

HOUSE BILL NO. 5422

February 07, 2024, Introduced by Reps. Martin, Steele, Jaime Greene, St. Germaine, Tisdell, Borton, Kuhn, Wozniak, Kunse, Bierlein, Paquette, Bruck, BeGole, Lightner and Bollin and referred to the Committee on Government Operations.

A bill to amend 1976 PA 442, entitled "Freedom of information act," by amending sections 10 and 10a (MCL 15.240 and 15.240a), section 10 as amended and section 10a as added by 2014 PA 563.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10. (1) If a public body makes a final determination to
2 deny all or a portion of a request, the ~~requesting person~~ **requestor**
3 may do ~~1~~ **any** of the following: ~~at his or her option:~~

4 (a) Submit to the head of the public body a written appeal
5 that specifically states the word "appeal" and identifies the

1 reason or reasons for reversal of the denial.

2 (b) Commence a civil action in the circuit court, or if the
3 decision of a state public body is at issue, the court of claims,
4 to compel the public body's disclosure of the public records within
5 180 days after ~~a~~**the** public body's final determination to deny a
6 request.

7 **(c) Submit to the commission a written appeal that**
8 **specifically states the word "appeal" and identifies the reason or**
9 **reasons for reversal of the denial.**

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

13 (a) Reverse the disclosure denial.

14 (b) Issue a written notice to the ~~requesting person~~**requestor**
15 upholding the disclosure denial.

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

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

24 (3) A board or commission that is the head of a public body is
25 not considered to have received a written appeal under subsection
26 (2) until the first regularly scheduled meeting of that board or
27 commission following submission of the written appeal under
28 subsection (1)(a). If the head of the public body fails to respond
29 to a written appeal pursuant to subsection (2), or if the head of

1 the public body upholds all or a portion of the disclosure denial
2 that is the subject of the written appeal, the ~~requesting person~~
3 **requestor** may seek judicial review of the nondisclosure by
4 commencing a civil action under subsection (1) (b).

5 (4) In an action commenced under subsection (1) (b), a court
6 that determines a public record **or portion of a public record** is
7 not exempt from disclosure shall order the public body to cease
8 withholding or to produce all or a portion of a public record
9 wrongfully withheld, regardless of the location of the public
10 record. Venue for an action against a local public body is proper
11 in the circuit court for the county in which the public record or
12 an office of the public body is located. ~~has venue over the action.~~
13 The court shall determine the matter de novo and the burden is on
14 the public body to sustain its denial. **In defending an action**
15 **commenced under subsection (1) (b), a public body is limited to the**
16 **reasons given in its response denying the request. If the public**
17 **body failed to timely respond to the request, it waives the right**
18 **to assert any exemption in section 13 as a basis to withhold all or**
19 **any portion of a public record.** The court, on its own motion, may
20 view the public record in controversy in private before reaching a
21 decision. Failure to comply with an order of the court may be
22 punished as contempt of court. **Notwithstanding any other provision**
23 **of this subsection, a court may permit the redaction of material**
24 **pursuant to an exemption not asserted in a public body's initial**
25 **response if the court determines that the release of the exempted**
26 **material would disclose privileged material, Social Security**
27 **numbers, or medical information; would violate the law; or would**
28 **result in a disclosure that is substantially outweighed by a public**
29 **interest in nondisclosure.**

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

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

14 (7) ~~If the court determines in an action commenced under this~~
15 ~~section that the public body has arbitrarily and capriciously~~
16 ~~violated this act by refusal or delay in disclosing or providing~~
17 ~~copies of a public record, the court shall order the public body to~~
18 ~~pay a civil fine of \$1,000.00, which shall be deposited into the~~
19 ~~general fund of the state treasury. The court shall award, in~~
20 ~~addition to any actual or compensatory damages, punitive damages in~~
21 ~~the amount of \$1,000.00 to the person seeking the right to inspect~~
22 ~~or receive a copy of a public record. The damages shall not be~~
23 ~~assessed against an individual, but shall be assessed against the~~
24 ~~next succeeding public body that is not an individual and that kept~~
25 ~~or maintained the public record as part of its public function.~~**If**
26 **an attorney appeals a request filed by that attorney to a court or**
27 **the commission and prevails as provided in subsection (6), that**
28 **attorney is entitled to whatever fees and costs would be awarded if**
29 **the attorney had represented a client in that appeal, including the**

1 **attorney fees that would have been awarded for that representation.**

2 Sec. 10a. (1) If a public body requires a fee that exceeds the
3 amount permitted under its publicly available procedures and
4 guidelines or section 4, the ~~requesting person~~ **requestor** may do any
5 of the following:

6 (a) If the public body provides for fee appeals to the head of
7 the public body in its publicly available procedures and
8 guidelines, submit to the head of the public body a written appeal
9 for a fee reduction that specifically states the word "appeal" and
10 identifies how the required fee exceeds the amount permitted under
11 the public body's available procedures and guidelines or section 4.

