

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 6582

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending sections 3 and 4 (MCL 15.233 and 15.234), section 3 as
amended by 1996 PA 553 and section 4 as amended by 2014 PA 563.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) Except as expressly provided in section 13, upon
2 providing a public body's FOIA coordinator with a written request
3 that describes a public record sufficiently to enable the public
4 body to find the public record, a person has a right to inspect,
5 copy, or receive copies of the requested public record of the
6 public body. **A REQUEST FROM A PERSON, OTHER THAN AN INDIVIDUAL WHO**
7 **QUALIFIES AS INDIGENT UNDER SECTION 4(2)(A), MUST INCLUDE THE**
8 **REQUESTING PERSON'S COMPLETE NAME, ADDRESS, AND CONTACT**
9 **INFORMATION, AND, IF THE REQUEST IS MADE BY A PERSON OTHER THAN AN**

1 INDIVIDUAL, THE COMPLETE NAME, ADDRESS, AND CONTACT INFORMATION OF
2 THE PERSON'S AGENT WHO IS AN INDIVIDUAL. AN ADDRESS MUST BE WRITTEN
3 IN COMPLIANCE WITH UNITED STATES POSTAL SERVICE ADDRESSING
4 STANDARDS. CONTACT INFORMATION MUST INCLUDE A VALID TELEPHONE
5 NUMBER OR ELECTRONIC MAIL ADDRESS. A person has a right to
6 subscribe to future issuances of public records that are created,
7 issued, or disseminated on a regular basis. A subscription ~~shall be~~
8 IS valid for up to 6 months, at the request of the subscriber, and
9 ~~shall be~~ IS renewable. An employee of a public body who receives a
10 request for a public record shall promptly forward that request to
11 the freedom of information act coordinator.

12 (2) A freedom of information act coordinator shall keep a copy
13 of all written requests for public records on file for no less than
14 1 year.

15 (3) A public body shall furnish a requesting person a
16 reasonable opportunity for inspection and examination of its public
17 records, and shall furnish reasonable facilities for making
18 memoranda or abstracts from its public records during the usual
19 business hours. A public body may make reasonable rules necessary
20 to protect its public records and to prevent excessive and
21 unreasonable interference with the discharge of its functions. A
22 public body shall protect public records from loss, unauthorized
23 alteration, mutilation, or destruction.

24 (4) This act does not require a public body to make a
25 compilation, summary, or report of information, except as required
26 in section 11.

27 (5) This act does not require a public body to create a new

1 public record, except as required in section 11, and to the extent
2 required by this act for the furnishing of copies, or edited copies
3 pursuant to section 14(1), of an already existing public record.

4 (6) The custodian of a public record shall, upon written
5 request, furnish a requesting person a certified copy of a public
6 record.

7 Sec. 4. (1) A public body may charge a fee for a public record
8 search, for the necessary copying of a public record for
9 inspection, or for providing a copy of a public record if it has
10 established, makes publicly available, and follows procedures and
11 guidelines to implement this section as described in subsection
12 (4). Subject to subsections (2), (3), (4), (5), and (9), the fee
13 ~~shall~~**MUST** be limited to actual mailing costs, and to the actual
14 incremental cost of duplication or publication including labor, the
15 cost of search, examination, review, and the deletion and
16 separation of exempt from nonexempt information as provided in
17 section 14. Except as otherwise provided in this act, if the public
18 body estimates or charges a fee in accordance with this act, the
19 total fee ~~shall~~**MUST** not exceed the sum of the following
20 components:

21 (a) That portion of labor costs directly associated with the
22 necessary searching for, locating, and examining of public records
23 in conjunction with receiving and fulfilling a granted written
24 request. The public body shall not charge more than the hourly wage
25 of its lowest-paid employee capable of searching for, locating, and
26 examining the public records in the particular instance regardless
27 of whether that person is available or who actually performs the

1 labor. Labor costs under this subdivision shall be estimated and
2 charged in increments of 15 minutes or more, with all partial time
3 increments rounded down.

