

HOUSE BILL No. 5412

January 16, 2018, Introduced by Reps. Iden, McCreedy, Lucido and Johnson and referred to the Committee on Oversight.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending section 4 (MCL 15.234), as amended by 2014 PA 563.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) A public body may charge a fee for a public record
2 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, the
9 cost of search, examination, review, and the deletion and
10 separation of exempt from nonexempt information as provided in
11 section 14. Except as otherwise provided in this act, if the public

body estimates or charges a fee in accordance with this act, the total fee shall not exceed the sum of the following components:

(a) That portion of labor costs directly associated with the necessary searching for, locating, and examining of public records in conjunction with receiving and fulfilling a granted written request. The public body shall not charge more than the hourly wage of its lowest-paid employee capable of searching for, locating, and examining the public records in the particular instance regardless of whether that person is available or who actually performs the labor. Labor costs under this subdivision shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.

(b) That portion of labor costs, including necessary review, if any, directly associated with the separating and deleting of exempt information from nonexempt information as provided in section 14. For services performed by an employee of the public body, the public body shall not charge more than the hourly wage of its lowest-paid employee capable of separating and deleting exempt information from nonexempt information in the particular instance as provided in section 14, regardless of whether that person is available or who actually performs the labor. If a public body does not employ a person capable of separating and deleting exempt information from nonexempt information in the particular instance as provided in section 14 as determined by the public body's FOIA coordinator on a case-by-case basis, it may treat necessary contracted labor costs used for the separating and deleting of exempt information from nonexempt information in the same manner as

1 employee labor costs when calculating charges under this
2 subdivision if it clearly notes the name of the contracted person
3 or firm on the detailed itemization described under subsection (4).
4 Total labor costs calculated under this subdivision for contracted
5 labor costs shall not exceed an amount equal to 6 times the state
6 minimum hourly wage rate determined under section 4 of the
7 workforce opportunity wage act, 2014 PA 138, MCL ~~408.411 to~~
8 ~~408.424.~~ **408.414**. Labor costs under this subdivision shall be
9 estimated and charged in increments of 15 minutes or more, with all
10 partial time increments rounded down. A public body shall not
11 charge for labor directly associated with redaction under section
12 14 if it knows or has reason to know that it previously redacted
13 the public record in question and the redacted version is still in
14 the public body's possession.

15 (c) For public records provided to the requestor on **ANY FORM**
16 **OF** nonpaper physical media, the actual and most reasonably
17 economical cost of the ~~computer discs, computer tapes, or other~~
18 ~~digital or similar~~ **NONPAPER PHYSICAL** media. The requestor may
19 stipulate that the public records be provided on nonpaper physical
20 media, electronically mailed, or otherwise electronically provided
21 to him or her in lieu of paper copies. This subdivision does not
22 apply if a public body lacks the technological capability necessary
23 to provide records on the particular nonpaper physical media
24 stipulated in the particular instance.

25 (d) For paper copies of public records provided to the
26 requestor, the actual total incremental cost of necessary
27 duplication or publication, not including labor. The cost of paper

1 copies shall be calculated as a total cost per sheet of paper and
2 shall be itemized and noted in a manner that expresses both the
3 cost per sheet and the number of sheets provided. The fee shall not
4 exceed 10 cents per sheet of paper for copies of public records
5 made on 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper. A
6 public body shall utilize the most economical means available for
7 making copies of public records, including using double-sided
8 printing, if cost saving and available.

9 (e) The cost of labor directly associated with duplication or
10 publication, including making paper copies, making digital copies,
11 or transferring digital public records to be given to the requestor
12 on nonpaper physical media or through the internet or other
13 electronic means as stipulated by the requestor. The public body
14 shall not charge more than the hourly wage of its lowest-paid
15 employee capable of necessary duplication or publication in the
16 particular instance, regardless of whether that person is available
17 or who actually performs the labor. Labor costs under this
18 subdivision may be estimated and charged in time increments of the
19 public body's choosing; however, all partial time increments shall
20 be rounded down.

21 (f) The actual cost of mailing, if any, for sending the public
22 records in a reasonably economical and justifiable manner. The
23 public body shall not charge more for expedited shipping or
24 insurance unless specifically stipulated by the requestor, but may
25 otherwise charge for the least expensive form of postal delivery
26 confirmation when mailing public records.

