

HOUSE BILL NO. 5426

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

A bill to amend 1976 PA 442, entitled "Freedom of information act," by amending sections 3, 4, 5, and 6 (MCL 15.233, 15.234, 15.235, and 15.236), section 3 as amended by 2018 PA 523, section 4 as amended by 2020 PA 38, section 5 as amended by 2020 PA 36, and section 6 as amended by 1996 PA 553.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) Except as expressly provided in section 13, upon
2 providing a public body's FOIA coordinator with a written request

1 that describes a public record sufficiently to enable the public
 2 body to find the public record, a person has a right to inspect,
 3 copy, or receive copies of the requested public record of the
 4 public body.

5 (2) A request ~~from a person, other than an individual who~~
 6 ~~qualifies as indigent under section 4(2)(a),~~ must include the
 7 ~~requesting person's~~ **requestor's** complete name, address, and contact
 8 information, and, if the ~~request is made by~~ **requestor is** a person
 9 other than an individual, the complete name, address, and contact
 10 information of the ~~person's~~ **requestor's** agent who is an individual.
 11 ~~An address must be written in compliance with United States Postal~~
 12 ~~Service addressing standards.~~ Contact information must include a
 13 valid telephone number or ~~electronic mail~~ **email** address.

14 (3) A person has a right to subscribe to future issuances of
 15 public records that are created, issued, or disseminated on a
 16 regular basis. A subscription is valid for up to 6 months, at the
 17 request of the subscriber, and is renewable.

18 (4) An employee of a public body who receives a request for a
 19 public record shall promptly forward that request to the freedom of
 20 information act coordinator.

21 (5) ~~(2)~~ A freedom of information act coordinator shall keep a
 22 ~~copy~~ **copies** of all written requests for public records ~~of the~~
 23 **following** on file for ~~no less than~~ **at least** 1 year: -

24 (a) **All written requests for public records.**

25 (b) **All of the public body's responses to requests for public**
 26 **records.**

27 (c) **Records of all dates on which requested public records**
 28 **were produced.**

29 (d) **Records of all fees charged to requestors for the**

1 production of public records.

2 (6) As to each request for a public record, the minimum 1-year
3 retention period described in subsection (5) commences not more
4 than 30 days after the date the record is produced or its
5 production is denied. During the minimum 1-year period, all records
6 described in subsection (5) (a) to (d) must be published in 1 of the
7 following ways, as applicable:

8 (a) If the public body directly or indirectly maintains an
9 official internet presence, the public body shall post those
10 records on a portion of the public body's website that is fully
11 accessible to the public.

12 (b) If the public body does not directly or indirectly
13 maintain an official internet presence, the public body shall make
14 those records available for inspection by members of the public at
15 the public body's principal office or by request.

16 (7) ~~(3)~~ A public body shall furnish a ~~requesting person~~
17 **requestor** a reasonable opportunity for inspection and examination
18 of its public records, and shall furnish reasonable facilities for
19 making memoranda or abstracts from its public records during the
20 usual business hours. A public body may make reasonable rules
21 necessary to protect its public records and to prevent excessive
22 and unreasonable interference with the discharge of its functions.
23 A public body shall protect public records from loss, unauthorized
24 alteration, mutilation, or destruction.

25 ~~(4) This act does not require a public body to make a~~
26 ~~compilation, summary, or report of information, except as required~~
27 ~~in section 11.~~

28 (8) ~~(5)~~ This act does not require a public body to create a
29 new public record, except as required in section 11, and to the

1 extent required by this act for the furnishing of copies, or edited
2 copies pursuant to section 14(1), of an already existing public
3 record.

4 (9) ~~(6)~~—The custodian of a public record shall, upon written
5 request, furnish a ~~requesting person~~ **requestor** a certified copy of
6 a public record.

