

MEMORANDUM

To: Greg Ostrander, Office of Rep. Mike Shirkey
cc: Rep. Mike Shirkey
From: Herschel P. Fink, Legal Counsel, Detroit Free Press, Inc.
Date: April 28, 2013
Re: House Bill No. 4001

Michigan FOIA Has Ceased to Fulfill its Purpose

After decades spent representing news organizations in their efforts to inform the public about public affairs, utilizing “sunshine laws,” such as federal and Michigan freedom of information acts, I have come to the conclusion that Michigan FOIA has ceased to be a useful tool. In some cases, it operates as an impediment to access, imposing delays and excessive costs that the Legislature never intended when it enacted FOIA more than 35 years ago. It is the public that suffers from this breakdown, and I encourage the Legislature to repair this broken law.

What follows are my thoughts based upon my experience in scores of cases.

A. FOIA’s History and Promise

Michigan Court of Appeals Chief Judge Bill Whitbeck succinctly stated the purpose of “sunshine” laws, such as Michigan’s FOIA, in an opinion he authored in *State News v Michigan State University*, 274 Mich App 558, 567-568 (2007). He wrote for the Court:

Under FOIA, it is the public policy of Michigan that all persons, except prisoners, “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 The people shall be informed so that they may fully participate in the democratic process.”

We note in this regard that FOIA therefore is a “prodisclosure statute.” We interpret its disclosure provisions broadly to allow public access, and we interpret its exceptions narrowly so that we do not undermine its disclosure provisions. Central to both the broad policy and the implementing mechanisms of FOIA is the concept of accountability. FOIA, through its disclosure provisions, allows the citizens of Michigan to hold public officials accountable for the decisions that those officials make on their behalf. By shifting the balance away from restricted access to open access in all but a limited number of instances, the Legislature necessarily determined that, except in those limited instances, disclosure facilitates the

process of governing because it incorporates the concept of accountability. (Emphasis added)

Long before the enactment of FOIA, Michigan citizens enjoyed a tradition of access to information about their government, and their governmental records. The Michigan Supreme Court summarized the history and public policy considerations which underlie FOIA, and Michigan's more than century-long tradition of open government, in *Swickard v Wayne County Medical Examiner*, 438 Mich 536 (1991), a FOIA action I brought on behalf of the Detroit Free Press.

The Supreme Court declared:

Before the enactment of the FOIA in 1977, Michigan enjoyed a long history of allowing citizens free access to public records. Booth Newspapers, Inc. v Muskegon Probate Judge, 15 Mich App 203; 166 NW2d 546 (1968). In *Booth*, the Court of Appeals stated:

The fundamental rule in Michigan on the matter before us, first enunciated in the case of *Burton v Tuite* (1889), 78 Mich 363 [44 NW 282], is that citizens have the general right of free access to, and public inspection of, public records.

The *Nowak [v. Auditor General]*, 243 Mich 200; 219 NW 749 (1928) decision has "placed Michigan at the vanguard of those states holding that a citizen's accessibility to public records must be given the broadest possible effect." [*Id.* at 205, 207.]

Some ten years after the federal FOIA was enacted by Congress, Michigan enacted its FOIA in 1977. ***One of the reasons prompting the legislation was concern over abuses in the operation of the government. A policy of full disclosure underlies the FOIA.*** The preamble to the act, MCL 15.231(2); MSA 4.1801(1)(2), provides:

It is the public policy of this state that all persons 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 this act. The people shall be informed so that they may fully participate in the democratic process.

Section 3(1) of the act states:

Upon an oral or written request which describes the public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy or

receive copies of a public record of a public body, except as otherwise expressly provided by section 13.

Therefore, all public records are subject to full disclosure under the act unless the material is specifically exempt under § 13. Also, when a public body refuses to disclose a requested document under the act, and the requestor sues to compel disclosure, the public agency bears the burden of proving that the refusal was justified under the act. MCL 15.240(1); MSA 4.1801(10)(1).

In construing the provisions of the act, we keep in mind that the FOIA is intended primarily as a prodisclosure statute and the exemptions to disclosure are to be narrowly construed. State Employees Ass'n v Dep't of Management & Budget, 428 Mich 104; 404 NW2d 606 (1987).

