

**SUBSTITUTE FOR
HOUSE BILL NO. 4617**

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending sections 1, 2, 3, and 5 (MCL 15.231, 15.232, 15.233,
and 15.235), section 1 as amended by 1997 PA 6, section 2 as
amended by 2018 PA 68, section 3 as amended by 2018 PA 523, and
section 5 as amended by 2020 PA 36.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) This act shall be known and may be cited as the
2 "freedom of information act".
3 (2) It is the public policy of this state that, **subject to**
4 **section 3(7)**, all persons ~~, except those persons incarcerated in~~
5 ~~state or local correctional facilities,~~ are entitled to full and
6 complete information regarding the affairs of government and the



1 official acts of those who represent them as public officials and
2 public employees, consistent with this act. The people ~~shall~~**must**
3 be informed so that they may fully participate in the democratic
4 process.

5 Sec. 2. As used in this act:

6 (a) "Cybersecurity assessment" means an investigation
7 undertaken by a person, governmental body, or other entity to
8 identify vulnerabilities in cybersecurity plans.

9 (b) "Cybersecurity incident" includes, but is not limited to,
10 a computer network intrusion or attempted intrusion; a breach of
11 primary computer network controls; unauthorized access to programs,
12 data, or information contained in a computer system; or actions by
13 a third party that materially affect component performance or,
14 because of impact to component systems, prevent normal computer
15 system activities.

16 (c) "Cybersecurity plan" includes, but is not limited to,
17 information about a person's information systems, network security,
18 encryption, network mapping, access control, passwords,
19 authentication practices, computer hardware or software, or
20 response to cybersecurity incidents.

21 (d) "Cybersecurity vulnerability" means a deficiency within
22 computer hardware or software, or within a computer network or
23 information system, that could be exploited by unauthorized parties
24 for use against an individual computer user or a computer network
25 or information system.

26 (e) "Field name" means the label or identification of an
27 element of a computer database that contains a specific item of
28 information, and includes, but is not limited to, a subject heading
29 such as a column header, data dictionary, or record layout.



(f) "FOIA coordinator" means either of the following:

(i) An individual who is a public body.

(ii) An individual designated by a public body in accordance with section 6 to accept and process requests for public records under this act.

(g) "Person" means an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. ~~Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.~~

(h) "Public body" means any of the following:

(i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof.

(ii) An agency, board, commission, or council in the legislative branch of the state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.

(iv) Any other body that is created by state or local authority or is primarily funded by or through state or local authority, except that **it does not include** the judiciary, including the office of the county clerk and its employees when acting in the capacity of clerk to the circuit court. ~~, is not included in the definition of public body.~~



(i) "Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. Public record does not include computer software. This act separates public records into the following 2 classes:

(i) Those that are exempt from disclosure under section 13.

(ii) All public records that are not exempt from disclosure under section 13 and that are subject to disclosure under this act.

(j) "Software" means a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result. Software does not include computer-stored information or data, or a field name if disclosure of that field name does not violate a software license.

(k) "Unusual circumstances" means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

(i) The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.

(ii) The need to collect the requested public records from numerous field offices, facilities, or other establishments ~~which~~ **that** are located apart from the particular office receiving or processing the request.

(l) "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or



1 paper tapes, photographic films or prints, microfilm, microfiche,
2 magnetic or punched cards, discs, drums, hard drives, solid state
3 storage components, or other means of recording or retaining
4 meaningful content.

5 (m) "Written request" means a writing that asks for
6 information, and includes a writing transmitted by facsimile,
7 ~~electronic mail, email~~, or other electronic means.