7 (10) **Except as otherwise provided in this subsection, a public**
8 **body shall produce requested public records in electronic format**
9 **unless production in electronic format would significantly increase**
10 **the fee charged to the requestor. If production in electronic**
11 **format would increase the fee by more than \$20.00, or 10%,**
12 **whichever is greater, the public body shall notify the requestor of**
13 **the difference in cost and permit the requestor to choose between**
14 **production in electronic format or an alternative format. This**
15 **subsection does not apply to either of the following:**

16 (a) **A public body that lacks the technological capability**
17 **necessary to produce public records in an electronic format in the**
18 **particular instance.**

19 (b) **A requestor that specifies that records be produced in a**
20 **nonelectronic format or otherwise be made available for inspection.**

21 Sec. 4. (1) A public body may charge a fee for a public record
22 search, for the necessary copying of a public record for
23 inspection, or for providing a copy of a public record if it has
24 established, makes publicly available, and follows procedures and
25 guidelines to implement this section as described in subsection
26 (4). Subject to subsections (2), (3), (4), (5), and ~~(9)~~, **(8)**, the
27 fee must be limited to actual mailing costs, and to the actual
28 incremental cost of duplication or publication including labor, the
29 cost of search, examination, review, and the deletion and

1 separation of exempt from nonexempt information as provided in
2 section 14. Except as otherwise provided in this act, if the public
3 body estimates or charges a fee in accordance with this act, the
4 total fee must not exceed the sum of the following components:

5 (a) That portion of labor costs directly associated with the
6 necessary searching for, locating, and examining of public records
7 in conjunction with receiving and fulfilling a granted written
8 request. The public body shall not charge more than the hourly wage
9 of its lowest-paid employee capable of searching for, locating, and
10 examining the public records in the particular instance regardless
11 of whether that person is available or who actually performs the
12 labor. Labor costs under this subdivision ~~shall~~**must** be estimated
13 and charged in increments of 15 minutes or more, with all partial
14 time increments rounded down. **For purposes of this subdivision, a**
15 **public body's review may consist only of the review necessary to**
16 **determine whether a record is responsive, and no fee may be charged**
17 **for reviewing records for any other purpose.**

18 (b) That portion of labor costs, including necessary review,
19 if any, directly associated with the separating and deleting of
20 exempt information from nonexempt information as provided in
21 section 14. For services performed by an employee of the public
22 body, the public body shall not charge more than the hourly wage of
23 its lowest-paid employee capable of separating and deleting exempt
24 information from nonexempt information in the particular instance
25 as provided in section 14, regardless of whether that person is
26 available or who actually performs the labor. If a public body does
27 not employ a person capable of separating and deleting exempt
28 information from nonexempt information in the particular instance
29 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 must not exceed an amount equal to 6 times the state
9 minimum hourly wage rate determined under section 4 of the improved
10 workforce opportunity wage act, 2018 PA 337, MCL 408.934. Labor
11 costs under this subdivision ~~shall~~**must** be estimated and charged in
12 increments of 15 minutes or more, with all partial time increments
13 rounded down. A public body shall not charge for labor directly
14 associated with redaction under section 14 if it knows or has
15 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 any form
19 of nonpaper physical media, the actual and most reasonably
20 economical cost of the nonpaper physical media. The requestor may
21 stipulate that the public records be provided on nonpaper physical
22 media, ~~electronically mailed,~~**emailed**, or otherwise electronically
23 provided to ~~him or her~~**the requestor** in lieu of paper copies. This
24 subdivision does not apply if a public body lacks the technological
25 capability necessary to provide records on the particular nonpaper
26 physical media stipulated in the particular instance.

27 (d) For paper copies of public records provided to the
28 requestor, the actual total incremental cost of necessary
29 duplication or publication, not including labor. The cost of paper

1 copies ~~shall~~**must** be calculated as a total cost per sheet of paper
2 and ~~shall~~**must** be itemized and noted in a manner that expresses
3 both the cost per sheet and the number of sheets provided. The fee
4 must not exceed 10 cents per sheet of paper for copies of public
5 records made on 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper.
6 A public body shall utilize the most economical means available for
7 making copies of public records, including using double-sided
8 printing, if cost saving and available.