Id. at 543-544; 475 NW2d 304 (emphasis added).

Additionally, not only are exemptions to disclosure to be narrowly construed, the burden is on the defendant to prove that the non-disclosure was proper. As the Supreme Court has further explained:

The FOIA *requires* the full disclosure of public records, unless those records are exempt under § 13 The exemptions in § 13 are narrowly construed and the burden of proof rests on the party asserting the exemption. . . . If a request for information held by a public body falls within an exemption, the decision becomes discretionary. . . .

Bradley v Bd of Ed Saranac Community Schools, 455 Mich 285, 293; 565 NW 2D 650 (1997) (citations and footnotes omitted).

In short, a fundamental component of Michigan law is that government records are the public's records. The public has the right to inspect and to copy all such records except those few and specific records that the public, acting through its Legislature, has itself restricted. No such restrictive discretion lies in the custodian; the records are not his records. Nor has such discretion been legislatively or judicially granted to the custodian.

Except only as to specifically restricted records, the duty of the custodian under Michigan law is not only to permit, *but affirmatively to facilitate*, the right of the public to see and to know its own business.

FOIA is but one of several complementary laws and provisions governing access to public records. It is merely a procedural statute providing for civil penalties and attorney fees in the event of a violation.¹ Michigan common law and even *criminal law* also have long given the public additional *immediate* access rights *without charge* to public records. Michigan's "prodisclosure" history of openness - - and the seriousness with which its mandate is viewed - - has been expressed in, and implemented by, criminal statutes. Today, the Michigan Penal Code ("Code") provides that all records created by or received in any office of the state or its political subdivisions are public property. MCL § 750.491. The next section of the Code addresses the severe consequences of denying *immediate* and *free of charge* public access to the public records that are routinely on file in public offices:

Any officer having the custody of any county, city or township records in this state who shall **when requested** fail or neglect to furnish proper and reasonable facilities for the inspection and examination of the records filed in his office and for making memoranda of transcripts therefore during the **usual business hours, which shall not be less than 4 hours per day**, to any person having an occasion to make examination of them for any lawful purpose **shall be guilty of a misdemeanor**, punishable by imprisonment in the county jail not more than 1 year, or by a fine of not more than \$500.00. . . .

MCL § 750.42 (emphasis added).

The fundamental law of our state, its Constitutional, also guarantees free access to financial records of government.

Art 9 Sec 23 declares:

§23 Financial records; statement of revenues and expenditures.

Sec. 23. All financial records, accountings, audit reports and other reports of public moneys shall be public records and open to inspection. A statement of all revenues and expenditures of public moneys shall be published and distributed annually, as provided by law.

¹ In contrast to FOIA, the Open Meetings Act, MCL §15.261, *et. seq.*, enacted at about the same time, does contain an express preemption provision:

This act shall supersede all local charter provisions, ordinances, or resolutions which relate to requirements for meetings of local public bodies to be open to the public.

MCL § 15.261(2).

B. FOIA's Present Failures

With this heady tradition of freely accessible government information, FOIA's promise in 1977 was to facilitate and enhance that access.

But, as an attorney who has represented news organizations for longer than FOIA has existed in Michigan, and who has fought for access in scores of FOIA cases for the Detroit Free Press and others, it is my belief that FOIA - - as it is being interpreted and implemented by public bodies, and some court - - has become an impediment to public access. It no longer functions. It no longer lives up to its promise. It is broken, and it needs to be fixed.

C. What is Broken?

FOIA no longer works, not so much because of the Act itself, but because many public bodies choose to ignore its provisions, and because sanctions for violations are inadequate.

These are some of the problems:

1. Public bodies routinely ignore FOIA's time limits.

Requests go unresponded to; 10 day extensions have become routine, and typically are not justified. Even when FOIA requests are responded to, and granted, public bodies all too often drag out compliance for weeks, even months, without fear of consequence. What would have been newsworthy, and of public importance, become stale.

2. Public bodies are routinely charging "search" labor for every request.

This is so notwithstanding the requirement in FOIA Section 4 that public bodies are prohibited from charging anything "unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs." What was required to be a showing of not one "high costs," but "unreasonably high costs," is now the norm.