8 Sec. 3. (1) Except as expressly provided in section 13, **and**
9 **subject to subsection (7)**, upon providing a public body's FOIA
10 coordinator with a written request that describes a public record
11 sufficiently to enable the public body to find the public record, a
12 person has a right to inspect, copy, or receive copies of the
13 requested public record of the public body. A request from a
14 person, other than an individual who qualifies as indigent under
15 section 4(2) (a) **or who makes a request under subsection (7)**, must
16 include the requesting person's complete name, address, and contact
17 information, and, if the request is made by a person other than an
18 individual, the complete name, address, and contact information of
19 the person's agent who is an individual. An address must be written
20 in compliance with United States Postal Service addressing
21 standards. Contact information must include a valid telephone
22 number or ~~electronic mail email~~ address. A person has a right to
23 subscribe to future issuances of public records that are created,
24 issued, or disseminated on a regular basis. A subscription is valid
25 for up to 6 months, at the request of the subscriber, and is
26 renewable. An employee of a public body who receives a request for
27 a public record shall promptly forward that request to the freedom
28 of information act coordinator.

29 (2) A freedom of information act coordinator shall keep a copy



1 of all written requests for public records on file for no less than
2 1 year.

3 (3) A public body shall furnish a requesting person a
4 reasonable opportunity for inspection and examination of its public
5 records, and shall furnish reasonable facilities for making
6 memoranda or abstracts from its public records during the usual
7 business hours. A public body may make reasonable rules necessary
8 to protect its public records and to prevent excessive and
9 unreasonable interference with the discharge of its functions. A
10 public body shall protect public records from loss, unauthorized
11 alteration, mutilation, or destruction.

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

15 (5) This act does not require a public body to create a new
16 public record, except as required in section 11, and to the extent
17 required by this act for the furnishing of copies, or edited copies
18 pursuant to section 14(1), of an already existing public record.

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

22 **(7) The right to inspect, copy, or receive a copy of a public**
23 **record under this act is not available to an individual**
24 **incarcerated in a state or county correctional facility in this**
25 **state or any other state, or in a federal correctional facility,**
26 **except for a public record properly requested by the incarcerated**
27 **individual that meets all of the following:**

28 **(a) The record is not exempt under section 13.**

29 **(b) The record contains 1 or more specific references to the**



1 incarcerated individual or his or her minor child for whom he or
2 she has not been denied parenting time under the child custody act
3 of 1970, 1970 PA 91, MCL 722.21 to 722.31, and the record is
4 otherwise accessible to the individual by law.

5 (c) The record is related to an arrest or prosecution of the
6 incarcerated individual or his or her minor child as described in
7 subdivision (b).

8 (8) The right of incarcerated individuals described in
9 subsection (7) is not intended to interfere with any properly
10 adopted rules that a correctional agency may have regarding the
11 content of mail that may be delivered to an incarcerated
12 individual.

13 Sec. 5. (1) Except as provided in section 3, a person desiring
14 to inspect or receive a copy of a public record shall make a
15 written request for the public record to the FOIA coordinator of a
16 public body. A written request made by facsimile, ~~electronic mail,~~
17 **email**, or other electronic transmission is not received by a public
18 body's FOIA coordinator until 1 business day after the electronic
19 transmission is made. However, if a written request is sent by
20 ~~electronic mail~~**email** and delivered to the public body's spam or
21 junk-mail folder, the request is not received until 1 day after the
22 public body first becomes aware of the written request. The public
23 body shall note in its records both the time a written request is
24 delivered to its spam or junk-mail folder and the time the public
25 body first becomes aware of that request.

26 (2) Unless otherwise agreed to in writing by the person making
27 the request, a public body shall, subject to ~~subsection~~**subsections**
28 (10) **and (11)**, respond to a request for a public record within 5
29 business days after the public body receives the request by doing 1



1 of the following:

2 (a) Granting the request.

3 (b) Issuing a written notice to the requesting person denying
4 the request.

5 (c) Granting the request in part and issuing a written notice
6 to the requesting person denying the request in part.

7 (d) Issuing a notice extending for not more than 10 business
8 days the period during which the public body shall respond to the
9 request. A public body shall not issue more than 1 notice of
10 extension for a particular request. **This subdivision does not apply**
11 **to a response subject to subsection (11).**

12 (3) Failure to respond to a request under subsection (2)
13 constitutes a public body's final determination to deny the request
14 if either of the following applies:

15 (a) The failure was willful and intentional.