9 (e) The cost of labor directly associated with duplication or
10 publication, including making paper copies, making digital copies,
11 or transferring digital public records to be given to the requestor
12 on nonpaper physical media or through the internet or other
13 electronic means as stipulated by the requestor. The public body
14 shall not charge more than the hourly wage of its lowest-paid
15 employee capable of necessary duplication or publication in the
16 particular instance, regardless of whether that person is available
17 or who actually performs the labor. Labor costs under this
18 subdivision ~~may~~**must** be estimated and charged in ~~time~~ increments of
19 ~~the public body's choosing; however,~~ **15 minutes or more, with** all
20 partial time increments ~~shall be~~ rounded down.

21 (f) The actual cost of mailing, if any, for sending the public
22 records in a reasonably economical and justifiable manner. The
23 public body shall not charge more for expedited shipping or
24 insurance unless specifically stipulated by the requestor, but may
25 otherwise charge for the least expensive form of postal delivery
26 confirmation when mailing public records.

27 (2) When calculating labor costs under subsection (1)(a), (b),
28 or (e), fee components ~~shall~~**must** be itemized in a manner that
29 expresses both the hourly wage and the number of hours charged. ~~The~~

1 ~~public body may also add up to 50% to the applicable labor charge~~
2 ~~amount to cover or partially cover the cost of fringe benefits if~~
3 ~~it clearly notes the percentage multiplier used to account for~~
4 ~~benefits in the detailed itemization described in subsection (4).~~
5 ~~Subject to the 50% limitation, the public body shall not charge~~
6 ~~more than the actual cost of fringe benefits, and overtime wages~~
7 ~~shall not be used in calculating the cost of fringe benefits.~~
8 Overtime wages ~~shall~~**must** not be included in the calculation of
9 labor costs unless overtime is specifically stipulated by the
10 requestor and clearly noted on the detailed itemization described
11 in subsection (4). A search for a public record ~~may~~**must** be
12 conducted or copies of public records ~~may~~**must** be furnished without
13 charge or at a reduced charge if the public body determines that a
14 waiver or reduction of the fee is in the public interest because
15 searching for or furnishing copies of the public record can be
16 considered as primarily benefiting the general public. **The question**
17 **of whether the production of a public record can be considered as**
18 **primarily benefiting the general public must initially be**
19 **determined by the public body, but is subject to appeal to the**
20 **commission or the circuit court as provided in this act.** A public
21 record search ~~shall~~**must** be made and a copy of a public record
22 ~~shall~~**must** be furnished without charge ~~for the first \$20.00 of the~~
23 ~~fee for each request by to~~ either of the following:

24 (a) An individual who is entitled to information under this
25 act and who submits an affidavit stating that the individual is
26 indigent and receiving specific public assistance or, if not
27 receiving public assistance, stating facts showing inability to pay
28 the cost because of indigency. ~~If the requestor is eligible for a~~
29 ~~requested discount, the public body shall fully note the discount~~

1 ~~on the detailed itemization described under subsection (4).~~ If a
 2 requestor is ineligible for ~~the discount,~~ **indigent status**, the
 3 public body shall inform the requestor specifically of the reason
 4 for ineligibility in the public body's written response. An
 5 individual is ineligible for this fee reduction if ~~any of the~~
 6 ~~following apply:~~

7 ~~(i) The individual has previously received discounted copies of~~
 8 ~~public records under this subsection from the same public body~~
 9 ~~twice during that calendar year.~~

10 ~~(ii) The~~ **the** individual requests the information in conjunction
 11 with outside parties who are offering or providing payment or other
 12 remuneration to the individual to make the request. A public body
 13 may require a statement by the requestor in the affidavit that the
 14 request is not being made in conjunction with outside parties in
 15 exchange for payment or other remuneration.

16 (b) A nonprofit organization formally designated by the state
 17 to carry out activities under subtitle C of the developmental
 18 disabilities assistance and bill of rights act of 2000, Public Law
 19 106-402, and the protection and advocacy for individuals with
 20 mental illness act, Public Law 99-319, or their successors, if the
 21 request meets all of the following requirements:

22 (i) Is made directly on behalf of the organization or its
 23 clients.

24 (ii) Is made for a reason wholly consistent with the mission
 25 and provisions of those laws under section 931 of the mental health
 26 code, 1974 PA 258, MCL 330.1931.

27 (iii) Is accompanied by documentation of its designation by the
 28 state, if requested by the public body.

