

# HOUSE BILL NO. 5921

March 16, 2022, Introduced by Reps. Steven Johnson and Borton and referred to the Committee on Oversight.

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

1 reason or reasons for reversal of the denial.

2 (b) Commence a civil action in the circuit court, or if the  
3 decision of a state public body is at issue, the court of claims,  
4 to compel the public body's disclosure of the public records within  
5 180 days after ~~a~~**the** public body's final determination to deny a  
6 request.

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

10 (a) Reverse the disclosure denial.

11 (b) Issue a written notice to the requesting person upholding  
12 the disclosure denial.

13 (c) Reverse the disclosure denial in part and issue a written  
14 notice to the requesting person upholding the disclosure denial in  
15 part.

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

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

1 action under subsection (1) (b).

2 (4) ~~In~~ **All of the following apply in** an action commenced under  
3 subsection (1) (b): ~~7-a~~

4 (a) A court that determines a public record is not exempt from  
5 disclosure shall order the public body to cease withholding or to  
6 produce all or a portion of a public record wrongfully withheld,  
7 regardless of the location of the public record.

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

11 (c) The court shall determine the matter de novo and the  
12 burden is on the public body to sustain its denial. **In attempting**  
13 **to meet its burden, the public body is limited to the basis it**  
14 **previously gave for its denial by written notice properly and**  
15 **timely provided in response to the request under section 5(5). Any**  
16 **other basis for a denial is waived, including any basis for**  
17 **exemption under section 13 that was not properly and timely**  
18 **asserted by written notice under section 5(5).**

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

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

23 (5) An action commenced under this section and an appeal from  
24 an action commenced under this section ~~shall~~ **must** be assigned for  
25 hearing and trial or for argument at the earliest practicable date  
26 and expedited in every way.

27 (6) If a person asserting the right to inspect, copy, or  
28 receive a copy of all or a portion of a public record prevails in  
29 an action commenced under this section, the court shall award

1 reasonable ~~attorneys'~~**attorney** fees, costs, and disbursements. If  
2 the person or public body prevails in part, the court may, in its  
3 discretion, award all or an appropriate portion of reasonable  
4 ~~attorneys'~~**attorney** fees, costs, and disbursements. The award ~~shall~~  
5 **must** be assessed against the public body liable for damages under  
6 subsection (7).

7 (7) If the court determines in an action commenced under this  
8 section that the public body has arbitrarily and capriciously  
9 violated this act by refusal or delay in disclosing or providing  
10 copies of a public record, the court shall order the public body to  
11 pay a civil fine of \$1,000.00, which ~~shall~~**must** be deposited into  
12 the general fund of the state treasury. The court shall award, in  
13 addition to any actual or compensatory damages, punitive damages in  
14 the amount of \$1,000.00 to the person seeking the right to inspect  
15 or receive a copy of a public record. The damages ~~shall~~**must** not be  
16 assessed against an individual, but ~~shall~~**must** be assessed against  
17 the next succeeding public body that is not an individual and that  
18 kept or maintained the public record as part of its public  
19 function.