

HOUSE BILL No. 5208

October 18, 1989, Introduced by Rep. Perry Bullard and referred to the Committee on Judiciary.

A bill to amend sections 5, 10, and 11 of Act No. 442 of the Public Acts of 1976, entitled "Freedom of information act," being sections 15.235, 15.240, and 15.241 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 5, 10, and 11 of Act No. 442 of the
2 Public Acts of 1976, being sections 15.235, 15.240, and 15.241 of
3 the Michigan Compiled Laws, are amended to read as follows:

4 Sec. 5. (1) A person desiring to inspect or receive a copy
5 of a public record may make an oral or written request for the
6 public record to the public body.

7 (2) When a public body receives a request for a public
8 record, it shall immediately, but not more than 5 business days
9 after the day the request is received unless otherwise agreed to

1 in writing by the person making the request, respond to the
2 request by 1 of the following:

3 (a) Grant the request.

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

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

8 (d) Under unusual circumstances, issue a notice extending
9 for not more than 10 business days the period during which the
10 public body shall respond to the request. A public body shall
11 not issue more than 1 notice of extension for a particular
12 request.

13 (3) Failure to respond to a request as provided in subsec-
14 tion (2) constitutes a final decision by the public body to deny
15 the request. If a ~~circuit~~ court, upon an action commenced pur-
16 suant to section 10, finds that a public body has failed to
17 respond as provided in subsection (2), and if the court orders
18 the public body to disclose or provide copies of the public
19 record or a portion thereof, then the ~~circuit~~ court shall
20 assess damages against the public body as provided in section
21 10(5).

22 (4) A written notice denying a request for a public record
23 in whole or in part shall constitute a final determination by the
24 public body to deny the request or portion thereof and shall
25 contain:

26 (a) An explanation of the basis under this act or other
27 statute for the determination that the public record, or the

1 portion thereof, is exempt from disclosure, if that is the reason
2 for denying the request or a portion thereof.

3 (b) A certificate that the public record does not exist
4 under the name given by the requester or by another name reason-
5 ably known to the public body, if that is the reason for denying
6 the request or a portion thereof.

7 (c) A description of a public record or information on a
8 public record which is separated or deleted as provided in sec-
9 tion 14, if a separation or deletion is made.

10 (d) A full explanation of the requesting person's right to
11 seek judicial review under section 10. Notification of the right
12 to judicial review shall include notification of the right to
13 receive attorneys' fees and damages as provided in section 10.

14 (5) The individual designated in section 6 as responsible
15 for the denial of the request shall sign the written notice of
16 denial.

17 (6) If a public body issues a notice extending the period
18 for a response to the request, the notice shall set forth the
19 reasons for the extension and the date by which the public body
20 shall do 1 of the following:

21 (a) Grant the request.

22 (b) Issue a written notice to the requesting person denying
23 the request.

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

26 (7) If a public body makes a final determination to deny in
27 whole or in part a request to inspect or receive a copy of a

1 public record or portion thereof, the requesting person may
2 commence an action in ~~circuit~~ court, as provided in section
3 10.

4 Sec. 10. (1) If a public body makes a final determination
5 to deny a request or a portion thereof, the requesting person may
6 commence an action in the circuit court OR SMALL CLAIMS DIVISION
7 OF THE DISTRICT COURT to compel disclosure of the public
8 records. If the court determines that the public records are not
9 exempt from disclosure, the court shall order the public body to
10 cease withholding or to produce a public record or a portion
11 thereof wrongfully withheld, regardless of the location of the
12 public record. ~~The~~ JURISDICTION TO ISSUE THE ORDER RESIDES
13 CONCURRENTLY IN THE circuit court for the county in which the
14 complainant resides or has his OR HER principal place of business
15 AND THE SMALL CLAIMS DIVISION OF THE DISTRICT COURT FOR THE JUDI-
16 CIAL DISTRICT IN WHICH THE COMPLAINANT RESIDES OR HAS HIS OR HER
17 PRINCIPAL PLACE OF BUSINESS, or the circuit court for the county
18 in which the public record or an office of the public body is
19 located ~~shall have jurisdiction to issue the order~~ AND THE
20 SMALL CLAIMS DIVISION OF THE DISTRICT COURT FOR THE JUDICIAL DIS-
21 TRICT IN WHICH THE PUBLIC RECORD OR AN OFFICE OF THE PUBLIC BODY
22 IS LOCATED. The court shall determine the matter de novo and the
23 burden is on the public body to sustain its denial. The court,
24 on its own motion, may view the public record in controversy in
25 private before reaching a decision. Failure to comply with an
26 order of the court may be punished as contempt of court.