29 (3) A fee as described in subsection (1) ~~shall~~ **must** not be

1 charged for the cost of search, examination, review, and the
2 deletion and separation of exempt from nonexempt information as
3 provided in section 14 unless ~~failure~~ **both of the following**
4 **conditions are met:**

5 (a) **The claimed exemption is mandatory in that failure to**
6 **redact the relevant information would violate state or federal law.**
7 **To establish this condition, the public body must cite the**
8 **mandatory exemption on which it relies.**

9 (b) **Failure to charge a fee would result in unreasonably high**
10 **costs to the public body because of the nature of the request in**
11 **the particular instance. ~~and~~ To establish this condition,** the
12 **public body must specifically ~~identifies~~ identify the nature of**
13 **~~these~~ the unreasonably high costs and provide evidence**
14 **substantiating its claim of those unreasonably high costs,**
15 **including, at minimum, a statement of the public body's average**
16 **costs for producing records in the prior calendar year. The public**
17 **body has the burden of demonstrating that the failure to charge a**
18 **fee would result in unreasonably high costs to the public body by**
19 **clear and convincing evidence. A public body's claim of exemption**
20 **under subdivision (a) and claim that the costs of fulfilling a**
21 **request would be unreasonably high are appealable to the circuit**
22 **court or the commission as provided in this act.**

23 (4) A public body shall establish procedures and guidelines to
24 implement this act and shall create a written public summary of the
25 specific procedures and guidelines relevant to the general public
26 regarding how to submit written requests to the public body and
27 explaining how to understand a public body's written responses,
28 deposit requirements, fee calculations, and avenues for challenge
29 and appeal. The written public summary ~~shall~~ **must** be written in a

1 manner so as to be easily understood by the general public. If the
2 public body directly or indirectly administers or maintains an
3 official internet presence, it shall post and maintain the
4 procedures and guidelines and its written public summary on its
5 website. A public body shall make the procedures and guidelines
6 publicly available by providing free copies of the procedures and
7 guidelines and its written public summary both in the public body's
8 response to a written request and upon request by visitors at the
9 public body's office. A public body that posts and maintains
10 procedures and guidelines and its written public summary on its
11 website may include the website link to the documents in lieu of
12 providing paper copies in its response to a written request. A
13 public body's procedures and guidelines must include the use of a
14 standard form for detailed itemization of any fee amount in its
15 responses to written requests under this act. The detailed
16 itemization must clearly list and explain the allowable charges for
17 each of the 6 fee components listed under subsection (1) that
18 compose the total fee used for estimating or charging purposes.
19 Other public bodies may use a form created by the department of
20 technology, management, and budget or create a form of their own
21 that complies with this subsection. A public body that has not
22 established procedures and guidelines, has not created a written
23 public summary, or has not made those items publicly available
24 without charge as required in this subsection is not relieved of
25 its duty to comply with any requirement of this act and shall not
26 require deposits or charge fees otherwise permitted under this act
27 until it is in compliance with this subsection. Notwithstanding
28 this subsection and despite any law to the contrary, a public
29 body's procedures and guidelines under this act are not exempt

1 public records under section 13.

2 (5) If the public body directly or indirectly administers or
 3 maintains an official internet presence, any public records
 4 available to the general public on that internet site at the time
 5 the request is made are exempt from any charges under subsection
 6 (1)(b). If the FOIA coordinator knows or has reason to know that
 7 all or a portion of the requested information is available on its
 8 website, the public body shall notify the requestor in its written
 9 response that all or a portion of the requested information is
 10 available on its website. The written response, to the degree
 11 practicable in the specific instance, must include a specific
 12 webpage address where the requested information is available. On
 13 the detailed itemization described in subsection (4), the public
 14 body shall separate the requested public records that are available
 15 on its website from those that are not available on the website and
 16 shall inform the requestor of the additional charge to receive
 17 copies of the public records that are available on its website. If
 18 the public body has included the website address for a record in
 19 its written response to the requestor and the requestor thereafter
 20 stipulates that the public record be provided to ~~him or her~~ **the**
 21 **requestor** in a paper format or other form as described under
 22 subsection (1)(c), the public body shall provide the public records
 23 in the specified format. ~~but may use a fringe benefit multiplier~~
 24 ~~greater than the 50% limitation in subsection (2), not to exceed~~
 25 ~~the actual costs of providing the information in the specified~~
 26 ~~format.~~

27 (6) A public body may provide requested information available
 28 in public records without receipt of a written request.

