

HOUSE BILL No. 5470

March 16, 2016, Introduced by Reps. Howrylak, McBroom, Moss, Chatfield, Webber, Kivela, Runestad, Plawecki, Dianda, Lane, Hoadley, Pagan, Chang, Rutledge, Irwin, Barrett, Somerville, LaVoy, Darany, Brinks, Hughes, LaGrand, Bizon, Glenn, Cox, Sarah Roberts, Hovey-Wright, Wittenberg, Townsend, Price, Tedder, Lyons, Hooker, Howell, Phelps and Lucido and referred to the Committee on Oversight and Ethics.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
(MCL 15.231 to 15.246) by adding section 54.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 54. (1) A PUBLIC BODY MAY CHARGE A FEE FOR A PUBLIC
2 RECORD SEARCH, FOR THE NECESSARY COPYING OF A PUBLIC RECORD FOR
3 INSPECTION, OR FOR PROVIDING A COPY OF A PUBLIC RECORD IF IT HAS
4 ESTABLISHED, MAKES PUBLICLY AVAILABLE, AND FOLLOWS PROCEDURES AND
5 GUIDELINES TO IMPLEMENT THIS SECTION AS DESCRIBED IN SUBSECTION
6 (4). SUBJECT TO SUBSECTIONS (2), (3), (4), (5), AND (9), THE FEE
7 SHALL BE LIMITED TO ACTUAL MAILING COSTS AND TO THE ACTUAL
8 INCREMENTAL COST OF DUPLICATION OR PUBLICATION, INCLUDING LABOR,
9 THE COST OF SEARCH, EXAMINATION, REVIEW, AND THE DELETION AND
10 SEPARATION OF EXEMPT FROM NONEXEMPT INFORMATION AS PROVIDED IN

1 SECTION 59E. EXCEPT AS OTHERWISE PROVIDED IN THIS PART, IF THE
2 PUBLIC BODY ESTIMATES OR CHARGES A FEE IN ACCORDANCE WITH THIS
3 PART, THE TOTAL FEE SHALL NOT EXCEED THE SUM OF THE FOLLOWING:

4 (A) THAT PORTION OF LABOR COSTS DIRECTLY ASSOCIATED WITH THE
5 NECESSARY SEARCHING FOR, LOCATING, AND EXAMINING OF PUBLIC RECORDS
6 IN CONJUNCTION WITH RECEIVING AND FULFILLING A GRANTED WRITTEN
7 REQUEST. THE PUBLIC BODY SHALL NOT CHARGE MORE THAN THE HOURLY WAGE
8 OF ITS LOWEST-PAID EMPLOYEE CAPABLE OF SEARCHING FOR, LOCATING, AND
9 EXAMINING THE PUBLIC RECORDS IN THE PARTICULAR INSTANCE REGARDLESS
10 OF WHETHER THAT PERSON IS AVAILABLE OR WHO ACTUALLY PERFORMS THE
11 LABOR. LABOR COSTS UNDER THIS SUBDIVISION SHALL BE ESTIMATED AND
12 CHARGED IN INCREMENTS OF 15 MINUTES OR MORE, WITH ALL PARTIAL TIME
13 INCREMENTS ROUNDED DOWN.

