

Legislative Analysis



FOIA REQUESTS BY INCARCERATED INDIVIDUALS

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<http://www.house.mi.gov/hfa>

House Bill 4427 (H-5) as reported from committee

Sponsor: Rep. Stephanie A. Young

Committee: Criminal Justice

Complete to 6-5-24

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4427 would amend the Freedom of Information Act (FOIA) to allow access by an incarcerated individual to certain public documents that relate to their own case, to an arrest or prosecution or juvenile adjudication of their minor child for whom they have not been denied parenting time under the Child Custody Act, or to an arrest or prosecution or juvenile adjudication for an offense the incarcerated individual or minor child was an alleged victim of.

Persons who can request FOIA records

Currently, FOIA says that it is the state's public policy that all *persons, except those persons incarcerated in state or local correctional facilities*, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with the act. The bill would delete the italicized text and provide that the rest of the sentence is subject to the provisions described under "Records requests by incarcerated individuals," below.

In addition, FOIA currently defines *person* as an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity—but specifically excludes an individual serving a sentence of imprisonment in a federal correctional facility or in a state or county correctional facility in Michigan or any other state. The bill would eliminate this exclusion.

Records requests by incarcerated individuals

The bill would provide that the right to receive a copy of a public record under FOIA is available to an individual incarcerated in a county, state, or federal correctional facility in Michigan or any other state *only if* all of the following are met:

- In addition to the other requirements for properly requesting public records under FOIA, the request indicates it is made under these provisions.
- The record requested contains one or more specific references to the incarcerated individual or to a minor child of the incarcerated individual for whom they have not been denied parenting time under the Child Custody Act.
- The record is related to one or more of the following:
 - An arrest or prosecution of the incarcerated individual.
 - An arrest, prosecution, or juvenile adjudication of the individual's minor child described above.
 - An arrest, prosecution, or juvenile adjudication that involves the incarcerated individual, or their minor child described above, as an alleged victim.
- The record is otherwise accessible to the incarcerated individual by law.

- The record is not exempt under section 13 of the act.¹
- If applicable, the request is accompanied by an affidavit of the incarcerated individual attesting to both of the following:
 - That the minor child identified in the request as the individual's minor child to whom a record relates is in fact the individual's minor child.
 - That the incarcerated individual has in fact not been denied parenting time for that minor child under the Child Custody Act.

An incarcerated individual making a request as described above would be exempt from a provision that requires the requestor's contact information to include a valid phone number or email address.

The bill says that the right of incarcerated individuals described above is not intended to interfere with any properly adopted Department of Corrections rules regarding the content of mail that may be delivered to an individual incarcerated in a state correctional facility in Michigan.

Denial of a request

If a **public body** that receives a request from an incarcerated individual as described above does not possess any record related to an arrest or prosecution involving the incarcerated individual or their minor child, the public body would have to deny the request in a response provided within 30 calendar days after receiving the request. The response would have to certify that the public body does not possess any record related to an arrest or prosecution involving the incarcerated individual or their minor child as described above. A denial made under these provisions would not be subject to appeal under the act. [Note that these provisions do not address records related to juvenile adjudications as allowed above.]

Public body means any of the following:

- A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, except for the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof.
- An agency, board, commission, or council in the legislative branch of the state government.
- A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.
- Any other body created by state or local authority or primarily funded by or through state or local authority.

Public body does *not* include the judiciary (which includes the office of the county clerk and its employees when acting in the capacity of clerk to the circuit court).

¹ The section describes records a public body may exempt from disclosure under FOIA, such as those involving security concerns, trade secrets, or invasion of privacy. <http://legislature.mi.gov/doc.aspx?mcl-15-243>

Response to request from incarcerated individual

In general under FOIA, a public body is required to respond to a request for a public record within five business days after receiving the request by granting the request, issuing a written notice denying the request, granting the request in part and issuing a written notice denying the request in part, or *issuing a notice extending for not more than 10 business days the period during which the public body must respond to the request.*

Under the bill, the above response requirement would not apply to a request received under the bill by the Department of Corrections or a local law enforcement agency from an individual incarcerated in a state or local correctional facility in Michigan. In those cases, except as described under “Denial of a request,” above, the department or agency would have 30 calendar days after receiving the request to grant it, issue a written notice denying it, or grant it in part and issue a written notice denying it in part.

In addition, the language italicized above (related to issuing a notice of extension) would not apply to a request received by the Department of Corrections or a local law enforcement agency from an individual incarcerated in a state or local correctional facility in Michigan.

MCL 15.231 et seq.

BACKGROUND:

The bill is similar to House Bill 4617 of the 2021-22 legislative session, which was reported from the House Oversight committee.²

FISCAL IMPACT:

House Bill 4427 could have a fiscal impact on the state or local units of government depending on the number of public records requested under provisions of the bill and how the increase in record requests affects administrative costs. An increase in records requested from the Department of Corrections or local law enforcement agency would have a nominal fiscal impact on those entities, and any associated costs could be absorbed by existing appropriations or local funds.

POSITIONS:

Representatives of the following entities testified in support of the bill (2-27-24):

- Safe and Just Michigan
- Organization of Exonerees
- Michigan Collaborative to End Mass Incarceration
- Innocence Project
- Humanity for Prisoners

The following entities indicated support for the bill:

- ACLU of Michigan (2-27-24)
- Citizens for Prison Reform (2-27-24)

² <https://www.legislature.mi.gov/documents/2021-2022/billanalysis/House/pdf/2021-HLA-4617-5C0381C5.pdf>

- Cooley Innocence Project (2-27-24)
- Criminal Defense Attorneys of Michigan (2-27-24)
- Michigan Chapter of Citizens United for the Rehabilitation of Errants (2-27-24)
- Michigan Innocence Clinic, University of Michigan Law School (2-27-24)
- Michigan League for Public Policy (2-27-24)
- Nation Outside (5-14-24)

The Department of Corrections indicated a neutral position on the bill. (2-27-24)

The Michigan Sheriffs' Association indicated opposition to the bill. (5-14-24)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.