29 (7) If a verbal request for information is for information

1 that a public body believes is available on the public body's
2 website, the public employee shall, where practicable and to the
3 best of the public employee's knowledge, inform the requestor about
4 the public body's pertinent website address.

5 ~~(8) In either the public body's initial response or subsequent~~
6 ~~response as described under section 5(2)(d), the public body may~~
7 ~~require a good-faith deposit from the person requesting information~~
8 ~~before providing the public records to the requestor if the entire~~
9 ~~fee estimate or charge authorized under this section exceeds~~
10 ~~\$50.00, based on a good-faith calculation of the total fee~~
11 ~~described in subsection (4). Subject to subsection (10), the~~
12 ~~deposit must not exceed 1/2 of the total estimated fee, and a~~
13 ~~public body's request for a deposit must include a detailed~~
14 ~~itemization as required under subsection (4). The response must~~
15 ~~also contain a best efforts estimate by the public body regarding~~
16 ~~the time frame it will take the public body to comply with the law~~
17 ~~in providing the public records to the requestor. The time frame~~
18 ~~estimate is nonbinding upon the public body, but the public body~~
19 ~~shall provide the estimate in good faith and strive to be~~
20 ~~reasonably accurate and to provide the public records in a manner~~
21 ~~based on this state's public policy under section 1 and the nature~~
22 ~~of the request in the particular instance. If a public body does~~
23 ~~not respond in a timely manner as described under section 5(2), it~~
24 ~~is not relieved from its requirements to provide proper fee~~
25 ~~calculations and time frame estimates in any tardy responses.~~
26 ~~Providing an estimated time frame does not relieve a public body~~
27 ~~from any of the other requirements of this act.~~

28 ~~(8) (9)~~ If a public body does not respond to a written request
29 in a timely manner as required under section 5(2), the public body

1 shall do the following:

2 (a) Reduce the charges for labor costs otherwise permitted
3 under this section by 5% for each day the public body exceeds the
4 time permitted under section 5(2) for a response to the request. ~~7~~
5 ~~with a maximum 50% reduction, if either of the following applies:~~

6 ~~(i) The late response was willful and intentional.~~

7 ~~(ii) The written request included language that conveyed a~~
8 ~~request for information within the first 250 words of the body of a~~
9 ~~letter, facsimile, electronic mail, or electronic mail attachment,~~
10 ~~or specifically included the words, characters, or abbreviations~~
11 ~~for "freedom of information", "information", "FOIA", "copy", or a~~
12 ~~recognizable misspelling of such, or appropriate legal code~~
13 ~~reference for this act, on the front of an envelope, or in the~~
14 ~~subject line of an electronic mail, letter, or facsimile cover~~
15 ~~page.~~

16 (b) If a charge reduction is required under subdivision (a),
17 fully note the charge reduction on the detailed itemization
18 described under subsection (4).

19 **(9) Subsection (8) must not be construed as limiting any**
20 **remedies available for noncompliance established elsewhere in this**
21 **act.**

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

27 (11) Subject to subsection (12), after a public body has
28 granted and fulfilled a written request from an individual under
29 this act, if the public body has not been paid in full the total

1 amount under subsection (1) for the copies of public records that
2 the public body made available to the individual as a result of
3 that written request, the public body may require a deposit of up
4 to 100% of the estimated fee before it begins a full public record
5 search for any subsequent written request from that individual if
6 all of the following apply:

7 (a) The final fee for the prior written request was not more
8 than 105% of the estimated fee.

9 (b) The public records made available contained the
10 information being sought in the prior written request and are still
11 in the public body's possession.

12 ~~(c) The public records were made available to the individual,~~
13 ~~subject to payment, within the time frame estimate described under~~
14 ~~subsection (8).~~

15 (c) ~~(d)~~ Ninety days have passed since the public body notified
16 the individual in writing that the public records were available
17 for pickup or mailing.