3. There are no consequences for illegal, routine labor charges.

The Free Press challenged just such routine, illegal charges in *Detroit Free Press v Attorney General*, 271 Mich App 418 (2006). The Free Press there sued the Attorney General over its policy of illegally imposing routine search and labor charges, albeit nominal, for every request. The Oakland County Circuit Court agreed that the charges were unjustified, and violated Section 4. The Court not only struck down the improper charge, but awarded the Free Press substantial - - but reasonable - - attorney fees for its costs in bringing the case and vindicating the law.

On appeal, the Court of Appeals affirmed the trial court's finding that the routine labor charge could not be justified, but reversed the award of attorney fees. It reasoned that the requested records had not been withheld, because the newspaper could have paid the prohibited

labor charges, and it rejected the Free Press's argument that improper fee demand constituted a "constructive denial."

Thus, a reported Court of Appeals opinion now gives the green light to public bodies charging routine (but prohibited) labor fees, without fear of sanction.

4. Public bodies often hide embarrassing information behind demands for clearly excessive, unjustified "labor charges."

This was a favored tactic of the City of Detroit during the corrupt Kilpatrick administration, although it is by no means limited to it. I have been told by public body lawyers that this tactic has actually been encouraged at conferences of municipal lawyers.

In one case, the Free Press sued the City of Detroit over obviously fictitious and exorbitant labor charges intended as a "brush back pitch" to shield embarrassing audit information from disclosure. The Free Press sued, and the charges were revealed as grossly inflated.

5. Public bodies falsely claim that requested public records - - often containing embarrassing information or burdensome - - don't exist.

The Michigan State Police was recently caught doing just that, and was chastised by the Court of Appeals. See, *Prins v Michigan State Police*, No. 309803, March 5, 2013. Famously, the City of Detroit and its law department falsely claimed - - and represented to the Wayne County Circuit Court - - that documents did not exist relating to then Detroit Mayor Kwame Kilpatrick's settlement of a whistleblower lawsuit which, it would later be shown, linked him to embarrassing text messages. Only because of the persistence of the Detroit Free Press in pursuing a FOIA lawsuit against Kilpatrick and the City of Detroit did the truth emerge, leading to Kilpatrick's perjury conviction, and the disbarment, or license suspensions, of several City of Detroit lawyers.

But, false denials that records exist surely continue, secure in the knowledge that most requestors will simply give up, and the public bodies not be called to account. The Free Press is about to bring suit to unmask just such a case. But, it will be costly, and court's rarely award full legal fees under Section 10 (6).

6. There is no recognition in FOIA of the singular role played by journalists and news organizations in informing the public.

As Sixth Circuit U. S. Court of Appeals Judge Damon Keith succinctly stated in *Detroit Free Press v United States Department of Justice*, 303 F.3d 681 (6th Cir 2002), in which the newspaper established the principle that immigration courts must be open to the public:

...the only safeguard on this extraordinary government power is the public, deputizing the press as the guardians of their liberty.

...The executive branch seeks to uproot people's lives, outside the public eye and behind closed doors. Democracies die behind closed

doors. The First Amendment, through a free press, protects the people's right to know that their government acts fairly, lawfully, and accurately in deportation hearings. When the government begins closing doors, it selectively controls information rightfully belonging to the people. Selective information is misinformation.

The framers of the First Amendment did not trust any government to separate the true from the false for us. They protected the people against secret government. (Emphasis added).

Michigan FOIA treats every request equally, without regard to the identity of the requestor, or the purpose of the request. Thus, purely commercial requests, made by enterprises that simply sell raw information for marketing purposes, are lumped in with a legitimate news organizations that "protects the people's right to know their government acts fairly, lawfully, and accurately," to quote Judge Keith.

Although FOIA in Section 4(1) does provide that a search for public records may be conducted and "copies of public records may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public," I have never once in more than 35 years of working with Michigan FOIA encountered a public body that applied it. (And, can you imagine the Kilpatrick Administration of Detroit "determining" that the Free Press's costly investigation of it was 'primarily benefiting the general public'?)

A specific provision is needed in FOIA to provide for expedited treatment of, and reduced costs or no costs, for requests by legitimate news organizations or journalists. Many states have such provisions, and have worked out acceptable definitions of "journalists."