27 (2) When calculating labor costs under subsection (1)(a), (b),

1 or (e), fee components shall be itemized in a manner that expresses
2 both the hourly wage and the number of hours charged. The public
3 body may also add up to 50% to the applicable labor charge amount
4 to cover or partially cover the cost of fringe benefits if it
5 clearly notes the percentage multiplier used to account for
6 benefits in the detailed itemization described in subsection (4).
7 Subject to the 50% limitation, the public body shall not charge
8 more than the actual cost of fringe benefits, and overtime wages
9 shall not be used in calculating the cost of fringe benefits.
10 Overtime wages shall not be included in the calculation of labor
11 costs unless overtime is specifically stipulated by the requestor
12 and clearly noted on the detailed itemization described in
13 subsection (4). A search for a public record may be conducted or
14 copies of public records may be furnished without charge or at a
15 reduced charge if the public body determines that a waiver or
16 reduction of the fee is in the public interest because searching
17 for or furnishing copies of the public record can be considered as
18 primarily benefiting the general public. A public record search
19 shall be made and a copy of a public record shall be furnished
20 without charge for the first \$20.00 of the fee for each request by
21 either of the following:

22 (a) An individual who is entitled to information under this
23 act and who submits an affidavit stating that the individual is
24 indigent and receiving specific public assistance or, if not
25 receiving public assistance, stating facts showing inability to pay
26 the cost because of indigency. If the requestor is eligible for a
27 requested discount, the public body shall fully note the discount

1 on the detailed itemization described under subsection (4). If a
2 requestor is ineligible for the discount, the public body shall
3 inform the requestor specifically of the reason for ineligibility
4 in the public body's written response. An individual is ineligible
5 for this fee reduction if any of the following apply:

6 (i) The individual has previously received discounted copies
7 of public records under this subsection from the same public body
8 twice during that calendar year.

9 (ii) The individual requests the information in conjunction
10 with outside parties who are offering or providing payment or other
11 remuneration to the individual to make the request. A public body
12 may require a statement by the requestor in the affidavit that the
13 request is not being made in conjunction with outside parties in
14 exchange for payment or other remuneration.

15 (b) A nonprofit organization formally designated by the state
16 to carry out activities under subtitle C of the developmental
17 disabilities assistance and bill of rights act of 2000, Public Law
18 106-402, and the protection and advocacy for individuals with
19 mental illness act, Public Law 99-319, or their successors, if the
20 request meets all of the following requirements:

21 (i) Is made directly on behalf of the organization or its
22 clients.

23 (ii) Is made for a reason wholly consistent with the mission
24 and provisions of those laws under section 931 of the mental health
25 code, 1974 PA 258, MCL 330.1931.

26 (iii) Is accompanied by documentation of its designation by
27 the state, if requested by the public body.

1 (3) A fee as described in subsection (1) shall not be charged
2 for the cost of search, examination, review, and the deletion and
3 separation of exempt from nonexempt information as provided in
4 section 14 unless failure to charge a fee would result in
5 unreasonably high costs to the public body because of the nature of
6 the request in the particular instance, and the public body
7 specifically identifies the nature of these unreasonably high
8 costs.

9 (4) A public body shall establish procedures and guidelines to
10 implement this act and shall create a written public summary of the
11 specific procedures and guidelines relevant to the general public
12 regarding how to submit written requests to the public body and
13 explaining how to understand a public body's written responses,
14 deposit requirements, fee calculations, and avenues for challenge
15 and appeal. The written public summary shall be written in a manner
16 so as to be easily understood by the general public. If the public
17 body directly or indirectly administers or maintains an official
18 internet presence, it shall post and maintain the procedures and
19 guidelines and its written public summary on its website. A public
20 body shall make the procedures and guidelines publicly available by
21 providing free copies of the procedures and guidelines and its
22 written public summary both in the public body's response to a
23 written request and upon request by visitors at the public body's
24 office. A public body that posts and maintains procedures and
25 guidelines and its written public summary on its website may
26 include the website link to the documents in lieu of providing
27 paper copies in its response to a written request. A public body's

1 procedures and guidelines shall include the use of a standard form
2 for detailed itemization of any fee amount in its responses to
3 written requests under this act. The detailed itemization shall
4 clearly list and explain the allowable charges for each of the 6
5 fee components listed under subsection (1) that compose the total
6 fee used for estimating or charging purposes. Other public bodies
7 may use a form created by the department of technology, management,
8 and budget or create a form of their own that complies with this
9 subsection. A public body that has not established procedures and
10 guidelines, has not created a written public summary, or has not
11 made those items publicly available without charge as required in
12 this subsection is not relieved of its duty to comply with any
13 requirement of this act and shall not require deposits or charge
14 fees otherwise permitted under this act until it is in compliance
15 with this subsection. Notwithstanding this subsection and despite
16 any law to the contrary, a public body's procedures and guidelines
17 under this act are not exempt public records under section 13.