18 (d) ~~(e)~~ The individual is unable to show proof of prior
19 payment to the public body.

20 (e) ~~(f)~~ The public body calculates a detailed itemization, as
21 required under subsection (4), that is the basis for the current
22 written request's increased estimated fee deposit.

23 (12) A public body shall ~~no longer~~ **not** require an increased
24 estimated fee deposit from an individual as described under
25 subsection (11) if any of the following apply:

26 (a) The individual is able to show proof of prior payment in
27 full to the public body.

28 (b) The public body is subsequently paid in full for the
29 applicable prior written request.

1 (c) Three hundred sixty-five days have passed since the
2 individual made the written request for which full payment was not
3 remitted to the public body.

4 (13) A deposit required by a public body under this act is a
5 fee.

6 (14) If a deposit that is required under subsection ~~(8) or~~
7 (11) is not received by the public body within 45 days from receipt
8 by the ~~requesting person~~ **requestor** of the notice that a deposit is
9 required, and if the ~~requesting person~~ **requestor** has not filed an
10 appeal of the deposit amount pursuant to section 10a, the **public**
11 **body may consider the** request ~~shall be considered to have been~~
12 abandoned by the ~~requesting person~~ **requestor** and the public body is
13 no longer required to fulfill the request. Notice of a deposit
14 requirement under subsection ~~(8) or~~ (11) is considered received 3
15 days after it is sent, regardless of the means of transmission.
16 Notice of a deposit requirement under subsection ~~(8) or~~ (11) must
17 include notice of the date by which the deposit must be received,
18 which date is 48 days after the date the notice is sent.

19 **(15) If a public body accepts electronic payment for any other**
20 **service it provides, it shall also accept electronic payment for**
21 **fees permitted by this act. A public body may not charge any fee**
22 **for accepting an electronic payment that is not equal to or less**
23 **than the fee charged in connection with other electronic payments.**

24 Sec. 5. (1) Except as provided in section 3, a person desiring
25 to inspect or receive a copy of a public record ~~shall~~ **must** make a
26 written request for the public record to the FOIA coordinator of a
27 public body. A written request made by facsimile, ~~electronic mail,~~
28 **email**, or other electronic transmission is ~~not~~ received by a public
29 body's FOIA coordinator **on the day it is transmitted unless the**

1 **request is not transmitted on a business day, in which case it is**
 2 **not received** until ~~1~~ **the following** business day. ~~after the~~
 3 ~~electronic transmission is made.~~ However, if a written request is
 4 sent by ~~electronic mail~~ **email** and delivered to the public body's
 5 spam or junk-mail folder, the request is not received until 1
 6 **business** day after the public body first becomes aware of the
 7 written request. The public body shall note in its records both the
 8 time a written request is delivered to its spam or junk-mail folder
 9 and the time the public body first becomes aware of that request. **A**
 10 **public body must acknowledge, in writing, receipt of a request**
 11 **within 1 business day after receiving it.**

12 (2) Unless otherwise agreed to in writing by the ~~person making~~
 13 ~~the request,~~ **requestor**, a public body shall ~~, subject to subsection~~
 14 ~~(10),~~ respond to a request for a public record within 5 business
 15 days after the public body receives the request by ~~doing 1 of the~~
 16 ~~following:~~

17 ~~(a) Granting the request.~~

18 ~~(b) Issuing a written notice to the requesting person denying~~
 19 ~~the request.~~

20 ~~(c) Granting the request in part and issuing a written notice~~
 21 ~~to the requesting person denying the request in part.~~

22 ~~(d) Issuing a notice extending for not more than 10 business~~
 23 ~~days the period during which the public body shall respond to the~~
 24 ~~request. A~~ **producing the requested public record. If unusual**
 25 **circumstances prevent the public body from producing the public**
 26 **record within 5 business days, the public body may take an**
 27 **additional 10 business days, but only if the public body has issued**
 28 **a written notice to the requestor specifically identifying the**
 29 **unusual circumstances justifying the 10-business-day extension. The**

1 **notice must comply with subsection (7), and the** public body shall
2 not issue more than 1 notice of extension for a particular request.

