

HOUSE BILL NO. 5925

March 16, 2022, Introduced by Reps. Posthumus, Steven Johnson and Borton and referred to the Committee on Oversight.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending section 4 (MCL 15.234), as amended by 2020 PA 38.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) A public body may charge a fee for a public record
2 search, for the necessary copying of a public record for
3 inspection, or for providing a copy of a public record if it has
4 established, makes publicly available, and follows procedures and
5 guidelines to implement this section as described in subsection
6 (4). Subject to subsections (2), (3), (4), (5), and (9), the fee

1 must be limited to actual mailing costs, and to the actual
2 incremental cost of duplication or publication including labor, the
3 cost of search, examination, review, and the deletion and
4 separation of exempt from nonexempt information as provided in
5 section 14. Except as otherwise provided in this act, if the public
6 body estimates or charges a fee in accordance with this act, the
7 total fee must not exceed the sum of the following components:

8 (a) That portion of labor costs directly associated with the
9 necessary searching for, locating, and examining of public records
10 in conjunction with receiving and fulfilling a granted written
11 request. The public body shall not charge more than the hourly wage
12 of its lowest-paid employee capable of searching for, locating, and
13 examining the public records in the particular instance regardless
14 of whether that person is available or who actually performs the
15 labor. Labor costs under this subdivision ~~shall~~**must** be estimated
16 and charged in increments of 15 minutes or more, with all partial
17 time increments rounded down.

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 in lieu of paper copies. This subdivision
24 does not apply if a public body lacks the technological capability
25 necessary to provide records on the particular nonpaper physical
26 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 be estimated and charged in time increments of the
19 public body's choosing; however, all partial time increments ~~shall~~
20 **must** 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-must~~ 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. **If a public
17 body determines that searching for or furnishing copies of a public
18 record cannot be considered as primarily benefiting the general
19 public, that determination may be challenged in a civil action
20 commenced under section 10a(1)(b) on the grounds that the resulting
21 fee exceeds the amount permitted by this section, and the issue is
22 subject to the court's de novo review as provided in section
23 10a(4).** A public record search ~~shall-must~~ be made and a copy of a
24 public record ~~shall-must~~ be furnished without charge for the first
25 \$20.00 of the fee for each request by either of the following:

26 (a) An individual who is entitled to information under this
27 act and who submits an affidavit stating that the individual is
28 indigent and receiving specific public assistance or, if not
29 receiving public assistance, stating facts showing inability to pay

1 the cost because of indigency. If the requestor is eligible for a
2 requested discount, the public body shall fully note the discount
3 on the detailed itemization described under subsection (4). If a
4 requestor is ineligible for the discount, the public body shall
5 inform the requestor specifically of the reason for ineligibility
6 in the public body's written response. An individual is ineligible
7 for this fee reduction if any of the following apply:

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

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

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

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

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

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

1 (3) A fee as described in subsection (1) ~~shall~~**must** not be
2 charged for the cost of search, examination, review, and the
3 deletion and separation of exempt from nonexempt information as
4 provided in section 14 unless failure to charge a fee would result
5 in unreasonably high costs to the public body because of the nature
6 of the request in the particular instance, and the public body
7 specifically identifies the nature of these unreasonably high
8 costs.

9 (4) A public body shall establish procedures and guidelines to
10 implement this act and shall create a written public summary of the
11 specific procedures and guidelines relevant to the general public
12 regarding how to submit written requests to the public body and
13 explaining how to understand a public body's written responses,
14 deposit requirements, fee calculations, and avenues for challenge
15 and appeal. The written public summary ~~shall~~**must** be written in a
16 manner so as to be easily understood by the general public. If the
17 public body directly or indirectly administers or maintains an
18 official internet presence, it shall post and maintain the
19 procedures and guidelines and its written public summary on its
20 website. A public body shall make the procedures and guidelines
21 publicly available by providing free copies of the procedures and
22 guidelines and its written public summary both in the public body's
23 response to a written request and upon request by visitors at the
24 public body's office. A public body that posts and maintains
25 procedures and guidelines and its written public summary on its
26 website may include the website link to the documents in lieu of
27 providing paper copies in its response to a written request. A
28 public body's procedures and guidelines must include the use of a
29 standard form for detailed itemization of any fee amount in its

1 responses to written requests under this act. The detailed
2 itemization must clearly list and explain the allowable charges for
3 each of the 6 fee components listed under subsection (1) that
4 compose the total fee used for estimating or charging purposes.
5 Other public bodies may use a form created by the department of
6 technology, management, and budget or create a form of their own
7 that complies with this subsection. **A public body's procedures and
8 guidelines must provide requestors with a choice of fee payment
9 methods that includes electronic payment if the public body accepts
10 electronic payment for other transactions.** A public body that has
11 not established procedures and guidelines, has not created a
12 written public summary, or has not made those items publicly
13 available without charge as required in this subsection is not
14 relieved of its duty to comply with any requirement of this act and
15 shall not require deposits or charge fees otherwise permitted under
16 this act until it is in compliance with this subsection. **A public
17 body's compliance with this subsection does not limit any remedies
18 provided by this act for the public body's noncompliance with any
19 other provision of this act.** Notwithstanding this subsection and
20 despite any law to the contrary, a public body's procedures and
21 guidelines under this act are not exempt public records under
22 section 13.

