

SENATE BILL NO. 785

March 13, 2024, Introduced by Senator RUNESTAD and referred to the Committee on Oversight.

A bill to create the office of the FOIA ombudsman; to provide for the powers and duties of the office and certain other state and local governmental officers and entities; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "FOIA ombudsman act".

2 Sec. 2. As used in this act:

3 (a) "Administrative act" includes an action, omission,
4 decision, recommendation, practice, or other procedure of a public
5 body related to its powers and duties under FOIA.

6 (b) "Complainant" means a FOIA requester or potential

1 requester or a legislator who files a complaint under section 5.

2 (c) "Council" means the legislative council established under
3 section 15 of article IV of the state constitution of 1963.

4 (d) "FOIA" means the freedom of information act, 1976 PA 442,
5 MCL 15.231 to 15.246.

6 (e) "FOIA ombudsman" means the principal executive officer of
7 the office appointed and serving under section 3.

8 (f) "FOIA request" means a written request for public records
9 submitted pursuant to FOIA.

10 (g) "FOIA requester or potential requester" means a person who
11 has submitted or intends to submit a FOIA request.

12 (h) "Legislator" means a member of the senate or the house of
13 representatives of this state.

14 (i) "Office" means the office of the FOIA ombudsman created in
15 section 3.

16 (j) "Public body" and "public record" mean those terms as
17 defined in section 2 of FOIA, MCL 15.232.

18 Sec. 3. (1) The office of the FOIA ombudsman is created in the
19 legislative council.

20 (2) The principal executive officer of the office is the FOIA
21 ombudsman, who is appointed by and serves at the pleasure of the
22 council.

23 Sec. 4. The council shall establish procedures for approving
24 the budget of the office, for expending funds allocated to the
25 office, and for the employment of personnel for the office.

26 Sec. 5. (1) The FOIA ombudsman may commence an investigation
27 upon either of the following:

28 (a) Receipt of a complaint from a FOIA requester or potential
29 requester or a legislator, or on the FOIA ombudsman's own

1 initiative, concerning an administrative act that is alleged to be
2 contrary to FOIA.

3 (b) The FOIA ombudsman's own initiative for any specific issue
4 concerning the administration of FOIA for which there is no
5 effective administrative remedy.

6 (2) Subject to approval of the council, the FOIA ombudsman
7 shall establish procedures for receiving and processing complaints,
8 conducting investigations, holding hearings, and reporting the
9 findings resulting from the investigations.

10 Sec. 6. (1) Upon request and without the requirement of any
11 release, the FOIA ombudsman must be given access to and physical or
12 electronic copies of all public records, including public records
13 that may be exempt under section 13 of FOIA, MCL 15.243, in the
14 possession of a public body that the ombudsman considers necessary
15 in an investigation.

16 (2) Upon request, the FOIA ombudsman may interview any
17 individual employed by or retained under contract by a public body
18 whom the FOIA ombudsman considers necessary in an investigation.
19 The FOIA ombudsman shall arrange an interview under this subsection
20 in cooperation with the public body at a time and location of
21 mutual convenience.

22 (3) The FOIA ombudsman may hold informal hearings and may
23 request that any person appear before the FOIA ombudsman, or at a
24 hearing, and give testimony or produce documentary or other
25 evidence that the FOIA ombudsman considers relevant to a matter
26 under investigation.

27 Sec. 7. (1) The FOIA ombudsman shall advise a complainant to
28 pursue all remedies available to the complainant under FOIA or
29 other applicable law. The FOIA ombudsman may request and shall

1 receive from a public body a progress report concerning the
2 administrative processing of a complaint made against the public
3 body. After administrative action on a complaint, the FOIA
4 ombudsman may conduct further investigation on the request of a
5 complainant or on the FOIA ombudsman's own initiative.

6 (2) The FOIA ombudsman need not conduct an investigation on a
7 complaint brought before the FOIA ombudsman. A person is not
8 entitled as a right to be heard by the FOIA ombudsman.

9 Sec. 8. Upon receiving a complaint from a legislator or a FOIA
10 requester or potential requester under section 5 and deciding to
11 investigate the complaint, the FOIA ombudsman shall notify the
12 complainant, the FOIA requester or potential requester affected,
13 and the public body. If the FOIA ombudsman declines to investigate,
14 the FOIA ombudsman shall notify the complainant, in writing, and
15 inform the FOIA requester or potential requester affected of the
16 reasons for the FOIA ombudsman's decision.

17 Sec. 9. Upon request of the FOIA ombudsman, the council may
18 hold a hearing. The council may administer oaths, subpoena
19 witnesses, and examine the books and records of a public body or of
20 a person, partnership, or corporation involved, in accordance with
21 section 104 of the legislative council act, 1986 PA 268, MCL
22 4.1104, in a matter that is or was a proper subject of
23 investigation by the FOIA ombudsman under this act.