4 (b) That portion of labor costs, including necessary review,
5 if any, directly associated with the separating and deleting of
6 exempt information from nonexempt information as provided in
7 section 14. For services performed by an employee of the public
8 body, the public body shall not charge more than the hourly wage of
9 its lowest-paid employee capable of separating and deleting exempt
10 information from nonexempt information in the particular instance
11 as provided in section 14, regardless of whether that person is
12 available or who actually performs the labor. If a public body does
13 not employ a person capable of separating and deleting exempt
14 information from nonexempt information in the particular instance
15 as provided in section 14 as determined by the public body's FOIA
16 coordinator on a case-by-case basis, it may treat necessary
17 contracted labor costs used for the separating and deleting of
18 exempt information from nonexempt information in the same manner as
19 employee labor costs when calculating charges under this
20 subdivision if it clearly notes the name of the contracted person
21 or firm on the detailed itemization described under subsection (4).
22 Total labor costs calculated under this subdivision for contracted
23 labor costs ~~shall~~**MUST** not exceed an amount equal to 6 times the
24 state minimum hourly wage rate determined under section 4 of the
25 ~~workforce opportunity wage act, 2014 PA 138, MCL 408.411 to~~
26 ~~408.424.~~**IMPROVED WORKFORCE OPPORTUNITY WAGE ACT, 2018 PA 337, MCL**
27 **408.934.** Labor costs under this subdivision shall be estimated and

1 charged in increments of 15 minutes or more, with all partial time
2 increments rounded down. A public body shall not charge for labor
3 directly associated with redaction under section 14 if it knows or
4 has reason to know that it previously redacted the public record in
5 question and the redacted version is still in the public body's
6 possession.

7 (c) For public records provided to the requestor on nonpaper
8 physical media, the actual and most reasonably economical cost of
9 the computer discs, computer tapes, or other digital or similar
10 media. The requestor may stipulate that the public records be
11 provided on nonpaper physical media, electronically mailed, or
12 otherwise electronically provided to him or her in lieu of paper
13 copies. This subdivision does not apply if a public body lacks the
14 technological capability necessary to provide records on the
15 particular nonpaper physical media stipulated in the particular
16 instance.

17 (d) For paper copies of public records provided to the
18 requestor, the actual total incremental cost of necessary
19 duplication or publication, not including labor. The cost of paper
20 copies shall be calculated as a total cost per sheet of paper and
21 shall be itemized and noted in a manner that expresses both the
22 cost per sheet and the number of sheets provided. The fee ~~shall~~
23 **MUST** not exceed 10 cents per sheet of paper for copies of public
24 records made on 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper.
25 A public body shall utilize the most economical means available for
26 making copies of public records, including using double-sided
27 printing, if cost saving and available.

1 (e) The cost of labor directly associated with duplication or
2 publication, including making paper copies, making digital copies,
3 or transferring digital public records to be given to the requestor
4 on nonpaper physical media or through the internet or other
5 electronic means as stipulated by the requestor. The public body
6 shall not charge more than the hourly wage of its lowest-paid
7 employee capable of necessary duplication or publication in the
8 particular instance, regardless of whether that person is available
9 or who actually performs the labor. Labor costs under this
10 subdivision may be estimated and charged in time increments of the
11 public body's choosing; however, all partial time increments shall
12 be rounded down.

13 (f) The actual cost of mailing, if any, for sending the public
14 records in a reasonably economical and justifiable manner. The
15 public body shall not charge more for expedited shipping or
16 insurance unless specifically stipulated by the requestor, but may
17 otherwise charge for the least expensive form of postal delivery
18 confirmation when mailing public records.

19 (2) When calculating labor costs under subsection (1)(a), (b),
20 or (e), fee components shall be itemized in a manner that expresses
21 both the hourly wage and the number of hours charged. The public
22 body may also add up to 50% to the applicable labor charge amount
23 to cover or partially cover the cost of fringe benefits if it
24 clearly notes the percentage multiplier used to account for
25 benefits in the detailed itemization described in subsection (4).
26 Subject to the 50% limitation, the public body shall not charge
27 more than the actual cost of fringe benefits, and overtime wages

1 shall not be used in calculating the cost of fringe benefits.
2 Overtime wages shall not be included in the calculation of labor
3 costs unless overtime is specifically stipulated by the requestor
4 and clearly noted on the detailed itemization described in
5 subsection (4). A search for a public record may be conducted or
6 copies of public records may be furnished without charge or at a
7 reduced charge if the public body determines that a waiver or
8 reduction of the fee is in the public interest because searching
9 for or furnishing copies of the public record can be considered as
10 primarily benefiting the general public. A public record search
11 shall be made and a copy of a public record shall be furnished
12 without charge for the first \$20.00 of the fee for each request by
13 either of the following:

14 (a) An individual who is entitled to information under this
15 act and who submits an affidavit stating that the individual is
16 indigent and receiving specific public assistance or, if not
17 receiving public assistance, stating facts showing inability to pay
18 the cost because of indigency. If the requestor is eligible for a
19 requested discount, the public body shall fully note the discount
20 on the detailed itemization described under subsection (4). If a
21 requestor is ineligible for the discount, the public body shall
22 inform the requestor specifically of the reason for ineligibility
23 in the public body's written response. An individual is ineligible
24 for this fee reduction if any of the following apply:

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

1 (ii) The individual requests the information in conjunction
2 with outside parties who are offering or providing payment or other
3 remuneration to the individual to make the request. A public body
4 may require a statement by the requestor in the affidavit that the
5 request is not being made in conjunction with outside parties in
6 exchange for payment or other remuneration.

7 (b) A nonprofit organization formally designated by the state
8 to carry out activities under subtitle C of the developmental
9 disabilities assistance and bill of rights act of 2000, Public Law
10 106-402, and the protection and advocacy for individuals with
11 mental illness act, Public Law 99-319, or their successors, if the
12 request meets all of the following requirements:

13 (i) Is made directly on behalf of the organization or its
14 clients.

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

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

20 (3) A fee as described in subsection (1) shall not be charged
21 for the cost of search, examination, review, and the deletion and
22 separation of exempt from nonexempt information as provided in
23 section 14 unless failure to charge a fee would result in
24 unreasonably high costs to the public body because of the nature of
25 the request in the particular instance, and the public body
26 specifically identifies the nature of these unreasonably high
27 costs.

1 (4) A public body shall establish procedures and guidelines to
2 implement this act and shall create a written public summary of the
3 specific procedures and guidelines relevant to the general public
4 regarding how to submit written requests to the public body and
5 explaining how to understand a public body's written responses,
6 deposit requirements, fee calculations, and avenues for challenge
7 and appeal. The written public summary shall be written in a manner
8 so as to be easily understood by the general public. If the public
9 body directly or indirectly administers or maintains an official
10 internet presence, it shall post and maintain the procedures and
11 guidelines and its written public summary on its website. A public
12 body shall make the procedures and guidelines publicly available by
13 providing free copies of the procedures and guidelines and its
14 written public summary both in the public body's response to a
15 written request and upon request by visitors at the public body's
16 office. A public body that posts and maintains procedures and
17 guidelines and its written public summary on its website may
18 include the website link to the documents in lieu of providing
19 paper copies in its response to a written request. A public body's
20 procedures and guidelines ~~shall~~**MUST** include the use of a standard
21 form for detailed itemization of any fee amount in its responses to
22 written requests under this act. The detailed itemization ~~shall~~
23 **MUST** clearly list and explain the allowable charges for each of the
24 6 fee components listed under subsection (1) that compose the total
25 fee used for estimating or charging purposes. Other public bodies
26 may use a form created by the department of technology, management,
27 and budget or create a form of their own that complies with this

1 subsection. A public body that has not established procedures and
2 guidelines, has not created a written public summary, or has not
3 made those items publicly available without charge as required in
4 this subsection is not relieved of its duty to comply with any
5 requirement of this act and shall not require deposits or charge
6 fees otherwise permitted under this act until it is in compliance
7 with this subsection. Notwithstanding this subsection and despite
8 any law to the contrary, a public body's procedures and guidelines
9 under this act are not exempt public records under section 13.

10 (5) If the public body directly or indirectly administers or
11 maintains an official internet presence, any public records
12 available to the general public on that internet site at the time
13 the request is made are exempt from any charges under subsection
14 (1)(b). If the FOIA coordinator knows or has reason to know that
15 all or a portion of the requested information is available on its
16 website, the public body shall notify the requestor in its written
17 response that all or a portion of the requested information is
18 available on its website. The written response, to the degree
19 practicable in the specific instance, ~~shall~~**MUST** include a specific
20 webpage address where the requested information is available. On
21 the detailed itemization described in subsection (4), the public
22 body shall separate the requested public records that are available
23 on its website from those that are not available on the website and
24 shall inform the requestor of the additional charge to receive
25 copies of the public records that are available on its website. If
26 the public body has included the website address for a record in
27 its written response to the requestor and the requestor thereafter

1 stipulates that the public record be provided to him or her in a
2 paper format or other form as described under subsection (1)(c),
3 the public body shall provide the public records in the specified
4 format but may use a fringe benefit multiplier greater than the 50%
5 limitation in subsection (2), not to exceed the actual costs of
6 providing the information in the specified format.

