



**House
Legislative
Analysis
Section**

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone 517/373-6466

CORRECTIONS: FOIA DISCLOSURE EXEMPTIONS

RECEIVED

House Bill 5262 as introduced MAR 16 1988

Sponsor: Rep. Floyd Clack

Committee: Corrections

Mich. State Law Library

Senate Bill 585 with committee amendments

Sponsor: Sen. Jack Welborn

Senate Committee: Criminal Justice, Urban Affairs,
and Economic Development

House Committee: Corrections

First Analysis (2-24-88)

THE APPARENT PROBLEM:

The Freedom of Information Act of 1976 (FOIA) provides for public access to records of public bodies. For those individuals who can verify that they are either indigent or on public assistance, the first \$20 of copied records must be supplied free of charge. The FOIA also specifies that a public agency must respond to an oral or written request for disclosure of a public record within five business days of receipt of the request, provided that the request describes the record sufficiently to enable the public body to locate it. Any agency document is subject to disclosure under the FOIA unless there is a statutory exemption for the document. The reason for a disclosure request generally is not required to be divulged, and, unless the requested records are specifically exempted from disclosure, a public body has a duty to provide access to the records sought or to release copies of those records. If the agency denies a request for disclosure of information, it is required to inform the requester of his or her right to sue the agency. (Failure to meet the five-day disclosure requirement is considered a denial.)

Reportedly, the Department of Corrections handles a greater volume of FOIA disclosure requests than any other public agency. Through October 1987, the department had processed over 17,000 disclosure requests in that year alone. The total number of requests for 1987 was projected to be about 20,500. Most of the requests are made by, or on behalf of, prisoners under the department's jurisdiction. Since the FOIA requires a public body to satisfy requests quickly and without inquiry as to the reason for the request, the department must provide requested information (unless that information is statutorily exempted from disclosure) or face legal action on the part of the requesting party. Some contend that prisoners routinely use their rights to disclosure of information under the FOIA to harass the department and its employees by requesting records that are irrelevant to their particular cases. They feel that limits should be placed on the type of information people can request of the department.

THE CONTENT OF THE BILLS:

House Bill 5262 would amend the Freedom of Information Act of 1976 to conform to amendments proposed in Senate Bill 585, exempting Department of Corrections records from the \$20 waiver for information requested by prisoners under the corrections commission's jurisdiction. The bill is tie-barred to Senate Bill 585, which would amend the Department of Corrections Act to exempt certain specified

information and records from the disclosure requirements of the FOIA when that information was requested by — or on behalf of — a prisoner, unless the requested material contained information which identified that particular prisoner. Other public records in the possession of the department or commission would remain subject to disclosure under the FOIA, except that the waiver of the first \$20 of the copying fee for a public record would not apply. Senate Bill 585 would also exempt the home addresses, phone numbers and personnel records of department employees and employees of the Center for Forensic Psychiatry from disclosure under the FOIA.

The following items would be exempt from disclosure under Senate Bill 585:

- Log books or daily reports of the rounds made by department employees, or any other form of daily record made by employees for the purposes of apprising other employees of events in a correctional facility.
- Staffing charts or daily assignment sheets, or other records of the duty assignments of department employees, the release of which would threaten the security of a corrections facility.
- Critical incident reports, records of dangerous or violent incidents, or records of other incidents whose release would threaten the security of a correctional facility.
- Records of a civil action involving the department, its employees, or the commission.
- Records of employee meetings. (This provision would not apply to meetings of the corrections commission.)
- Periodic reports made to the commission or department by wardens, officers, or employees.
- Home addresses, telephone numbers, and personnel records of department employees.

MCL 15.234

FISCAL IMPLICATIONS:

A representative of the Department of Corrections testified before the House Corrections Committee that, at the department's central office alone, one-half of all FOIA requests received involve requests for information pertaining to the prisoner making the request. Therefore, the department estimates that these bills will result in a substantial savings in time to department employees and an undetermined amount of savings to the state. (2-23-88)

H.B. 5262 & S.B. 585 (2-24-88)

OVER

H.B. 5262 & S.B. 585 (2-24-88)

ARGUMENTS:

For:

The bills would apply legitimate and much-needed restrictions on the type of information that may be requested from the Department of Corrections by or on behalf of prisoners under the department's jurisdiction. As evidenced by the staggering number of FOIA disclosure requests received by the department, prisoners have abused their right to information disclosure. Prisoners routinely request the disclosure of records whose contents are irrelevant to the prisoners' legal battles. Further, upon being granted access to records and notified of copying charges due, prisoners often have altered requests to include only the first \$20 worth of copies (which must be given free of charge under the FOIA). By limiting the records that could be disclosed and waiving rights to free copies in some instances, the bills would reduce disclosure requests and save the state money.

For:

The bills would ensure that records specifically naming the requesting prisoner still would be accessible. For those prisoners whose requests for information were relevant to their legal battles, therefore, the necessary information would still be available.

For:

Prison personnel and their families should be given as much protection as possible from harassment by prisoners. While continuing to offer disclosure of information for legitimate requests, the bills would protect personnel by exempting work and personal information from disclosure under the FOIA.

Against:

Although there has been an increase in so-called nuisance requests, certain documents should remain accessible even if a particular prisoner's name does not appear in the document. Medical records and staff log books, for instance, should be accessible. If a prisoner filed a suit claiming that a health care worker did not make required rounds, the prisoner would need the log to demonstrate that failure, but his or her name would not actually appear in the log. Under the bills, that document would be inaccessible under the FOIA disclosure provisions. While it is true that if such a suit were filed the information would be subject to the discovery provisions of Michigan court rules, no enforcement of those rules can occur unless a suit actually is filed. The bills, consequently, could result in an increase of frivolous suits against the department.

Against:

Such broad restrictions on FOIA disclosure would violate prisoners' legal rights. Since prisoners' mobility is restricted by their confinement, their ability to gain access to information already is limited. The bills would compound that limitation. Further, although the bills could effectively reduce the abuses of the FOIA, it would occur at the expense of some prisoners whose disclosure requests were legitimate.

POSITIONS:

A representative of the Department of Corrections testified in support of the bill. (2-23-88)