12 (b) Commence a civil action in the circuit court, or if the
13 decision of a state public body is at issue, in the court of
14 claims, for a fee reduction. The action must be filed within 45
15 days after receiving the notice of the required fee or a
16 determination of an appeal to the head of a public body. If a civil
17 action is commenced against the public body under this subdivision,
18 the public body is not obligated to complete the processing of the
19 written request for the public record at issue until the court
20 resolves the fee dispute. An action ~~shall~~ **must** not be filed under
21 this subdivision unless 1 of the following applies:

22 (i) The public body does not provide for appeals under
23 subdivision (a).

24 (ii) The head of the public body failed to respond to a written
25 appeal as required under subsection (2).

26 (iii) The head of the public body issued a determination to a
27 written appeal as required under subsection (2).

28 (c) **Submit to the commission a written appeal for a fee**
29 **reduction that specifically states the word "appeal" and identifies**

1 **how the required fee exceeds the amount permitted under the public**
 2 **body's available procedures and guidelines or section 4.**

3 (2) Within 10 business days after receiving a written appeal
 4 under subsection (1)(a), the head of a public body shall do 1 of
 5 the following:

6 (a) Waive the fee.

7 (b) Reduce the fee and issue a written determination to the
 8 ~~requesting person~~ **requestor** indicating the specific basis under
 9 section 4 that supports the remaining fee. The determination ~~shall~~
 10 **must** include a certification from the head of the public body that
 11 the statements in the determination are accurate and that the
 12 reduced fee amount complies with its publicly available procedures
 13 and guidelines and section 4.

14 (c) Uphold the fee and issue a written determination to the
 15 ~~requesting person~~ **requestor** indicating the specific basis under
 16 section 4 that supports the required fee. The determination ~~shall~~
 17 **must** include a certification from the head of the public body that
 18 the statements in the determination are accurate and that the fee
 19 amount complies with the public body's publicly available
 20 procedures and guidelines and section 4.

21 ~~(d) Issue a notice extending for not more than 10 business~~
 22 ~~days the period during which the head of the public body must~~
 23 ~~respond to the written appeal. The notice of extension shall~~
 24 ~~include a detailed reason or reasons why the extension is~~
 25 ~~necessary. The head of a public body shall not issue more than 1~~
 26 ~~notice of extension for a particular written appeal.~~

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

1 commission following submission of the written appeal under
2 subsection (1) (a).

3 (4) In an action commenced under subsection (1) (b), a court
4 that determines the public body required a fee that exceeds the
5 amount permitted under its publicly available procedures and
6 guidelines or section 4 shall reduce the fee to a permissible
7 amount. Venue for an action against a local public body is proper
8 in the circuit court for the county in which the public record or
9 an office of the public body is located. The court shall determine
10 the matter de novo, and the burden is on the public body to
11 establish that the required fee complies with its publicly
12 available procedures and guidelines and section 4. Failure to
13 comply with an order of the court may be punished as contempt of
14 court.

15 (5) An action commenced under this section and an appeal from
16 an action commenced under this section ~~shall~~**must** be assigned for
17 hearing and trial or for argument at the earliest practicable date
18 and expedited in every way.

19 (6) If the ~~requesting person~~**requestor** prevails in an action
20 commenced under this section by receiving a reduction of ~~50%~~**25%** or
21 more of the total fee, the court ~~may, in its discretion,~~**shall**
22 award all or an appropriate portion of reasonable ~~attorneys'~~
23 **attorney** fees, costs, and disbursements. ~~The award shall be~~
24 ~~assessed against the public body liable for damages under~~
25 ~~subsection (7).~~

26 (7) ~~If the court determines in an action commenced under this~~
27 ~~section that the public body has arbitrarily and capriciously~~
28 ~~violated this act by charging an excessive fee, the court shall~~
29 ~~order the public body to pay a civil fine of \$500.00, which shall~~

~~1 be deposited in the general fund of the state treasury. The court~~
~~2 may also award, in addition to any actual or compensatory damages,~~
~~3 punitive damages in the amount of \$500.00 to the person seeking the~~
~~4 fee reduction. The fine and any damages shall not be assessed~~
~~5 against an individual, but shall be assessed against the next~~
~~6 succeeding public body that is not an individual and that kept or~~
~~7 maintained the public record as part of its public function.~~**If an**
8 attorney appeals a request filed by that attorney to a court or the
9 commission and prevails as provided in subsection (6), that
10 attorney is entitled to whatever fees and costs would be awarded if
11 the attorney had represented a client in that appeal, including the
12 attorney fees that would have been awarded for that representation.

13 (8) As used in this section, "fee" means the total fee or any
14 component of the total fee calculated under section 4, including
15 any deposit.

16 Enacting section 1. This amendatory act does not take effect
17 unless all of the following bills of the 102nd Legislature are
18 enacted into law:

19 (a) Senate Bill No. ____ or House Bill No. 5427 (request no.
20 04892'23).

21 (b) Senate Bill No. ____ or House Bill No. 5426 (request no.
22 05111'23).

23 (c) Senate Bill No. ____ or House Bill No. 5425 (request no.
24 05113'23).

25 (d) Senate Bill No. ____ or House Bill No. 5424 (request no.
26 05114'23).

27 (e) Senate Bill No. ____ or House Bill No. 5423 (request no.
28 05115'23).