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

9 (7) If a verbal request for information is for information
10 that a public body believes is available on the public body's
11 website, the public employee shall, where practicable and to the
12 best of the public employee's knowledge, inform the requestor about
13 the public body's pertinent website address.

14 (8) In either the public body's initial response or subsequent
15 response as described under section 5(2)(d), the public body may
16 require a good-faith deposit from the person requesting information
17 before providing the public records to the requestor if the entire
18 fee estimate or charge authorized under this section exceeds
19 \$50.00, based on a good-faith calculation of the total fee
20 described in subsection (4). Subject to subsection (10), the
21 deposit ~~shall~~**MUST** not exceed 1/2 of the total estimated fee, and a
22 public body's request for a deposit ~~shall~~**MUST** include a detailed
23 itemization as required under subsection (4). The response ~~shall~~
24 **MUST** also contain a best efforts estimate by the public body
25 regarding the time frame it will take the public body to comply
26 with the law in providing the public records to the requestor. The
27 time frame estimate is nonbinding upon the public body, but the

1 public body shall provide the estimate in good faith and strive to
2 be reasonably accurate and to provide the public records in a
3 manner based on this state's public policy under section 1 and the
4 nature of the request in the particular instance. If a public body
5 does not respond in a timely manner as described under section
6 5(2), it is not relieved from its requirements to provide proper
7 fee calculations and time frame estimates in any tardy responses.
8 Providing an estimated time frame does not relieve a public body
9 from any of the other requirements of this act.

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

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

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

18 (ii) The written request included language that conveyed a
19 request for information within the first 250 words of the body of a
20 letter, facsimile, electronic mail, or electronic mail attachment,
21 or specifically included the words, characters, or abbreviations
22 for "freedom of information", "information", "FOIA", "copy", or a
23 recognizable misspelling of such, or appropriate legal code
24 reference for this act, on the front of an envelope, or in the
25 subject line of an electronic mail, letter, or facsimile cover
26 page.

27 (b) If a charge reduction is required under subdivision (a),

1 fully note the charge reduction on the detailed itemization
2 described under subsection (4).

3 (10) This section does not apply to public records prepared
4 under an act or statute specifically authorizing the sale of those
5 public records to the public, or if the amount of the fee for
6 providing a copy of the public record is otherwise specifically
7 provided by an act or statute.

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

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

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

22 (c) The public records were made available to the individual,
23 subject to payment, within the time frame estimate described under
24 subsection ~~(7)~~-(8).

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

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

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

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

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

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

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

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

18 (14) IF A DEPOSIT THAT IS REQUIRED UNDER SUBSECTION (8) OR
19 (11) IS NOT RECEIVED BY THE PUBLIC BODY WITHIN 45 DAYS FROM RECEIPT
20 BY THE REQUESTING PERSON OF THE NOTICE THAT A DEPOSIT IS REQUIRED,
21 AND IF THE REQUESTING PERSON HAS NOT FILED AN APPEAL OF THE DEPOSIT
22 AMOUNT PURSUANT TO SECTION 10A, THE REQUEST SHALL BE CONSIDERED
23 ABANDONED BY THE REQUESTING PERSON AND THE PUBLIC BODY IS NO LONGER
24 REQUIRED TO FULFILL THE REQUEST. NOTICE OF A DEPOSIT REQUIREMENT
25 UNDER SUBSECTION (8) OR (11) IS CONSIDERED RECEIVED 3 DAYS AFTER IT
26 IS SENT, REGARDLESS OF THE MEANS OF TRANSMISSION. NOTICE OF A
27 DEPOSIT REQUIREMENT UNDER SUBSECTION (8) OR (11) MUST INCLUDE

- 1 NOTICE OF THE DATE BY WHICH THE DEPOSIT MUST BE RECEIVED, WHICH
- 2 DATE IS 48 DAYS AFTER THE DATE THE NOTICE IS SENT.