Moreover, currently, public bodies are able to hold requests hostage by demanding that 50 percent of "estimated" - - and often excessive - - fees be paid before work is done on a request.

I suggest that where fee demands are disputed by journalists, the records must first be produced, and the burden of establishing reasonableness placed on the public body in an action where there are sanctions against the public body if its fee demand is found unjustified.

D. An Example of FOIA Failure

On March 27, 2013, I passed along to you a copy of a letter that I sent to the Public Service Commission's FOIA officer; someone who clearly lost sight of what "public service" means. In that case, the Free Press, in response to a gas explosion in Royal Oak on February 28, 2013, attributable to likely negligence on the part of crews working on a gas main for Consumers Energy, asked the PSC to provide information under FOIA relating to "major incidents" involving gas leaks over a period of years.

The request was made on March 5, 2013. It clearly relates to public safety. It is clearly in the public interest. It clearly will shed light on how well the PSC does in its safety oversight of utilities.

The response demanded \$2,195 - - an excessive demand - - and clearly a "brush back." They also "brushed off" my March 27 appeal letter, which you said you passed along to other folks in government with varying interests in Rep. Shirkey's bill.

The Free Press then advised the PSC that it was scaling back its request to just the last two years - - which the PSC admitted was computerized, and readily available.

Attached is the PSC's March 29 response to that scaled back request - - still demanding almost two thousand dollars to provide public safety information regarding how well it does - - or doesn't do - - its job.

After two months, this public safety information has not been provided, and the public remain "in the dark" by the PSC.

You and the Committee may be interested in the comments on the PSC's stall by Free Press reporter Keith Matheny, a veteran journalist who has long experience with a functioning FOIA environment in California. Here are his comments to me:

Attached is the latest, via mail, from our friends at the Michigan Public Service Commission.

I'm trying to think if I've ever seen a public agency so blatantly try to stonewall and throw up roadblocks to accessing rather important public information - - and the sad thing is, they're using a Michigan law that's supposedly designed to *provide* access to public records to do it.

* * *

We're kind of at a standstill unless we're willing to pay these exorbitant and (in my opinion) unjustifiable expenses, or if we fight them and win.

E. House Bill No. 4001 And What It Does, and Doesn't Accomplish

The following comments are addressed to a version of the bill that I received in early March. Based upon my observations, above, there are deficiencies in the present FOIA that the bill does not address, particularly in how requests from legitimate news organizations are still not given special considerations, and can continue to be thwarted.

I am pleased to see the addition in Sec. 4(1) of both a maximum per page copy cost, and recognition of the right of a requestor to provide its own copy equipment.

Sec. 4(8) can be very helpful in giving public bodies an incentive to not foot drag on responding to requests. This addresses an important failing.

Sec. 10(1) addresses an issue the Free Press highlighted in *Detroit Free Press v Attorney General*, discussed above, where an improper fee demand (a “constructive denial”) does not result in an attorney fee award. This is an important change.

Sec. 10(4) is useful in preventing public bodies from “moving the ball” by asserting new exemptions not raised initially.

Sec. 10(6) again clarifies that improper fee demands will result in an attorney fee award. Again this is useful.

Sec. 10(7) provides a more reasonable sanction, \$5,000, but it would be a far greater deterrent to abuse were the sanction imposed against an individual.

Herschel P. Fink
Legal Counsel
Detroit Free Press, Inc.
615 W. Lafayette Blvd.
Detroit, MI 48226
313-749-9979 (office)
313-749-9978 (fax)
hfink@freepress.com

Attachment



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
METRO AUTHORITY / FOIA
MELVIN FARMER, JR.
DIRECTOR

STEVE ARWOOD
DIRECTOR

March 29, 2013

Mr. Keith Matheny
Detroit Free Press, Inc.
615 W. Lafayette Blvd.
Detroit, Michigan 48226

RE: Freedom of Information Act Request to Inspect MPSC Records

Dear Mr. Matheny:

This notice is in response to Mr. Herschel P. Fink's March 27, 2013 letter to Ms. Mary Jo Kunkle, Michigan Department of Licensing and Regulatory Affairs (LARA) Michigan Public Service Commission (MPSC) regarding the fee charges related to your March 12, 2013 Freedom of Information Act (FOIA) request to inspect existing, nonexempt public records/information over a ten year period you describe as:

"All incident reports related to natural gas operations of any kind filed with the Commission as called for under the following sections: R460.20503, Rule 503 [and] R460.20424."

