

Legislative Analysis



ALLOW RESTRICTED ACCESS TO FOIA BY INMATES

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<http://www.house.mi.gov/hfa>

House Bill 4427 as introduced
Sponsor: Rep. Stephanie A. Young
Committee: Criminal Justice
Revised 2-27-24

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4427 would amend the Freedom of Information Act (FOIA) to allow access by an inmate to certain public documents that relate to the inmate's own case or to an arrest or prosecution of the inmate's minor child if the inmate has not been denied parenting time for the child under the Child Custody Act.

Persons who can request FOIA records

Currently, FOIA says that it is the state's public policy that all *persons, except those persons incarcerated in state or local correctional facilities*, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with the act. The bill would delete the italicized text.

In addition, the act also currently defines *person* as an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. However, the definition now specifically excludes an individual serving a sentence of imprisonment in a federal correctional facility or in a state or county correctional facility in Michigan or any other state. The bill would eliminate this exclusion.

Records requests by incarcerated individuals

The bill would instead add a provision providing that the right to inspect, copy, or receive a copy of a public record under FOIA is not available to an individual incarcerated in a federal correctional facility or in a state or county correctional facility in Michigan or any other state **except for** a public record properly requested by the incarcerated individual that meets all of the following:

- The record is related to an arrest or prosecution of the incarcerated individual or the individual's minor child for whom the individual has not been denied parenting time under the Child Custody Act.
- The record contains one or more specific references to the incarcerated individual or the minor child and is otherwise accessible to the individual by law.
- The record is not exempt under section 13 of the act.¹

The bill states that the right of incarcerated individuals described above is not intended to interfere with any properly adopted rules a correctional agency may have regarding the content of mail that may be delivered to an incarcerated individual.

¹ The section describes records a public body may exempt from disclosure under FOIA, for example those involving security concerns, trade secrets, or invasion of privacy. <http://legislature.mi.gov/doc.aspx?mcl-15-243>

Response to request from incarcerated individual

In general, a public body is required to respond to a request for a public record within five business days after receiving the request by granting the request, issuing a written notice denying the request, granting the request in part and issuing a written notice denying the request in part, or *issuing a notice extending for not more than 10 business days the period during which the public body must respond to the request.*

Under the bill, the above time frame for a response would not apply to a request received by a correctional facility from an incarcerated individual under the bill's provisions. In those cases, the correctional facility would have 30 calendar days after the request was received to grant the request, issue a written notice denying the request, or grant the request in part and issue a written notice denying the request in part.

In addition, the language italicized above (notice of extension) also would not apply to a request received by a correctional facility from an incarcerated individual under the bill's provisions.

MCL 15.231 et seq.

BACKGROUND:

The bill as introduced is substantively identical to House Bill 4617 (H-2) of the 2021-22 legislative session as reported from the House Oversight committee.²

FISCAL IMPACT:

House Bill 4427 could have a fiscal impact on counties depending on the number of records requested under provisions of the bill and how the increase in record requests affects administrative costs. An increase in records requested from the Department of Corrections would have a nominal fiscal impact on the department, and any associated costs could be absorbed by existing appropriations.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

² <https://www.legislature.mi.gov/documents/2021-2022/billanalysis/House/pdf/2021-HLA-4617-5C0381C5.pdf>