3 (3) Failure to ~~respond~~**timely produce a public record in**
4 **response** to a request under subsection (2) constitutes a public
5 body's final determination to deny the request ~~if either of the~~
6 ~~following applies:~~

7 ~~(a) The failure was willful and intentional.~~

8 ~~(b) The written request included language that conveyed a~~
9 ~~request for information within the first 250 words of the body of a~~
10 ~~letter, facsimile, electronic mail, or electronic mail attachment,~~
11 ~~or specifically included the words, characters, or abbreviations~~
12 ~~for "freedom of information", "information", "FOIA", "copy", or a~~
13 ~~recognizable misspelling of such, or appropriate legal code~~
14 ~~reference to this act, on the front of an envelope or in the~~
15 ~~subject line of an electronic mail, letter, or facsimile cover~~
16 ~~page.~~**unless a petition for additional time has been filed as**
17 **provided in subsection (11).**

18 (4) In a civil action to compel a public body's disclosure of
19 a public record under section 10, the court shall assess damages
20 against the public body under section ~~10(7)~~**10b(1) to (3), as**
21 **applicable**, if the court has done both of the following:

22 (a) Determined that the public body has not complied with
23 subsection (2).

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

26 (5) A written notice denying a request for a public record in
27 whole or in part is a public body's final determination to deny the
28 request or portion of that request. The written notice must
29 contain:

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

5 (b) A certificate that the public record does not exist under
 6 the name given by the ~~requester~~**requestor** or by another name
 7 reasonably known to the public body, if that is the reason for
 8 denying the request or a portion of the request.

9 (c) A description of a public record or information on a
 10 public record that is separated or deleted under section 14, if a
 11 separation or deletion is made.

12 (d) A full explanation of the ~~requesting person's~~**requestor's**
 13 right to do ~~either~~**any** of the following:

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

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

18 **(iii) Appeal the determination to the commission under section**
 19 **10c.**

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

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

26 (7) If a public body issues a notice extending the period for
 27 ~~a response to the request,~~**producing a public record,** the notice
 28 must specify the reasons for the extension and the date by which
 29 the public body will do 1 of the following, **which may not exceed 15**

1 **business days from the date the request was received:**

2 (a) Grant the request **by producing the requested public**
3 **record.**

4 (b) Issue a written notice to the ~~requesting person~~**requestor**
5 denying the request.

6 (c) Grant the request in part **by producing a portion of the**
7 **requested public records** and issue a written notice to the
8 ~~requesting person~~**requestor** denying the request in part. **A written**
9 **notice of partial denial issued under this subdivision must**
10 **include, in addition to the information required under subsection**
11 **(5), a statement indicating the anticipated number of public**
12 **records to be produced in comparison to the average number of**
13 **public records produced by the public body per request received in**
14 **the previous year.**

15 (8) If a public body makes a final determination to deny in
16 whole or in part a request to inspect or receive a copy of a public
17 record or portion of that public record, the ~~requesting person~~
18 **requestor** may do ~~either~~**any** of the following:

19 (a) Appeal the denial to the head of the public body under
20 section 10.

21 (b) Commence a civil action ~~under~~**under** section 10.

22 **(c) Appeal the denial to the commission under section 10c.**

23 (9) Notwithstanding any other provision of this act to the
24 contrary, a public body that maintains a law enforcement records
25 management system and stores public records for another public body
26 that subscribes to the law enforcement records management system is
27 not in possession of, retaining, or the custodian of, a public
28 record stored on behalf of the subscribing public body. If the
29 public body that maintains a law enforcement records management

1 system receives a written request for a public record that is
2 stored on behalf of a subscribing public body, the public body that
3 maintains the law enforcement records management system shall,
4 within 10 business days after receipt of the request, give written
5 notice to the ~~requesting person~~**requestor** identifying the
6 subscribing public body and stating that the ~~requesting person~~
7 ~~shall~~**requestor must** submit the request to the subscribing public
8 body. As used in this subsection, "law enforcement records
9 management system" means a data storage system that may be used
10 voluntarily by subscribers, including any subscribing public
11 bodies, to share information and facilitate intergovernmental
12 collaboration in the provision of law enforcement services.