14 (B) THAT PORTION OF LABOR COSTS, INCLUDING NECESSARY REVIEW,
15 IF ANY, DIRECTLY ASSOCIATED WITH THE SEPARATING AND DELETING OF
16 EXEMPT INFORMATION FROM NONEXEMPT INFORMATION AS PROVIDED IN
17 SECTION 59E. FOR SERVICES PERFORMED BY AN EMPLOYEE OF THE PUBLIC
18 BODY, THE PUBLIC BODY SHALL NOT CHARGE MORE THAN THE HOURLY WAGE OF
19 ITS LOWEST-PAID EMPLOYEE CAPABLE OF SEPARATING AND DELETING EXEMPT
20 INFORMATION FROM NONEXEMPT INFORMATION IN THE PARTICULAR INSTANCE
21 AS PROVIDED IN SECTION 59E, REGARDLESS OF WHETHER THAT PERSON IS
22 AVAILABLE OR WHO ACTUALLY PERFORMS THE LABOR. LABOR COSTS UNDER
23 THIS SUBDIVISION SHALL BE ESTIMATED AND CHARGED IN INCREMENTS OF 15
24 MINUTES OR MORE, WITH ALL PARTIAL TIME INCREMENTS ROUNDED DOWN. A
25 PUBLIC BODY SHALL NOT CHARGE FOR LABOR DIRECTLY ASSOCIATED WITH
26 REDACTION UNDER SECTION 59E IF IT KNOWS OR HAS REASON TO KNOW THAT
27 IT PREVIOUSLY REDACTED THE PUBLIC RECORD IN QUESTION AND THE

1 REDACTED VERSION IS STILL IN THE PUBLIC BODY'S POSSESSION.

2 (C) FOR PUBLIC RECORDS PROVIDED TO THE REQUESTOR ON NONPAPER
3 PHYSICAL MEDIA, THE ACTUAL AND MOST REASONABLY ECONOMICAL COST OF
4 THE COMPUTER DISCS, COMPUTER TAPES, OR OTHER DIGITAL OR SIMILAR
5 MEDIA. THE REQUESTOR MAY STIPULATE THAT THE PUBLIC RECORDS BE
6 PROVIDED ON NONPAPER PHYSICAL MEDIA, ELECTRONICALLY MAILED, OR
7 OTHERWISE ELECTRONICALLY PROVIDED TO HIM OR HER IN LIEU OF PAPER
8 COPIES. THIS SUBDIVISION DOES NOT APPLY IF A PUBLIC BODY LACKS THE
9 TECHNOLOGICAL CAPABILITY NECESSARY TO PROVIDE RECORDS ON THE
10 PARTICULAR NONPAPER PHYSICAL MEDIA STIPULATED IN THE PARTICULAR
11 INSTANCE.

12 (D) FOR PAPER COPIES OF PUBLIC RECORDS PROVIDED TO THE
13 REQUESTOR, THE ACTUAL TOTAL INCREMENTAL COST OF NECESSARY
14 DUPLICATION OR PUBLICATION, NOT INCLUDING LABOR. THE COST OF PAPER
15 COPIES SHALL BE CALCULATED AS A TOTAL COST PER SHEET OF PAPER AND
16 SHALL BE ITEMIZED AND NOTED IN A MANNER THAT EXPRESSES BOTH THE
17 COST PER SHEET AND THE NUMBER OF SHEETS PROVIDED. THE FEE SHALL NOT
18 EXCEED 10 CENTS PER SHEET OF PAPER FOR COPIES OF PUBLIC RECORDS
19 MADE ON 8-1/2- BY 11-INCH PAPER OR 8-1/2- BY 14-INCH PAPER. A
20 PUBLIC BODY SHALL UTILIZE THE MOST ECONOMICAL MEANS AVAILABLE FOR
21 MAKING COPIES OF PUBLIC RECORDS, INCLUDING USING DOUBLE-SIDED
22 PRINTING, IF COST SAVING AND AVAILABLE.

23 (E) THE COST OF LABOR DIRECTLY ASSOCIATED WITH DUPLICATION OR
24 PUBLICATION, INCLUDING MAKING PAPER COPIES, MAKING DIGITAL COPIES,
25 OR TRANSFERRING DIGITAL PUBLIC RECORDS TO BE GIVEN TO THE REQUESTOR
26 ON NONPAPER PHYSICAL MEDIA OR THROUGH THE INTERNET OR OTHER
27 ELECTRONIC MEANS AS STIPULATED BY THE REQUESTOR. THE PUBLIC BODY

1 SHALL NOT CHARGE MORE THAN THE HOURLY WAGE OF ITS LOWEST-PAID
2 EMPLOYEE CAPABLE OF NECESSARY DUPLICATION OR PUBLICATION IN THE
3 PARTICULAR INSTANCE, REGARDLESS OF WHETHER THAT PERSON IS AVAILABLE
4 OR WHO ACTUALLY PERFORMS THE LABOR. LABOR COSTS UNDER THIS
5 SUBDIVISION MAY BE ESTIMATED AND CHARGED IN TIME INCREMENTS OF THE
6 PUBLIC BODY'S CHOOSING. HOWEVER, ALL PARTIAL TIME INCREMENTS SHALL
7 BE ROUNDED DOWN.