Please be informed that, pursuant to MCL 15.233, MCL 15.234, and MCL 15.235 of the state's FOIA, the Department/MPSC has granted the portion of your request for an onsite inspection, subject to payment of estimated FOIA processing costs. The Department's March 19, 2013 FOIA processing fee charge estimate has been revised to reflect that the Department may not need to copy the estimated 5,000 pages of records involved with this request; and now includes the cost of securing state records/property while being inspected. If you decide to proceed with the requested onsite records inspection, the inspection location will be at the Department's MPSC office at 4300 West Saginaw, Lansing, Michigan 48917.

The following describes the Department's costs and protocols related to the onsite inspection:

1. Compliance Costs—Pursuant to MCL 15.233 and MCL 15.234 of the FOIA, the Department's allowable FOIA processing costs are based on the hourly wage and benefits of the lowest paid LARA employee(s) capable of performing the necessary tasks to comply with the request, including:
 - Labor time for locating/retrieving the requested records; reviewing and separating exempt records/information from nonexempt records; securing the records during the on-site inspection; and copying requested records.
 - Labor time for protecting public records while being inspected.

LARA is an equal opportunity employer

Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.
611 WEST OTTAWA • OTTAWA BUILDING 4TH FLOOR • P.O. BOX 30338 • LANSING, MICHIGAN 48909
www.michigan.gov/metro • Phone: (517) 373-0194 • Fax: (517) 335-4037

--Mailing/postage costs, if any.

Note: The labor time/costs for separating exempt from nonexempt information entails:

- Review all requested records to identify exempt information.
- Separate documents containing exempt information from nonexempt documents
- Make copies of documents containing exempt information
- Place original document back in sequence with original files
- Redact exempt information from copies originals
- Make copies of redacted copies and place in sequence with nonexempt files for inspection
- If requested, make copies of redacted documents after inspection
- Providing a secure room and staff person to be present during the entire inspection.

2. Record Preparation— Labor time/costs entails gathering from all Department sources the requested records to examine/review, by appropriate level staff, to determine whether there is exempt information that needs to be segregated and/or redacted prior to inspection; and taking the examined/reviewed records to the designated secure location where the requester will be allowed to inspect them.

3. Inspection of Original Records Parameters

- To ensure the security of state property, per MCL 15.233, Sec. 3(3) of the FOIA, a LARA staff member must be present at all time during the inspection of Department/MPSC records if any original records are involved, at a rate, including wages and benefits, of \$31.06/hour,.
- The requester is allowed to review/identify the records desired to be copied by placing a yellow "post-it" sticker or paper clip on each page. Note: Usually all pages to be copied are identified prior to making any copies; and dependent upon the number of copies to be made, the copies may have to be mailed the next business day.
- In order that records/documents remain together as filed, the requester is not allowed to un-staple/un-clip records without supervision.
- The requester is not allowed to remove documents from files or from the premises unless those documents are copied specifically for the requester by LARA staff.
- A public body is only required to make the records available for inspection and/or copying. It is not required by the FOIA, to explain or interpret the contents of the records. Thusly, the staff assigned to secure the records is not expected to engage in discussions with the requester regarding the content or interpretation of the records being inspected. If the requester has questions, they must submit the questions in writing back to the Department/MPSC.
- The state's FOIA does not require a public body to create, summarize, or make a compilation of voluminous documents.

4. Inspection Costs Estimate

As indicated in the Department's March 19, 2013 letter, Section 4(3) of the FOIA, MCL 15.234, Section 4(3), provides that, in addition to copying and mailing costs, a public body may charge a fee for the cost of search, retrieval, review, and examination of records, and the segregation of any exempt records, where "failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs."

