

HOUSE BILL No. 4227

February 14, 2001, Introduced by Reps. Bradstreet, Gosselin, Voorhees, Vander Veen, Shackleton, Mead, Allen, Ruth Johnson and Pappageorge and referred to the Committee on Civil Law and the Judiciary.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending sections 5 and 10 (MCL 15.235 and 15.240), as amended
by 1996 PA 553.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5. (1) Except as provided in section 3, a person
2 desiring to inspect or receive a copy of a public record shall
3 make a written request for the public record to the FOIA coordi-
4 nator of a public body. A written request made by facsimile,
5 electronic mail, or other electronic transmission is not received
6 by a public body's FOIA coordinator until 1 business day after
7 the electronic transmission is made.

8 (2) Unless otherwise agreed to in writing by the person
9 making the request, a public body shall respond to a request for

1 a public record within 5 business days after the public body
2 receives the request by doing 1 of the following:

3 (a) Granting the request.

4 (b) Issuing a written notice to the requesting person deny-
5 ing the request.

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

8 (d) Issuing a notice extending for not more than 10 business
9 days the period during which the public body shall respond to the
10 request. A public body shall not issue more than 1 notice of
11 extension for a particular request.

12 (3) Failure to respond to a request ~~pursuant to~~ UNDER sub-
13 section (2) constitutes a public body's final determination to
14 deny the request AND MAY RESULT IN A CIVIL ACTION UNDER THIS SUB-
15 SECTION, A CRIMINAL ACTION UNDER SECTION 10, OR BOTH. In a cir-
16 cuit court action to compel a public body's disclosure of a
17 public record under section 10, the circuit court shall assess
18 PUNITIVE damages against the public body ~~pursuant to~~ AS PRO-
19 VIDED IN section ~~10(8)~~ 10 if the circuit court has done both of
20 the following:

21 (a) Determined that the public body has not complied with
22 subsection (2).

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

25 (4) A written notice denying a request for a public record
26 in whole or in part is a public body's final determination to

1 deny the request or portion of that request. The written notice
2 shall contain:

3 (a) An explanation of the basis under this act or other
4 statute for the determination that the public record, or portion
5 of that public record, is exempt from disclosure, if that is the
6 reason for denying all or a portion of the request.

7 (b) A certificate that the public record does not exist
8 under the name given by the requester or by another name reason-
9 ably known to the public body, if that is the reason for denying
10 the request or a portion of the request.

11 (c) A description of a public record or information on a
12 public record that is separated or deleted ~~pursuant to~~ UNDER
13 section 14, if a separation or deletion is made.

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

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

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

20 (e) Notice of the right to receive attorneys' fees and dam-
21 ages as provided in section 10 if, after judicial review, the
22 circuit court determines that the public body has not complied
23 with this section and orders disclosure of all or a portion of a
24 public record.

25 (5) The individual designated in section 6 as responsible
26 for the denial of the request shall sign the written notice of
27 denial.

1 (6) If a public body issues a notice extending the period
2 for a response to the request, the notice shall specify the rea-
3 sons for the extension and the date by which the public body will
4 do 1 of the following:

5 (a) Grant the request.

6 (b) Issue a written notice to the requesting person denying
7 the request.

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

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

14 (a) Appeal the denial to the head of the public body
15 ~~pursuant to~~ AS PROVIDED IN section 10.

16 (b) Commence an action in circuit court ~~, pursuant to~~
17 UNDER section 10.

18 Sec. 10. (1) If a public body makes a final determination
19 to deny all or a portion of a request, the requesting person may
20 do 1 of the following at his or her option:

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

24 (b) Commence an action in the circuit court to compel the
25 public body's disclosure of the public records within 180 days
26 after a public body's final determination to deny a request.

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

4 (a) Reverse the disclosure denial.

5 (b) Issue a written notice to the requesting person uphold-
6 ing the disclosure denial.

7 (c) Reverse the disclosure denial in part and issue a writ-
8 ten notice to the requesting person upholding the disclosure
9 denial in part.

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

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

26 (4) In an action commenced under subsection (1)(b), a court
27 that determines a public record is not exempt from disclosure

1 shall order the public body to cease withholding or to produce
2 all or a portion of a public record wrongfully withheld, regard-
3 less of the location of the public record. The circuit court for
4 the county in which the complainant resides or has his or her
5 principal place of business, or the circuit court for the county
6 in which the public record or an office of the public body is
7 located has venue over the action. The court shall determine the
8 matter de novo and the burden is on the public body to sustain
9 its denial. The court, on its own motion, may view the public
10 record in controversy in private before reaching a decision.
11 Failure to comply with an order of the court may be punished as
12 contempt of court.

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

26 (7) If the circuit court determines in an action commenced
27 under this section that the public body has arbitrarily and

1 capriciously violated this act by refusal or delay in disclosing
2 or providing copies of a public record, the court shall award, in
3 addition to any actual or compensatory damages, punitive damages
4 in the amount of \$500.00 to the person seeking the right to
5 inspect or receive a copy of a public record. The damages shall
6 not be assessed against an individual, but shall be assessed
7 against the next succeeding public body that is not an individual
8 and that kept or maintained the public record as part of its
9 public function.

10 (8) A PUBLIC BODY THAT KNOWINGLY PROVIDES FALSE INFORMATION
11 IN RESPONSE TO A REQUEST, OR KNOWINGLY FAILS TO RESPOND TO A
12 REQUEST WITHIN 5 BUSINESS DAYS AS PROVIDED IN SECTION 5, IS
13 GUILTY OF A MISDEMEANOR PUNISHABLE, IF THE PUBLIC BODY IS AN
14 INDIVIDUAL, BY A FINE OF NOT LESS THAN \$1,000.00 OR NOT MORE THAN
15 \$5,000.00, OR IMPRISONMENT FOR NOT MORE THAN 93 DAYS, OR BOTH,
16 OR, IF THE PUBLIC BODY IS NOT AN INDIVIDUAL, BY A FINE OF NOT
17 LESS THAN \$10,000.00 OR MORE THAN \$100,000.00.