

**SUBSTITUTE FOR
HOUSE BILL NO. 5921**

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending section 10 (MCL 15.240), as amended by 2014 PA 563.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10. (1) If a public body makes a final determination to
2 deny all or a portion of a request, the requesting person may do ~~±~~
3 **either** 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 a civil action in the circuit court, or if the
8 decision of a state public body is at issue, the court of claims,
9 to compel the public body's disclosure of the public records within



1 180 days after ~~a~~**the** public body's final determination to deny a
2 request.

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

6 (a) Reverse the disclosure denial.

7 (b) Issue a written notice to the requesting person upholding
8 the disclosure denial.

9 (c) Reverse the disclosure denial in part and issue a written
10 notice to the requesting person upholding the disclosure denial in
11 part.

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

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

27 (4) ~~In~~**All of the following apply in** an action commenced under
28 subsection (1)(b): ~~—a~~

29 (a) **A** court that determines a public record is not exempt from



1 disclosure shall order the public body to cease withholding or to
2 produce all or a portion of a public record wrongfully withheld,
3 regardless of the location of the public record.

4 (b) Venue for an action against a local public body is proper
5 in the circuit court for the county in which the public record or
6 an office of the public body is located. ~~has venue over the action.~~

7 (c) The court shall determine the matter de novo and the
8 burden is on the public body to sustain its denial.

9 (d) The court, on its own motion, may view the public record
10 in controversy in private before reaching a decision.

11 (e) Failure to comply with an order of the court may be
12 punished as contempt of court.

13 (5) An action commenced under this section and an appeal from
14 an action commenced under this section ~~shall~~**must** be assigned for
15 hearing and trial or for argument at the earliest practicable date
16 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'~~**attorney** fees, costs, and disbursements. If
21 the person or public body prevails in part, the court may, in its
22 discretion, award all or an appropriate portion of reasonable
23 ~~attorneys'~~**attorney** fees, costs, and disbursements. The award ~~shall~~
24 **must** be assessed against the public body liable for damages under
25 subsection (7).

26 (7) If the court determines in an action commenced under this
27 section that the public body has arbitrarily and capriciously
28 violated this act by refusal or delay in disclosing or providing
29 copies of a public record, the court shall order the public body to



1 pay a civil fine of \$1,000.00, which ~~shall~~**must** be deposited into
2 the general fund of the state treasury. The court shall award, in
3 addition to any actual or compensatory damages, punitive damages in
4 the amount of \$1,000.00 to the person seeking the right to inspect
5 or receive a copy of a public record. The damages ~~shall~~**must** not be
6 assessed against an individual, but ~~shall~~**must** be assessed against
7 the next succeeding public body that is not an individual and that
8 kept or maintained the public record as part of its public
9 function.

10 (8) If the court determines in an action commenced under this
11 section that the public body, in attempting to sustain a denial in
12 whole or in part of a request for a public record, has asserted a
13 basis for denial that was not included in its denial by written
14 notice properly and timely provided in response to the request
15 under section 5(5), the court shall order the public body to pay
16 \$500.00 presumed damages to the person asserting the right to
17 inspect, copy, or receive a copy of all or a portion of the public
18 record. Presumed damages must be awarded under this subsection
19 regardless of whether the person asserting the right to inspect,
20 copy, or receive a copy of all or a portion of the public record
21 prevails in that claim and are to be awarded in addition to any
22 remedies the court may order under subsection (6) or (7). This
23 subsection does not require a public body to disclose information
24 that is exempt or otherwise protected from disclosure under this
25 act or any other law of this state or the United States.

26 Enacting section 1. This amendatory act does not take effect
27 unless House Bill No. 4617 of the 101st Legislature is enacted into
28 law.