The processing of this particular request regarding a 10 period-period-years involves a voluminous amount of records which requires an extensive search and retrieval, and review and examination to determine/separate any exempt from nonexempt material. Based on the hourly wage of the lowest paid LARA employees capable of performing the tasks necessary to complete the processing of your request, LARA provides the following estimated FOIA processing fees:

Revised Itemized Estimated Fees (See Attached FOIA Cost Estimate Worksheet)

Note: As regards the estimated costs illustrated in the MPSC March 19, 2013 letter, the estimated calculations did not include fringe benefits (Michigan Attorney General Opinion No. 7017), or the estimated costs to protect/secure public the records while being inspected per MCL 15.233 of the state's FOIA.

Labor costs @ \$48.04/hr. to search for 10 years of responsive records and redact exempt from nonexempt material, 15 hrs.=	\$ 720.06
Labor costs @ \$37.50/hr. to search for 10 years of responsive records and redact exempt from nonexempt material, 15 hrs.=	\$ 562.50
20 CDs @ \$10.00 each	\$ 200.00
Labor costs to secure the estimated 5,000 pages of records during estimated review time of 8 hrs.@ \$31.06/hr.=	\$ 248.48
Number of pages to copy at \$.25/page	<u>TBD</u>
Total Estimated Cost (less pages to copy)	\$1,731.04

Security of Records Estimate

As previously mentioned, a LARA staff member at \$31.06/hour, including benefits, must be present at all times during the inspection of public records. As indicated above, the estimated cost, at this time, for this compliance process is 8 hours at \$31.06/hr. plus/minus \$248.48, dependent upon the actual time spent inspecting the records.

If you wish to proceed with your request, please send payment of \$1,731.04 as instructed by the attached FOIA invoice. Upon receipt of payment, MPSC staff will contact you to schedule the requested onsite records inspection.

Upon completion of your records inspection, you will be informed in writing of any balance due the Department, or refund owed to you; the basis for any claimed statutory exemptions from disclosure; and any statutory FOIA remedial provisions. Copies of the non-exempt records identified during the inspection, will be mailed to you upon payment of any due balance.

Sincerely,

A handwritten signature in cursive script that reads "Melvin Farmer, Jr.".

Melvin Farmer, Jr.
Central FOIA Coordinator

Attachments

cc: Mary Jo Kunkle
Herschel P. Fink

Department of Licensing and Regulatory Affairs
FOIA COST ESTIMATE WORKSHEET

Requester: Keith Matheny

LARA Agency: MPSC

FOIA Request Dated: March 12, 2013

LARA AGENCY	CLASSIFICATION OF LOWEST PAID EMPLOYEE CAPABLE OF RETRIEVING/ COPYING THE INFORMATION (POSITION TITLE/GRADE)	HOURLY PAY INCLUDING BENEFITS \$	TIME TO COMPLY IN ¼ HR. INCREMENTS	TOTAL STAFF COST \$	# OF PAGES OF DOCUMENTS	# OF PAGES TIMES \$0.25/PAGE \$	TOTALS \$
MPSC	General Office Assist 5	\$31.06	8.0 hrs.	\$248.48	5,000	TBD	\$248.48
	Secretary 7	\$35.43					
MPSC	Secretary 8	\$37.50	15.0 hrs.	\$562.50	*		\$562.50
	Unempl Insur Examine 9	\$39.34					
	Financial Analyst 9	\$39.92					
	Human Res Analyst 9	\$39.92					
	Department Analyst 9	\$39.92					
	Executive Secretary 10	\$41.16					
	Executive Secretary 11	\$43.41					
MPSC	Public Utilities Engineer 10	\$48.04	15.0 hrs.	\$720.06	*		\$720.06
	Financial Analyst 11	\$49.83					
	Human Res Analyst 11	\$49.83					
	Department Manager 13	\$58.72					
	Financial Specialist 13	\$58.72					
	Unempl Claims Mgr 13	\$59.15					
	Info Tech Prog/Analyst 12	\$59.17					
	Department Manager 15	\$71.96					
	Financial Specialist 15	\$71.96					
	State Division Admin 16	\$88.05					
	State Division Admin 17	\$94.27					
	Senior Policy Exec. 18	\$100.55					
	OTHER CHARGES						
	20 CDs @ \$10.00 each						\$200.00
Totals			38.0 HRS.	\$1,531.04	5,000		\$1,731.04
Mailing Cost Estimate							TBD
TOTAL COST Estimate							\$1,731.04
*Search/Retrieve/Redact							

