (B) COMMENCE AN ACTION IN THE CIRCUIT COURT FOR A FEE
10 REDUCTION NOT LATER THAN 180 DAYS AFTER RECEIVING THE NOTICE OF THE
11 REQUIRED FEE OR A DETERMINATION OF AN APPEAL TO THE PUBLIC BODY,
12 BUT ONLY IF 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) AFTER PURSUING AN APPEAL UNDER SUBDIVISION (A), THE
18 REQUESTING PERSON HAS A GOOD-FAITH BELIEF THAT THE REQUIRED FEE
19 REMAINS AN UNREASONABLE FEE.

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

23 (A) WAIVE THE FEE.

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

1 CONTAINED THEREIN ARE ACCURATE AND THAT THE REDUCED FEE AMOUNT IS
2 NOT AN UNREASONABLE FEE.

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 CONTAINED THEREIN ARE ACCURATE AND THAT THE PERMITTED FEE IS NOT AN
8 UNREASONABLE FEE.

9 (D) UNDER UNUSUAL CIRCUMSTANCES, ISSUE A NOTICE EXTENDING FOR
10 NOT MORE THAN 10 BUSINESS DAYS THE PERIOD DURING WHICH THE HEAD OF
11 THE PUBLIC BODY SHALL RESPOND TO THE WRITTEN APPEAL. THE HEAD OF A
12 PUBLIC BODY SHALL NOT ISSUE MORE THAN 1 NOTICE OF EXTENSION FOR A
13 PARTICULAR WRITTEN APPEAL.

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

19 (4) IN AN ACTION COMMENCED UNDER SUBSECTION (1) (B), IF A COURT
20 DETERMINES THAT THE PUBLIC BODY REQUIRED AN UNREASONABLE FEE, IT
21 SHALL REDUCE THE FEE TO AN AMOUNT SUPPORTED UNDER SECTION 4. THE
22 CIRCUIT COURT FOR THE COUNTY IN WHICH THE COMPLAINANT RESIDES OR
23 HAS HIS OR HER PRINCIPAL PLACE OF BUSINESS, OR THE CIRCUIT COURT
24 FOR THE COUNTY IN WHICH THE PUBLIC RECORD OR AN OFFICE OF THE
25 PUBLIC BODY IS LOCATED, HAS VENUE OVER THE ACTION. THE COURT SHALL
26 DETERMINE THE MATTER DE NOVO, AND THE BURDEN IS ON THE PUBLIC BODY
27 TO ESTABLISH THAT THE REQUIRED FEE IS NOT AN UNREASONABLE FEE.

1 FAILURE TO COMPLY WITH AN ORDER OF THE COURT MAY BE PUNISHED AS
2 CONTEMPT OF COURT.

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

7 (6) IF A PERSON ASSERTING THE RIGHT TO A REDUCTION IN FEES
8 PREVAILS IN AN ACTION COMMENCED UNDER SUBSECTION (1) (B) (i), THE
9 COURT MAY, IN ITS DISCRETION, AWARD ALL OR AN APPROPRIATE PORTION
10 OF REASONABLE ATTORNEY FEES, COSTS, AND DISBURSEMENTS. IF THE
11 PERSON ASSERTING THE RIGHT TO A REDUCTION IN FEES PREVAILS IN AN
12 ACTION COMMENCED UNDER SUBSECTION (1) (B) (ii), THE COURT SHALL AWARD
13 REASONABLE ATTORNEY FEES, COSTS, AND DISBURSEMENTS. IF THE PERSON
14 ASSERTING THE RIGHT TO A REDUCTION IN FEES PREVAILS IN AN ACTION
15 COMMENCED UNDER SUBSECTION (1) (B) (iii) AND THE COURT FINDS THAT THE
16 HEAD OF THE PUBLIC BODY'S BASIS FOR IMPOSING THE FEE CONTAINED IN
17 THE WRITTEN NOTICE WAS UNSUPPORTED OR WAS CLEARLY ERRONEOUS, THE
18 COURT SHALL AWARD REASONABLE ATTORNEY FEES, COSTS, AND
19 DISBURSEMENTS. AN AWARD UNDER THIS SUBSECTION SHALL BE ASSESSED
20 AGAINST THE PUBLIC BODY LIABLE FOR DAMAGES UNDER SUBSECTION (7).

21 (7) IF THE CIRCUIT COURT DETERMINES IN AN ACTION COMMENCED
22 UNDER THIS SECTION THAT THE PUBLIC BODY HAS ARBITRARILY AND
23 CAPRICIOUSLY VIOLATED THIS ACT BY CHARGING AN UNREASONABLE FEE, THE
24 COURT SHALL AWARD, IN ADDITION TO ANY ACTUAL OR COMPENSATORY
25 DAMAGES, PUNITIVE DAMAGES IN THE AMOUNT OF \$1,000.00 TO THE PERSON
26 SEEKING THE RIGHT TO INSPECT OR RECEIVE A COPY OF A PUBLIC RECORD.
27 THE DAMAGES SHALL NOT BE ASSESSED AGAINST AN INDIVIDUAL, BUT SHALL

1 BE ASSESSED AGAINST THE NEXT SUCCEEDING PUBLIC BODY THAT IS NOT AN
2 INDIVIDUAL AND THAT KEPT OR MAINTAINED THE PUBLIC RECORD AS PART OF
3 ITS PUBLIC FUNCTION.

4 (8) AS USED IN THIS SECTION, "UNREASONABLE FEE" MEANS A FEE
5 THAT UNREASONABLY EXCEEDS THE FEE PERMITTED UNDER SECTION 4.

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