8 (F) THE ACTUAL COST OF MAILING, IF ANY, FOR SENDING THE PUBLIC
9 RECORDS IN A REASONABLY ECONOMICAL AND JUSTIFIABLE MANNER. THE
10 PUBLIC BODY SHALL NOT CHARGE MORE FOR EXPEDITED SHIPPING OR
11 INSURANCE UNLESS SPECIFICALLY STIPULATED BY THE REQUESTOR, BUT MAY
12 OTHERWISE CHARGE FOR THE LEAST EXPENSIVE FORM OF POSTAL DELIVERY
13 CONFIRMATION WHEN MAILING PUBLIC RECORDS.

14 (2) WHEN CALCULATING LABOR COSTS UNDER SUBSECTION (1) (A), (B),
15 OR (E), FEE COMPONENTS SHALL BE ITEMIZED IN A MANNER THAT EXPRESSES
16 BOTH THE HOURLY WAGE AND THE NUMBER OF HOURS CHARGED. THE PUBLIC
17 BODY MAY ALSO ADD UP TO 50% TO THE APPLICABLE LABOR CHARGE AMOUNT
18 TO COVER OR PARTIALLY COVER THE COST OF FRINGE BENEFITS IF IT
19 CLEARLY NOTES THE PERCENTAGE MULTIPLIER USED TO ACCOUNT FOR
20 BENEFITS IN THE DETAILED ITEMIZATION DESCRIBED IN SUBSECTION (4).
21 SUBJECT TO THE 50% LIMITATION, THE PUBLIC BODY SHALL NOT CHARGE
22 MORE THAN THE ACTUAL COST OF FRINGE BENEFITS, AND OVERTIME WAGES
23 SHALL NOT BE USED IN CALCULATING THE COST OF FRINGE BENEFITS.
24 OVERTIME WAGES SHALL NOT BE INCLUDED IN THE CALCULATION OF LABOR
25 COSTS UNLESS OVERTIME IS SPECIFICALLY STIPULATED BY THE REQUESTOR
26 AND CLEARLY NOTED ON THE DETAILED ITEMIZATION DESCRIBED IN
27 SUBSECTION (4). A SEARCH FOR A PUBLIC RECORD MAY BE CONDUCTED OR

1 COPIES OF PUBLIC RECORDS MAY BE FURNISHED WITHOUT CHARGE OR AT A
2 REDUCED CHARGE IF THE PUBLIC BODY DETERMINES THAT A WAIVER OR
3 REDUCTION OF THE FEE IS IN THE PUBLIC INTEREST BECAUSE SEARCHING
4 FOR OR FURNISHING COPIES OF THE PUBLIC RECORD CAN BE CONSIDERED AS
5 PRIMARILY BENEFITING THE GENERAL PUBLIC. A PUBLIC RECORD SEARCH
6 SHALL BE MADE AND A COPY OF A PUBLIC RECORD SHALL BE FURNISHED
7 WITHOUT CHARGE FOR THE FIRST \$20.00 OF THE FEE FOR EACH REQUEST BY
8 EITHER OF THE FOLLOWING:

9 (A) AN INDIVIDUAL WHO IS ENTITLED TO INFORMATION UNDER THIS
10 PART AND WHO SUBMITS AN AFFIDAVIT STATING THAT THE INDIVIDUAL IS
11 INDIGENT AND RECEIVING SPECIFIC PUBLIC ASSISTANCE OR, IF NOT
12 RECEIVING PUBLIC ASSISTANCE, STATING FACTS SHOWING INABILITY TO PAY
13 THE COST BECAUSE OF INDIGENCY. IF THE REQUESTOR IS ELIGIBLE FOR A
14 REQUESTED DISCOUNT, THE PUBLIC BODY SHALL FULLY NOTE THE DISCOUNT
15 ON THE DETAILED ITEMIZATION DESCRIBED UNDER SUBSECTION (4). IF A
16 REQUESTOR IS INELIGIBLE FOR THE DISCOUNT, THE PUBLIC BODY SHALL
17 INFORM THE REQUESTOR SPECIFICALLY OF THE REASON FOR INELIGIBILITY
18 IN THE PUBLIC BODY'S WRITTEN RESPONSE. AN INDIVIDUAL IS INELIGIBLE
19 FOR THIS FEE REDUCTION IF ANY OF THE FOLLOWING APPLY:

20 (i) THE INDIVIDUAL HAS PREVIOUSLY RECEIVED DISCOUNTED COPIES
21 OF PUBLIC RECORDS UNDER THIS SUBSECTION FROM THE PUBLIC BODY TWICE
22 DURING THAT CALENDAR YEAR.

23 (ii) THE INDIVIDUAL REQUESTS THE INFORMATION IN CONJUNCTION
24 WITH OUTSIDE PARTIES WHO ARE OFFERING OR PROVIDING PAYMENT OR OTHER
25 REMUNERATION TO THE INDIVIDUAL TO MAKE THE REQUEST. A PUBLIC BODY
26 MAY REQUIRE A STATEMENT BY THE REQUESTOR IN THE AFFIDAVIT THAT THE
27 REQUEST IS NOT BEING MADE IN CONJUNCTION WITH OUTSIDE PARTIES IN

1 EXCHANGE FOR PAYMENT OR OTHER REMUNERATION.

2 (B) A NONPROFIT ORGANIZATION FORMALLY DESIGNATED BY THE STATE
3 TO CARRY OUT ACTIVITIES UNDER SUBTITLE C OF THE DEVELOPMENTAL
4 DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT OF 2000, PUBLIC LAW
5 106-402, AND THE PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH
6 MENTAL ILLNESS ACT, PUBLIC LAW 99-319, OR THEIR SUCCESSORS, IF THE
7 REQUEST MEETS ALL OF THE FOLLOWING REQUIREMENTS:

8 (i) IS MADE DIRECTLY ON BEHALF OF THE ORGANIZATION OR ITS
9 CLIENTS.

10 (ii) IS MADE FOR A REASON WHOLLY CONSISTENT WITH THE MISSION
11 AND PROVISIONS OF THOSE LAWS UNDER SECTION 931 OF THE MENTAL HEALTH
12 CODE, 1974 PA 258, MCL 330.1931.

13 (iii) IS ACCOMPANIED BY DOCUMENTATION OF ITS DESIGNATION BY
14 THIS STATE, IF REQUESTED BY THE PUBLIC BODY.

15 (3) A FEE AS DESCRIBED IN SUBSECTION (1) SHALL NOT BE CHARGED
16 FOR THE COST OF SEARCH, EXAMINATION, REVIEW, AND THE DELETION AND
17 SEPARATION OF EXEMPT FROM NONEXEMPT INFORMATION AS PROVIDED IN
18 SECTION 59E UNLESS FAILURE TO CHARGE A FEE WOULD RESULT IN
19 UNREASONABLY HIGH COSTS TO THE PUBLIC BODY BECAUSE OF THE NATURE OF
20 THE REQUEST IN THE PARTICULAR INSTANCE AND THE PUBLIC BODY
21 SPECIFICALLY IDENTIFIES THE NATURE OF THESE UNREASONABLY HIGH
22 COSTS.