24 Sec. 10. (1) Correspondence between the FOIA ombudsman and a
25 FOIA requester or potential requester is confidential and must be
26 processed as privileged correspondence in the same manner as
27 correspondence between attorneys and clients.

28 (2) The FOIA ombudsman shall maintain secrecy with respect to
29 all matters and the identities of the complainants or persons from

1 whom information is acquired, except so far as disclosures may be
2 necessary to enable the FOIA ombudsman to perform the duties of the
3 office and to support any recommendations resulting from an
4 investigation. A record of or information obtained or created by
5 the FOIA ombudsman is confidential, is considered privileged, must
6 only be used for purposes set forth in this act, is not subject to
7 court subpoena, and is not discoverable in a legal proceeding. A
8 record of or information obtained by the FOIA ombudsman that is
9 otherwise available from other sources is not exempt from court
10 subpoena or discovery from other sources solely because it was
11 presented to or reviewed by the ombudsman.

12 (3) All of the following are exempt from disclosure under
13 FOIA:

14 (a) A record of the FOIA ombudsman.

15 (b) A report or recommendations made by the FOIA ombudsman and
16 submitted to the council under section 11.

17 (c) Information obtained or created by the FOIA ombudsman.

18 Sec. 11. (1) The FOIA ombudsman shall prepare and submit a
19 report of the findings of an investigation and make recommendations
20 to the council within 30 days after completing the investigation if
21 the FOIA ombudsman finds any of the following:

22 (a) A matter that should be considered by any state or local
23 governmental officer or entity that oversees a public body subject
24 to the investigation.

25 (b) An administrative act that should be modified or canceled.

26 (c) A statute or rule that should be altered.

27 (d) Administrative acts for which justification is necessary.

28 (e) Significant FOIA-related issues as determined by the
29 council.

1 (f) Any other significant concerns as determined by the
2 council.

3 (2) Subject to section 12, the council may forward the report
4 prepared and submitted under this section to the governmental
5 officer or entity described in subsection (1)(a), the public body
6 subject to the investigation, the FOIA requester or potential
7 requester affected, or the complainant who requested the report.

8 Sec. 12. Before announcing a conclusion or recommendation that
9 expressly or by implication criticizes a person or a public body,
10 the FOIA ombudsman shall consult with that person or the public
11 body. When publishing an opinion adverse to the public body, or any
12 person, the FOIA ombudsman shall include in that publication a
13 statement of reasonable length made to the FOIA ombudsman by the
14 public body or person in defense or mitigation of the action if
15 that statement is provided within a reasonable period of time as
16 determined by the council. The FOIA ombudsman may request to be
17 notified by the public body, within a specified time, of any action
18 taken on any recommendation presented. The FOIA ombudsman shall
19 notify the complainant of the actions taken by the office and by
20 the public body.

21 Sec. 13. (1) A FOIA requester or potential requester must not
22 be penalized in any way by a state or local governmental officer or
23 entity as a result of filing a complaint, complaining to a
24 legislator, or cooperating with the FOIA ombudsman in investigating
25 a complaint.

26 (2) A person or public body shall not hinder the lawful
27 actions of the FOIA ombudsman or employees of the office, or
28 willfully refuse to comply with lawful demands of the office.

29 (3) A public body shall not take disciplinary action against

1 an employee for communicating with the FOIA ombudsman.

2 Sec. 14. In addition to the powers and duties under this act
3 related to the formal investigation and processing of complaints
4 and specific issues raised on the FOIA ombudsman's own initiative,
5 as described in section 5, the FOIA ombudsman shall do all of the
6 following:

7 (a) Establish procedures for assisting FOIA requesters and
8 potential requesters with all of the following:

9 (i) Making FOIA requests and tailoring FOIA requests as needed
10 for efficiency and improved response times.

11 (ii) Overcoming obstacles to obtaining public records from
12 public bodies pursuant to FOIA requests.

13 (iii) Understanding and, as appropriate, contesting fees that
14 have been or may be charged by a public body pursuant to section 4
15 of FOIA, MCL 15.234.

16 (b) Publish for use by public bodies and FOIA requesters and
17 potential requesters recommendations as to acceptable fees that may
18 be charged by public bodies pursuant to section 4 of FOIA, MCL
19 15.234.

20 (c) Maintain a searchable internet presence accessible to the
21 public by link on the council's website.

22 Sec. 15. The FOIA ombudsman shall submit to the council and
23 the legislature an annual report on the conduct of the office.

24 Sec. 16. The authority granted the FOIA ombudsman is in
25 addition to the authority granted under the provisions of any other
26 act or rule under which the remedy or right of appeal or objection
27 is provided for a person, or any procedure provided for the inquiry
28 into or investigation of any matter. The authority granted the FOIA
29 ombudsman must not be construed to limit or affect the remedy or

- 1 right of appeal or objection and must not be considered part of an
- 2 exclusionary process.