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

25 (4) In a civil action to compel a public body's disclosure of
26 a public record under section 10, the court shall assess damages
27 against the public body under section 10(7) if the court has done
28 both of the following:

29 (a) Determined that the public body has not complied with



1 subsection (2).

2 (b) Ordered the public body to disclose or provide copies of
3 all or a portion of the public record.

4 (5) A written notice denying a request for a public record in
5 whole or in part is a public body's final determination to deny the
6 request or portion of that request. The written notice must
7 contain:

8 (a) An explanation of the basis under this act or other
9 statute for the determination that the public record, or portion of
10 that public record, is exempt from disclosure, if that is the
11 reason for denying all or a portion of the request.

12 (b) A certificate that the public record does not exist under
13 the name given by the requester or by another name reasonably known
14 to the public body, if that is the reason for denying the request
15 or a portion of the request.

16 (c) A description of a public record or information on a
17 public record that is separated or deleted under section 14, if a
18 separation or deletion is made.

19 (d) A full explanation of the requesting person's right to do
20 either of the following:

21 (i) Submit to the head of the public body a written appeal that
22 specifically states the word "appeal" and identifies the reason or
23 reasons for reversal of the disclosure denial.

24 (ii) Seek judicial review of the denial under section 10.

25 (e) Notice of the right to receive ~~attorneys'~~ **attorney** fees
26 and damages as provided in section 10 if, after judicial review,
27 the court determines that the public body has not complied with
28 this section and orders disclosure of all or a portion of a public
29 record.



1 (6) The individual designated in section 6 as responsible for
2 the denial of the request shall sign the written notice of denial.

3 (7) If a public body issues a notice extending the period for
4 a response to the request, the notice must specify the reasons for
5 the extension and the date by which the public body will do 1 of
6 the following:

7 (a) Grant the request.

8 (b) Issue a written notice to the requesting person denying
9 the request.

10 (c) Grant the request in part and issue a written notice to
11 the requesting person denying the request in part.

12 (8) If a public body makes a final determination to deny in
13 whole or in part a request to inspect or receive a copy of a public
14 record or portion of that public record, the requesting person may
15 do either of the following:

16 (a) Appeal the denial to the head of the public body under
17 section 10.

18 (b) Commence a civil action, under section 10.

19 (9) Notwithstanding any other provision of this act to the
20 contrary, a public body that maintains a law enforcement records
21 management system and stores public records for another public body
22 that subscribes to the law enforcement records management system is
23 not in possession of, retaining, or the custodian of, a public
24 record stored on behalf of the subscribing public body. If the
25 public body that maintains a law enforcement records management
26 system receives a written request for a public record that is
27 stored on behalf of a subscribing public body, the public body that
28 maintains the law enforcement records management system shall,
29 within 10 business days after receipt of the request, give written



1 notice to the requesting person identifying the subscribing public
2 body and stating that the requesting person shall submit the
3 request to the subscribing public body. As used in this subsection,
4 "law enforcement records management system" means a data storage
5 system that may be used voluntarily by subscribers, including any
6 subscribing public bodies, to share information and facilitate
7 intergovernmental collaboration in the provision of law enforcement
8 services.

9 (10) A person making a request under subsection (1) may
10 stipulate that the public body's response under subsection (2) be
11 ~~electronically mailed,~~ **emailed**, delivered by facsimile, or
12 delivered by first-class mail. This subsection does not apply if
13 the public body lacks the technological capability to provide an
14 ~~electronically mailed~~ **emailed** response.

15 (11) **If a public body that is a correctional agency receives a**
16 **request submitted by an incarcerated individual pursuant to section**
17 **3(7), the public body shall respond to the request in the manner**
18 **prescribed in subsection (2) (a) to (c) within 30 days after the**
19 **public body receives the request.**