

HOUSE BILL NO. 4736

June 19, 2019, Introduced by Reps. Cherry, VanSingel, Love, Brixie, Sneller, Hood and Kuppa and referred to the Committee on Natural Resources and Outdoor Recreation.

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



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

9 (2) Unless otherwise agreed to in writing by the person making
10 the request, a public body shall respond to a request for a public
11 record within 5 business days after the public body receives the
12 request by doing 1 of the 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 **(e) If the request is made to the FOIA coordinator for the**
23 **department of natural resources for records relating to the**
24 **specific location of game obtained by the department of natural**
25 **resources during any restoration, management, or research project**
26 **conducted under section 40501 of the natural resources and**
27 **environmental protection act, 1994 PA 451, MCL 324.40501, or the**
28 **expenditure of money under section 43553 of the natural resources**
29 **and environmental protection act, 1994 PA 451, MCL 324.43553, 1 of**



1 the following:

2 (i) Responding as described in subdivision (a), (b), (c), or
3 (d).

4 (ii) Granting the request on the condition that the requesting
5 person sign a form indicating that the person shall not use the
6 information of game location to take game or assist others in the
7 taking of game.

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

11 (a) The failure was willful and intentional.

12 (b) The written request included language that conveyed a
13 request for information within the first 250 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 to 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 (4) In a civil action to compel a public body's disclosure of
22 a public record under section 10, the court shall assess damages
23 against the public body ~~pursuant to~~**under** section 10(7) if the
24 court has done both of the following:

25 (a) Determined that the public body has not complied with
26 subsection (2).

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

29 (5) A written notice denying a request for a public record in



1 whole or in part is a public body's final determination to deny the
 2 request or portion of that request. The written notice must
 3 contain:

4 (a) An explanation of the basis under this act or other
 5 statute for the determination that the public record, or portion of
 6 that public record, is exempt from disclosure, if that is the
 7 reason for denying all or a portion of the request.

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

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

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

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

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

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

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

27 (7) If a public body issues a notice extending the period for
 28 a response to the request, the notice must specify the reasons for
 29 the extension and the date by which the public body will do 1 of



1 the following:

2 (a) Grant the request.

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

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

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

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

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

14 (9) Notwithstanding any other provision of this act to the
15 contrary, a public body that maintains a law enforcement records
16 management system and stores public records for another public body
17 that subscribes to the law enforcement records management system is
18 not in possession of, retaining, or the custodian of, a public
19 record stored on behalf of the subscribing public body. If the
20 public body that maintains a law enforcement records management
21 system receives a written request for a public record that is
22 stored on behalf of a subscribing public body, the public body that
23 maintains the law enforcement records management system shall,
24 within 10 business days after receipt of the request, give written
25 notice to the requesting person identifying the subscribing public
26 body and stating that the requesting person shall submit the
27 request to the subscribing public body. As used in this subsection,
28 "law enforcement records management system" means a data storage
29 system that may be used voluntarily by subscribers, including any



1 subscribing public bodies, to share information and facilitate
2 intergovernmental collaboration in the provision of law enforcement
3 services.

4 Enacting section 1. This amendatory act does not take effect
5 unless Senate Bill No. ____ or House Bill No. 4735 (request no.
6 02153'19) of the 100th Legislature is enacted into law.