- Generally the hourly charge, per Section 4(3) of the FOIA, is the lowest paid fulltime LARA employee (General Office Assistant 5) capable of retrieving/copying necessary information/records. However, when a professional or technical class capable employee is required to process requests related to certain information retrieval/examination/redaction, the hourly rate (including benefits) of the lowest paid capable professional/technical employee is charged.
- Average benefits rate utilized of 72%, includes FICA/Retirement/Insurance.
- Other Charges: Postage, Photo/Video discs, CDs, Audio tapes, Transcripts, etc.

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
FREEDOM OF INFORMATION ACT INVOICE

Invoice Date: March 29, 2013

NAME AND ADDRESS OF REQUESTER Mr. Keith Matheny <u>Detroit Free Press, Inc.</u> 615 W. Lafayette Blvd. Detroit, Michigan 48226	BUREAU/OFFICE:	MPSC	
	ACCOUNT CODE:	Index 89008	PCA
	REQUEST RECEIVED: March 12, 2013		
	TYPE OF REQUEST ___ LETTER/SUBPOENA ___ FAX <u> x </u> E-MAIL		
REQUEST PARTIALLY DENIED (x) YES () NO	REQUESTED INFORMATION WILL BE:		
EXEMPT INFORMATION WITHHELD/REDACTED... (-x) YES (-) NO			
EXTENDED RESPONSE NOTICE ISSUED (x) YES () NO			
___ MAILED UPON RECEIPT OF PAYMENT ___ MAILED/INVOICED FOR FULL PAYMENT ___ PAID AND PICKED UP IN PERSON <u> x </u> MADE AVAILABLE FOR ONSITE INSPECTION			

LARA CONTACT: Melvin Farmer, Central FOIA Coordinator (517) 373-0194 / (517) 335-4037 (Fax)
Ottawa Building, 4th Floor, 611 W. Ottawa, Lansing, MI 48909

The FOIA provides that the Department may charge a fee to comply with requests for public records. The processing fee is comprised of hourly wages/benefit costs of the lowest paid employee(s) capable of processing the request; costs/page for duplication of records mailing costs; and other related special costs. Prior to searching and copying requested records, the Department may request full payment or 50% of the estimated costs exceeding \$50.00 with the balance required before mailing the records. Assessed costs are related to your request for: 10 YEARS OF RECORDS REGARDING R460.20503, RULE 503 & R460.20424 INCIDENT REPORTS.

INVOICE CALCULATIONS

(Lowest Paid Capable Employee)

LABOR (Locating and Duplicating):	No. of Hours	x Hourly Rate	\$
LABOR (Examining and Extracting):	No. of Hours	x Hourly Rate	\$
LABOR (Capable Technical Employee):	No. of Hours	x Hourly Rate	\$

See attached
FOIA Cost Estimate Worksheet

POSTAGE: (estimate)

Same as above

DUPLICATING: No. of Pages x Copying Rate Per Side \$.25

Same as above

OTHER: (overtime, audio tapes, discs, photos, security, etc.)

Same as above

REQUESTER:

Make check or money order payable to: STATE OF MICHIGAN
 Department of Licensing and Regulatory Affairs
 Office Services Mailroom
 7150 Harris Drive, P.O. Box 30015
 Lansing, MI 48909

TOTAL \$1,731.04

*DEPOSIT -0-

BALANCE TO BE PAID
\$1,731.04

RETURN ORIGINAL COPY OF THIS INVOICE WITH YOUR PAYMENT.

*PLEASE NOTE: IF A DEPOSIT IS REQUESTED, THE INDICATED AMOUNT IS AN ESTIMATE OF THE COST OF COMPLYING WITH THE REQUEST. THE ACTUAL COST MAY VARY SOMEWHAT FROM THIS AMOUNT AND WILL BE ADJUSTED.

Distribution: Requester, Bureau/Office, Mailroom, FOIA Coordinator

NOTE TO PAYROLL & FOIA COORDINATORS:

UPON PAYMENT OF DEPOSIT OR BALANCE SEND COPY TO CENTRAL FOIA COORDINATOR