13 (10) A person making a request under subsection (1) may
14 stipulate that the public body's response under subsection (2) be
15 ~~electronically mailed,~~**emailed**, delivered by facsimile, or
16 delivered by first-class mail. This subsection does not apply if
17 the public body lacks the technological capability to provide an
18 ~~electronically mailed~~**emailed** response.

19 (11) **If a public body determines that it is not possible for**
20 **it to respond within the time required under subsection (2), it may**
21 **petition the commission for an extension. The public body bears the**
22 **burden of proving, by clear and convincing evidence, that adherence**
23 **to the timelines in subsection (2) would materially disrupt the**
24 **public body's ordinary business. If the public body meets this**
25 **burden of proof, the commission may permit the public body**
26 **additional time to produce the requested public records, but the**
27 **additional time must be the minimum time the commission determines**
28 **is reasonably necessary for a public body working diligently to**
29 **respond to the request. If the public body fails to meet its burden**

1 of proof, it is responsible for any reasonable attorney fees and
2 costs incurred by the requestor in responding to the public body's
3 petition, as well as fines and fees as provided in section 10b, and
4 shall produce records in a period determined by the commission not
5 to exceed 15 business days.

6 Sec. 6. (1) All of the following apply to the designation of a
7 FOIA coordinator:

8 (a) A public body that is a city, village, township, county,
9 or state department, or under the control of a city, village,
10 township, county, or state department, shall designate an
11 individual as the public body's FOIA coordinator.

12 (b) In a county not having an executive form of government,
13 the chairperson of the county board of commissioners is designated
14 the FOIA coordinator for that county.

15 (c) This state's speaker of the house of representatives shall
16 designate an individual as the FOIA coordinator for the house of
17 representatives.

18 (d) This state's senate majority leader shall designate an
19 individual as the FOIA coordinator for the senate.

20 (e) The governor shall designate the FOIA coordinator for the
21 executive office of the governor and the FOIA coordinator for the
22 executive office of the lieutenant governor.

23 (f) For all other public bodies, the chief administrative
24 officer of the respective public body is designated the public
25 body's FOIA coordinator.

26 (2) The FOIA coordinator shall ~~be responsible for accepting~~
27 ~~and processing~~ **accept and process** requests for the public body's
28 public records under this act and shall ~~be responsible for~~
29 ~~approving a~~ **approve any** denial under section ~~5(4) and (5)~~. In a

1 ~~county not having an executive form of government, the chairperson~~
 2 ~~of the county board of commissioners is designated the FOIA~~
 3 ~~coordinator for that county.~~ **5(5) and (6).**

4 ~~(2) For all other public bodies, the chief administrative~~
 5 ~~officer of the respective public body is designated the public~~
 6 ~~body's FOIA coordinator.~~

7 (3) ~~An~~ **A** FOIA coordinator may designate another individual to
 8 act on his ~~or her~~ **the FOIA coordinator's** behalf in accepting and
 9 processing requests for the public body's public records, and in
 10 approving a denial under section ~~5(4) and (5).~~ **5(5) and (6).**

11 **(4) For a FOIA coordinator designated by a public body under**
 12 **subsection (1) (a), (c), (d), or (e), and for any individual**
 13 **designated to act on the FOIA coordinator's behalf under subsection**
 14 **(3), the public body shall make the designee's official email**
 15 **address, official mailing address, and official telephone number**
 16 **publicly available. A public body that directly or indirectly**
 17 **maintains an official internet presence shall conspicuously post**
 18 **this information in an online location that is available to the**
 19 **public.**

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

23 (a) Senate Bill No. ____ or House Bill No. 5427 (request no.
 24 04892'23).

25 (b) Senate Bill No. ____ or House Bill No. 5422 (request no.
 26 05112'23).

27 (c) Senate Bill No. ____ or House Bill No. 5425 (request no.
 28 05113'23).

29 (d) Senate Bill No. ____ or House Bill No. 5424 (request no.

- 1 05114'23).
- 2 (e) Senate Bill No. _____ or House Bill No. 5423 (request no.
- 3 05115'23).