1 (2) An action under this section arising from the denial of
2 an oral request may not be commenced unless the requesting person
3 confirms the oral request in writing not less than 5 days before
4 commencement of the action.

5 (3) An action commenced pursuant to this section and appeals
6 therefrom shall be assigned for hearing and trial or for argument
7 at the earliest practicable date and expedited in every way.

8 (4) If a person asserting the right to inspect or to receive
9 a copy of a public record or a portion thereof prevails in an
10 action commenced pursuant to this section, the court shall award
11 reasonable attorneys' fees, costs, and disbursements. If the
12 person prevails in part, the court may in its discretion award
13 reasonable attorneys' fees, costs, and disbursements or an appro-
14 priate portion thereof. The award shall be assessed against the
15 public body liable for damages under subsection (5).

16 (5) In an action commenced pursuant to this section, if the
17 circuit court finds that the public body has arbitrarily and
18 capriciously violated this act by refusal or delay in disclosing
19 or providing copies of a public record, the court shall, in addi-
20 tion to any actual or compensatory damages, award punitive dam-
21 ages in the amount of \$500.00 to the person seeking the right to
22 inspect or receive a copy of a public record. The damages shall
23 not be assessed against an individual, but shall be assessed
24 against the next succeeding public body, not an individual, pur-
25 suant to whose public function the public record was kept or
26 maintained.

1 Sec. 11. (1) A state agency shall publish and make
2 available to the public all of the following:

3 (a) Final orders or decisions in contested cases and the
4 records on which they were made.

5 (b) Promulgated rules.

6 (c) Other written statements which implement or interpret
7 laws, rules, or policy, including but not limited to guidelines,
8 manuals, and forms with instructions, adopted or used by the
9 agency in the discharge of its functions.

10 (2) Publications may be in pamphlet, loose-leaf, or other
11 appropriate form in printed, mimeographed, or other written
12 matter.

13 (3) Except to the extent that a person has actual and timely
14 notice of the terms thereof, a person shall not in any manner be
15 required to resort to, or be adversely affected by, a matter
16 required to be published and made available, if the matter is not
17 so published and made available.

18 (4) This section does not apply to public records which are
19 exempt from disclosure under section 13.

20 (5) A person may commence an action in the circuit court OR
21 SMALL CLAIMS DIVISION OF THE DISTRICT COURT to compel a state
22 agency to comply with this section. If the court determines that
23 the state agency has failed to comply, the court shall order the
24 state agency to comply and shall award reasonable attorneys'
25 fees, costs, and disbursements to the person commencing the
26 action. The circuit court for the county in which the state
27 agency is located AND THE SMALL CLAIMS DIVISION OF THE DISTRICT

1 COURT FOR THE JUDICIAL DISTRICT IN WHICH THE STATE AGENCY IS
2 LOCATED shall have jurisdiction to issue the order.

3 (6) As used in this section, "state agency", "contested
4 case", and "rules" shall have the same meanings as ascribed to
5 those terms in THE ADMINISTRATIVE PROCEDURES ACT OF 1969, Act
6 No. 306 of the Public Acts of 1969, as amended, being sections
7 24.201 to ~~24.315~~ 24.328 of the Michigan Compiled Laws.