23 (5) If the public body directly or indirectly administers or
24 maintains an official internet presence, any public records
25 available to the general public on that internet site at the time
26 the request is made are exempt from any charges under subsection
27 (1)(b). If the FOIA coordinator knows or has reason to know that
28 all or a portion of the requested information is available on its
29 website, the public body shall notify the requestor in its written

1 response that all or a portion of the requested information is
2 available on its website. The written response, to the degree
3 practicable in the specific instance, must include a specific
4 webpage address where the requested information is available. On
5 the detailed itemization described in subsection (4), the public
6 body shall separate the requested public records that are available
7 on its website from those that are not available on the website and
8 shall inform the requestor of the additional charge to receive
9 copies of the public records that are available on its website. If
10 the public body has included the website address for a record in
11 its written response to the requestor and the requestor thereafter
12 stipulates that the public record be provided to him or her in a
13 paper format or other form as described under subsection (1)(c),
14 the public body shall provide the public records in the specified
15 format but may use a fringe benefit multiplier greater than the 50%
16 limitation in subsection (2), not to exceed the actual costs of
17 providing the information in the specified format.

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

20 (7) If a verbal request for information is for information
21 that a public body believes is available on the public body's
22 website, the public employee shall, where practicable and to the
23 best of the public employee's knowledge, inform the requestor about
24 the public body's pertinent website address.

25 (8) In either the public body's initial response or subsequent
26 response as described under section 5(2)(d), the public body may
27 require a good-faith deposit from the person requesting information
28 before providing the public records to the requestor if the entire
29 fee estimate or charge authorized under this section exceeds

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

20 (9) If a public body does not respond to a written request in
21 a timely manner as required under section 5(2), the public body
22 shall do the following:

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

27 (i) The late response was willful and intentional.

28 (ii) The written request included language that conveyed a
29 request for information within the first 250 words of the body of a

1 letter, facsimile, ~~electronic mail, email~~, or ~~electronic mail-email~~
2 attachment, or specifically included the words, characters, or
3 abbreviations for "freedom of information", "information", "FOIA",
4 "copy", or a recognizable misspelling of such, or appropriate legal
5 code reference for this act, on the front of an envelope, or in the
6 subject line of an ~~electronic mail, email~~, letter, or facsimile
7 cover page.

8 (b) If a charge reduction is required under subdivision (a),
9 fully note the charge reduction on the detailed itemization
10 described under subsection (4).

11 (10) This section does not apply to public records prepared
12 under an act or statute specifically authorizing the sale of those
13 public records to the public, or if the amount of the fee for
14 providing a copy of the public record is otherwise specifically
15 provided by an act or statute.

16 (11) Subject to subsection (12), after a public body has
17 granted and fulfilled a written request from an individual under
18 this act, if the public body has not been paid in full the total
19 amount under subsection (1) for the copies of public records that
20 the public body made available to the individual as a result of
21 that written request, the public body may require a deposit of up
22 to 100% of the estimated fee before it begins a full public record
23 search for any subsequent written request from that individual if
24 all of the following apply:

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

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

1 (c) The public records were made available to the individual,
2 subject to payment, within the ~~time frame~~**time-frame** estimate
3 described under subsection (8).

4 (d) Ninety days have passed since the public body notified the
5 individual in writing that the public records were available for
6 pickup or mailing.

7 (e) The individual is unable to show proof of prior payment to
8 the public body.

9 (f) The public body calculates a detailed itemization, as
10 required under subsection (4), that is the basis for the current
11 written request's increased estimated fee deposit.

12 (12) A public body shall no longer require an increased
13 estimated fee deposit from an individual as described under
14 subsection (11) if any of the following apply:

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

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

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

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

24 (14) If a deposit that is required under subsection (8) or
25 (11) is not received by the public body within 45 days from receipt
26 by the requesting person of the notice that a deposit is required,
27 and if the requesting person has not filed an appeal of the deposit
28 amount pursuant to section 10a, the request ~~shall~~**must** be
29 considered abandoned by the requesting person and the public body

1 is no longer required to fulfill the request. Notice of a deposit
2 requirement under subsection (8) or (11) is considered received 3
3 days after it is sent, regardless of the means of transmission.
4 Notice of a deposit requirement under subsection (8) or (11) must
5 include notice of the date by which the deposit must be received,
6 which date is 48 days after the date the notice is sent.