23 (4) A PUBLIC BODY SHALL ESTABLISH PROCEDURES AND GUIDELINES TO
24 IMPLEMENT THIS PART AND SHALL CREATE A WRITTEN PUBLIC SUMMARY OF
25 THE SPECIFIC PROCEDURES AND GUIDELINES RELEVANT TO THE GENERAL
26 PUBLIC REGARDING HOW TO SUBMIT WRITTEN REQUESTS TO THE PUBLIC BODY
27 AND EXPLAINING HOW TO UNDERSTAND A PUBLIC BODY'S WRITTEN RESPONSES,

1 DEPOSIT REQUIREMENTS, FEE CALCULATIONS, AND AVENUES FOR CHALLENGE
2 AND APPEAL. THE WRITTEN PUBLIC SUMMARY SHALL BE WRITTEN IN A MANNER
3 SO AS TO BE EASILY UNDERSTOOD BY THE GENERAL PUBLIC. A PUBLIC BODY
4 SHALL POST AND MAINTAIN THE PROCEDURES AND GUIDELINES AND ITS
5 WRITTEN PUBLIC SUMMARY ON ITS WEBSITE. A PUBLIC BODY SHALL MAKE THE
6 PROCEDURES AND GUIDELINES PUBLICLY AVAILABLE BY PROVIDING FREE
7 COPIES OF THE PROCEDURES AND GUIDELINES AND ITS WRITTEN PUBLIC
8 SUMMARY BOTH IN THE PUBLIC BODY'S RESPONSE TO A WRITTEN REQUEST AND
9 UPON REQUEST BY VISITORS AT THE PUBLIC BODY'S OFFICE. A PUBLIC BODY
10 MAY INCLUDE THE WEBSITE LINK TO THE DOCUMENTS IN LIEU OF PROVIDING
11 PAPER COPIES IN ITS RESPONSE TO A WRITTEN REQUEST. A PUBLIC BODY'S
12 PROCEDURES AND GUIDELINES SHALL INCLUDE THE USE OF A STANDARD FORM
13 FOR DETAILED ITEMIZATION OF ANY FEE AMOUNT IN ITS RESPONSES TO
14 WRITTEN REQUESTS UNDER THIS PART. THE DETAILED ITEMIZATION SHALL
15 CLEARLY LIST AND EXPLAIN THE ALLOWABLE CHARGES FOR EACH OF THE 6
16 FEE COMPONENTS LISTED UNDER SUBSECTION (1) THAT COMPOSE THE TOTAL
17 FEE USED FOR ESTIMATING OR CHARGING PURPOSES. A PUBLIC BODY THAT
18 HAS NOT ESTABLISHED PROCEDURES AND GUIDELINES, HAS NOT CREATED A
19 WRITTEN PUBLIC SUMMARY, OR HAS NOT MADE THOSE ITEMS PUBLICLY
20 AVAILABLE WITHOUT CHARGE AS REQUIRED IN THIS SUBSECTION IS NOT
21 RELIEVED OF ITS DUTY TO COMPLY WITH ANY REQUIREMENT OF THIS PART
22 AND SHALL NOT REQUIRE DEPOSITS OR CHARGE FEES OTHERWISE PERMITTED
23 UNDER THIS PART UNTIL IT IS IN COMPLIANCE WITH THIS SUBSECTION.
24 NOTWITHSTANDING THIS SUBSECTION AND DESPITE ANY LAW TO THE
25 CONTRARY, A PUBLIC BODY'S PROCEDURES AND GUIDELINES UNDER THIS PART
26 ARE NOT EXEMPT PUBLIC RECORDS UNDER SECTION 59D.

