

HOUSE BILL No. 5310

October 23, 1997, Introduced by Reps. Kaza, Goschka, McBryde, Jaye and Perricone and referred to the Committee on House Oversight and Ethics.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending sections 10 and 11 (MCL 15.240 and 15.241), section
10 as amended by 1996 PA 553.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10. (1) If a public body makes a final determination
2 to deny all or a portion of a request, the requesting person may
3 do 1 of the following at his or her option:

4 (a) Submit to the head of the public body a written appeal
5 that specifically states the word "appeal" and identifies the
6 reason or reasons for reversal of the denial.

7 (b) Commence an action in the circuit court to compel the
8 public body's disclosure of the public records within 180 days
9 after a public body's final determination to deny a request.

1 (2) Within 10 days after receiving a written appeal pursuant
2 to subsection (1)(a), the head of a public body shall do 1 of the
3 following:

4 (a) Reverse the disclosure denial.

5 (b) issue a written notice to the requesting person uphold-
6 ing the disclosure denial.

7 (c) Reverse the disclosure denial in part and issue a writ-
8 ten notice to the requesting person upholding the disclosure
9 denial in part.

10 (d) Under unusual circumstances, Issue a notice extending
11 for not more than 10 business days the period during which the
12 head of the public body shall respond to the written appeal. The
13 head of a public body shall not issue more than 1 notice of
14 extension for a particular written appeal.

15 (3) A board or commission that is the head of a public body
16 is not considered to have received a written appeal under subsec-
17 tion (2) until the first regularly scheduled meeting of that
18 board or commission following submission of the written appeal
19 under subsection (1)(a). If the head of the public body fails to
20 respond to a written appeal pursuant to subsection (2), or if the
21 head of the public body upholds all or a portion of the disclo-
22 sure denial that is the subject of the written appeal, the
23 requesting person may seek judicial review of the nondisclosure
24 by commencing an action in circuit court under
25 subsection (1)(b).

26 (4) In an action commenced under subsection (1)(b), a court
27 that determines a public record is not exempt from disclosure

1 shall order the public body to cease withholding or to produce
2 all or a portion of a public record wrongfully withheld, regard-
3 less of the location of the public record. The circuit court for
4 the county in which the complainant resides or has his or her
5 principal place of business, or the circuit court for the county
6 in which the public record or an office of the public body is
7 located has venue over the action. The court shall determine the
8 matter de novo and the burden is on the public body to sustain
9 its denial. The court, on its own motion, may view the public
10 record in controversy in private before reaching a decision.
11 Failure to comply with an order of the court may be punished as
12 contempt of court.

13 (5) An action commenced under this section and an appeal
14 from an action commenced under this section shall be assigned for
15 hearing and trial or for argument at the earliest practicable
16 date and expedited in every way.

17 (6) If a person asserting the right to inspect, copy, or
18 receive a copy of all or a portion of a public record prevails in
19 an action commenced under this section, the court shall award
20 ~~reasonable attorneys'~~ ACTUAL ATTORNEY fees, costs, and
21 disbursements. If the person or public body prevails in part,
22 the court may, in its discretion, award all or an appropriate
23 portion of ~~reasonable attorneys'~~ ACTUAL ATTORNEY fees, costs,
24 and disbursements. The award shall be assessed against the
25 public body liable for damages under subsection (7).

26 (7) If the circuit court determines in an action commenced
27 under this section that the public body has ~~arbitrarily and~~

1 ~~capriciously~~ violated this act by refusal or delay in disclosing
2 or providing copies of a public record, the court shall award, in
3 addition to any actual or compensatory damages, punitive damages
4 in the amount of ~~-\$500.00-~~ \$5,000.00 to the person seeking the
5 right to inspect or receive a copy of a public record. The dam-
6 ages shall not be assessed against an individual, but shall be
7 assessed against the next succeeding public body that is not an
8 individual and that kept or maintained the public record as part
9 of its public function.

10 Sec. 11. (1) A state agency shall publish and make avail-
11 able to the public all of the following:

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

14 (b) Promulgated rules.

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

19 (2) Publications may be in pamphlet, loose-leaf, or other
20 appropriate form in printed, mimeographed, or other written
21 matter.

22 (3) Except to the extent that a person has actual and timely
23 notice of the terms thereof, a person shall not in any manner be
24 required to resort to, or be adversely affected by, a matter
25 required to be published and made available, if the matter is not
26 so published and made available.

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

3 (5) A person may commence an action in the circuit court to
4 compel a state agency to comply with this section. If the court
5 determines that the state agency has failed to comply, the court
6 shall order the state agency to comply and shall award
7 ~~reasonable attorneys'~~ ACTUAL ATTORNEY fees, costs, and dis-
8 bursements to the person commencing the action. The circuit
9 court for the county in which the state agency is located shall
10 have jurisdiction to issue the order.

11 (6) As used in this section, ~~"state"~~ "agency", "contested
12 case", and "rules" ~~shall have the same meanings as ascribed to~~
13 MEAN those terms ~~in Act No. 306 of the Public Acts of 1969, as~~
14 ~~amended, being sections 24.201 to 24.315 of the Michigan Compiled~~
15 ~~Laws~~ AS DEFINED IN THE ADMINISTRATIVE PROCEDURES ACT OF 1969,
16 1969 PA 306, MCL 24.201 TO 24.328.