27 (5) ANY PUBLIC RECORDS AVAILABLE TO THE GENERAL PUBLIC ON A

1 PUBLIC BODY'S INTERNET SITE AT THE TIME THE REQUEST IS MADE ARE
2 EXEMPT FROM CHARGE UNDER SUBSECTION (1) (B). IF THE LORA COORDINATOR
3 KNOWS OR HAS REASON TO KNOW THAT ALL OR A PORTION OF THE REQUESTED
4 INFORMATION IS AVAILABLE ON ITS WEBSITE, THE PUBLIC BODY SHALL
5 NOTIFY THE REQUESTOR IN ITS WRITTEN RESPONSE THAT ALL OR A PORTION
6 OF THE REQUESTED INFORMATION IS AVAILABLE ON ITS WEBSITE. THE
7 WRITTEN RESPONSE, TO THE DEGREE PRACTICABLE IN THE SPECIFIC
8 INSTANCE, SHALL INCLUDE A SPECIFIC WEBPAGE ADDRESS WHERE THE
9 REQUESTED INFORMATION IS AVAILABLE. ON THE DETAILED ITEMIZATION
10 DESCRIBED IN SUBSECTION (4), THE PUBLIC BODY SHALL SEPARATE THE
11 REQUESTED PUBLIC RECORDS THAT ARE AVAILABLE ON ITS WEBSITE FROM
12 THOSE THAT ARE NOT AVAILABLE ON THE WEBSITE AND SHALL INFORM THE
13 REQUESTOR OF THE ADDITIONAL CHARGE TO RECEIVE COPIES OF THE PUBLIC
14 RECORDS THAT ARE AVAILABLE ON ITS WEBSITE. IF THE PUBLIC BODY HAS
15 INCLUDED THE WEBSITE ADDRESS FOR A RECORD IN ITS WRITTEN RESPONSE
16 TO THE REQUESTOR AND THE REQUESTOR THEREAFTER STIPULATES THAT THE
17 PUBLIC RECORD BE PROVIDED TO HIM OR HER IN A PAPER FORMAT OR OTHER
18 FORM AS DESCRIBED UNDER SUBSECTION (1) (C), THE PUBLIC BODY SHALL
19 PROVIDE THE PUBLIC RECORDS IN THE SPECIFIED FORMAT BUT MAY USE A
20 FRINGE BENEFIT MULTIPLIER GREATER THAN THE 50% LIMITATION IN
21 SUBSECTION (2), NOT TO EXCEED THE ACTUAL COSTS OF PROVIDING THE
22 INFORMATION IN THE SPECIFIED FORMAT.

23 (6) A PUBLIC BODY MAY PROVIDE REQUESTED INFORMATION AVAILABLE
24 IN PUBLIC RECORDS WITHOUT RECEIPT OF A WRITTEN REQUEST.

25 (7) IF A VERBAL REQUEST FOR INFORMATION IS FOR INFORMATION
26 THAT A PUBLIC BODY BELIEVES IS AVAILABLE ON THE PUBLIC BODY'S
27 WEBSITE, A PUBLIC EMPLOYEE SHALL, IF PRACTICABLE AND TO THE BEST OF

1 THE PUBLIC EMPLOYEE'S KNOWLEDGE, INFORM THE REQUESTOR ABOUT THE
2 PUBLIC BODY'S PERTINENT WEBSITE ADDRESS.

3 (8) IN EITHER THE PUBLIC BODY'S INITIAL RESPONSE OR SUBSEQUENT
4 RESPONSE AS DESCRIBED UNDER SECTION 55(2)(D), THE PUBLIC BODY MAY
5 REQUIRE A GOOD-FAITH DEPOSIT FROM THE PERSON REQUESTING INFORMATION
6 BEFORE PROVIDING THE PUBLIC RECORDS TO THE REQUESTOR IF THE ENTIRE
7 FEE ESTIMATE OR CHARGE AUTHORIZED UNDER THIS SECTION EXCEEDS
8 \$50.00, BASED ON A GOOD-FAITH CALCULATION OF THE TOTAL FEE
9 DESCRIBED IN SUBSECTION (4). SUBJECT TO SUBSECTION (10), THE
10 DEPOSIT SHALL NOT EXCEED 1/2 OF THE TOTAL ESTIMATED FEE, AND A
11 PUBLIC BODY'S REQUEST FOR A DEPOSIT SHALL INCLUDE A DETAILED
12 ITEMIZATION AS REQUIRED UNDER SUBSECTION (4). THE RESPONSE SHALL
13 ALSO CONTAIN A BEST EFFORTS ESTIMATE BY THE PUBLIC BODY REGARDING
14 THE TIME FRAME IT WILL TAKE THE PUBLIC BODY TO COMPLY WITH THE LAW
15 IN PROVIDING THE PUBLIC RECORDS TO THE REQUESTOR. THE TIME FRAME
16 ESTIMATE IS NONBINDING UPON THE PUBLIC BODY, BUT THE PUBLIC BODY
17 SHALL PROVIDE THE ESTIMATE IN GOOD FAITH AND STRIVE TO BE
18 REASONABLY ACCURATE AND TO PROVIDE THE PUBLIC RECORDS IN A MANNER
19 BASED ON THIS STATE'S PUBLIC POLICY UNDER SECTION 51 AND THE NATURE
20 OF THE REQUEST IN THE PARTICULAR INSTANCE. IF A PUBLIC BODY DOES
21 NOT RESPOND IN A TIMELY MANNER AS DESCRIBED UNDER SECTION 55(2), IT
22 IS NOT RELIEVED FROM ITS REQUIREMENTS TO PROVIDE PROPER FEE
23 CALCULATIONS AND TIME FRAME ESTIMATES IN ANY TARDY RESPONSES.
24 PROVIDING AN ESTIMATED TIME FRAME DOES NOT RELIEVE A PUBLIC BODY
25 FROM ANY OF THE OTHER REQUIREMENTS OF THIS PART.

26 (9) IF A PUBLIC BODY DOES NOT RESPOND TO A WRITTEN REQUEST IN
27 A TIMELY MANNER AS REQUIRED UNDER SECTION 55(2), THE PUBLIC BODY

1 SHALL DO THE FOLLOWING:

2 (A) REDUCE THE CHARGES FOR LABOR COSTS OTHERWISE PERMITTED
3 UNDER THIS SECTION BY 5% FOR EACH DAY THE PUBLIC BODY EXCEEDS THE
4 TIME PERMITTED UNDER SECTION 55(2) FOR A RESPONSE TO THE REQUEST,
5 WITH A MAXIMUM 50% REDUCTION, IF EITHER OF THE FOLLOWING APPLIES:

6 (i) THE LATE RESPONSE WAS WILLFUL AND INTENTIONAL.

7 (ii) THE WRITTEN REQUEST INCLUDED LANGUAGE THAT CONVEYED A
8 REQUEST FOR INFORMATION WITHIN THE FIRST 250 WORDS OF THE BODY OF A
9 LETTER, FACSIMILE, ELECTRONIC MAIL, OR ELECTRONIC MAIL ATTACHMENT,
10 OR SPECIFICALLY INCLUDED THE WORDS, CHARACTERS, OR ABBREVIATIONS
11 FOR "FREEDOM OF INFORMATION", "OPEN RECORDS", "INFORMATION",
12 "LORA", "COPY", OR A RECOGNIZABLE MISSPELLING OF SUCH, OR
13 APPROPRIATE LEGAL CODE REFERENCE FOR THIS PART, ON THE FRONT OF AN
14 ENVELOPE OR IN THE SUBJECT LINE OF AN ELECTRONIC MAIL, A LETTER, OR
15 A FACSIMILE COVER PAGE.

16 (B) IF A CHARGE REDUCTION IS REQUIRED UNDER SUBDIVISION (A),
17 FULLY NOTE THE CHARGE REDUCTION ON THE DETAILED ITEMIZATION
18 DESCRIBED UNDER SUBSECTION (4).

19 (10) THIS SECTION DOES NOT APPLY TO PUBLIC RECORDS PREPARED
20 UNDER AN ACT OR STATUTE SPECIFICALLY AUTHORIZING THE SALE OF THOSE
21 PUBLIC RECORDS TO THE PUBLIC, OR IF THE AMOUNT OF THE FEE FOR
22 PROVIDING A COPY OF THE PUBLIC RECORD IS OTHERWISE SPECIFICALLY
23 PROVIDED BY AN ACT OR STATUTE.

24 (11) SUBJECT TO SUBSECTION (12), AFTER A PUBLIC BODY HAS
25 GRANTED AND FULFILLED A WRITTEN REQUEST FROM AN INDIVIDUAL UNDER
26 THIS PART, IF THE PUBLIC BODY HAS NOT BEEN PAID IN FULL THE TOTAL
27 AMOUNT UNDER SUBSECTION (1) FOR THE COPIES OF PUBLIC RECORDS THAT

1 THE PUBLIC BODY MADE AVAILABLE TO THE INDIVIDUAL AS A RESULT OF
2 THAT WRITTEN REQUEST, THE PUBLIC BODY MAY REQUIRE A DEPOSIT OF UP
3 TO 100% OF THE ESTIMATED FEE BEFORE IT BEGINS A FULL PUBLIC RECORD
4 SEARCH FOR ANY SUBSEQUENT WRITTEN REQUEST FROM THAT INDIVIDUAL IF
5 ALL OF THE FOLLOWING APPLY:

6 (A) THE FINAL FEE FOR THE PRIOR WRITTEN REQUEST WAS NOT MORE
7 THAN 105% OF THE ESTIMATED FEE.

8 (B) THE PUBLIC RECORDS MADE AVAILABLE CONTAINED THE
9 INFORMATION BEING SOUGHT IN THE PRIOR WRITTEN REQUEST AND ARE STILL
10 IN THE PUBLIC BODY'S POSSESSION.

11 (C) THE PUBLIC RECORDS WERE MADE AVAILABLE TO THE INDIVIDUAL,
12 SUBJECT TO PAYMENT, WITHIN THE TIME FRAME ESTIMATE DESCRIBED UNDER
13 SUBSECTION (7).

14 (D) NINETY DAYS HAVE PASSED SINCE THE PUBLIC BODY NOTIFIED THE
15 INDIVIDUAL IN WRITING THAT THE PUBLIC RECORDS WERE AVAILABLE FOR
16 PICKUP OR MAILING.

17 (E) THE INDIVIDUAL IS UNABLE TO SHOW PROOF OF PRIOR PAYMENT TO
18 THE PUBLIC BODY.

19 (F) THE PUBLIC BODY CALCULATES A DETAILED ITEMIZATION, AS
20 REQUIRED UNDER SUBSECTION (4), THAT IS THE BASIS FOR THE CURRENT
21 WRITTEN REQUEST'S INCREASED ESTIMATED FEE DEPOSIT.

22 (12) A PUBLIC BODY SHALL NOT CONTINUE TO REQUIRE AN INCREASED
23 ESTIMATED FEE DEPOSIT FROM AN INDIVIDUAL AS DESCRIBED UNDER
24 SUBSECTION (11) IF ANY OF THE FOLLOWING APPLY:

25 (A) THE INDIVIDUAL SHOWS TO THE PUBLIC BODY PROOF OF PRIOR
26 PAYMENT IN FULL FOR THE APPLICABLE PRIOR REQUEST.

27 (B) THE PUBLIC BODY RECEIVES PAYMENT IN FULL FOR THE

1 APPLICABLE PRIOR WRITTEN REQUEST.

2 (C) THREE HUNDRED SIXTY-FIVE DAYS HAVE PASSED SINCE THE
3 INDIVIDUAL MADE THE WRITTEN REQUEST FOR WHICH FULL PAYMENT WAS NOT
4 REMITTED TO THE PUBLIC BODY.

5 (13) A DEPOSIT REQUIRED BY A PUBLIC BODY UNDER THIS PART IS A
6 FEE.

7 Enacting section 1. This amendatory act takes effect January
8 1, 2017.

9 Enacting section 2. This amendatory act does not take effect
10 unless Senate Bill No. ____ or House Bill No. 5469 (request no.
11 05429'16) of the 98th Legislature is enacted into law.