18 (5) If the public body directly or indirectly administers or
19 maintains an official internet presence, any public records
20 available to the general public on that internet site at the time
21 the request is made are exempt from any charges under subsection
22 (1)(b). If the FOIA coordinator knows or has reason to know that
23 all or a portion of the requested information is available on its
24 website, the public body shall notify the requestor in its written
25 response that all or a portion of the requested information is
26 available on its website. The written response, to the degree
27 practicable in the specific instance, shall include a specific

1 webpage address where the requested information is available. On
2 the detailed itemization described in subsection (4), the public
3 body shall separate the requested public records that are available
4 on its website from those that are not available on the website and
5 shall inform the requestor of the additional charge to receive
6 copies of the public records that are available on its website. If
7 the public body has included the website address for a record in
8 its written response to the requestor and the requestor thereafter
9 stipulates that the public record be provided to him or her in a
10 paper format or other form as described under subsection (1)(c),
11 the public body shall provide the public records in the specified
12 format but may use a fringe benefit multiplier greater than the 50%
13 limitation in subsection (2), not to exceed the actual costs of
14 providing the information in the specified format.

15 (6) A public body may provide requested information available
16 in public records without receipt of a written request.

17 (7) If a verbal request for information is for information
18 that a public body believes is available on the public body's
19 website, the public employee shall, where practicable and to the
20 best of the public employee's knowledge, inform the requestor about
21 the public body's pertinent website address.

22 (8) In either the public body's initial response or subsequent
23 response as described under section 5(2)(d), the public body may
24 require a good-faith deposit from the person requesting information
25 before providing the public records to the requestor if the entire
26 fee estimate or charge authorized under this section exceeds
27 \$50.00, based on a good-faith calculation of the total fee

1 described in subsection (4). Subject to subsection (10), the
2 deposit shall not exceed 1/2 of the total estimated fee, and a
3 public body's request for a deposit shall include a detailed
4 itemization as required under subsection (4). The response shall
5 also contain a best efforts estimate by the public body regarding
6 the time frame it will take the public body to comply with the law
7 in providing the public records to the requestor. The time frame
8 estimate is nonbinding upon the public body, but the public body
9 shall provide the estimate in good faith and strive to be
10 reasonably accurate and to provide the public records in a manner
11 based on this state's public policy under section 1 and the nature
12 of the request in the particular instance. If a public body does
13 not respond in a timely manner as described under section 5(2), it
14 is not relieved from its requirements to provide proper fee
15 calculations and time frame estimates in any tardy responses.
16 Providing an estimated time frame does not relieve a public body
17 from any of the other requirements of this act.

18 (9) If a public body does not respond to a written request in
19 a timely manner as required under section 5(2), the public body
20 shall do the following:

21 (a) Reduce the charges for labor costs otherwise permitted
22 under this section by 5% for each day the public body exceeds the
23 time permitted under section 5(2) for a response to the request,
24 with a maximum 50% reduction, if either of the following applies:

25 (i) The late response was willful and intentional.

26 (ii) The written request included language that conveyed a
27 request for information within the first 250 words of the body of a

1 letter, facsimile, electronic mail, or electronic mail attachment,
2 or specifically included the words, characters, or abbreviations
3 for "freedom of information", "information", "FOIA", "copy", or a
4 recognizable misspelling of such, or appropriate legal code
5 reference for this act, on the front of an envelope, or in the
6 subject line of an electronic mail, letter, or facsimile cover
7 page.

8 (b) If a charge reduction is required under subdivision (a),
9 fully note the charge reduction on the detailed itemization
10 described under subsection (4).

11 (10) This section does not apply to public records prepared
12 under an act or statute specifically authorizing the sale of those
13 public records to the public, or if the amount of the fee for
14 providing a copy of the public record is otherwise specifically
15 provided by an act or statute.

16 (11) Subject to subsection (12), after a public body has
17 granted and fulfilled a written request from an individual under
18 this act, if the public body has not been paid in full the total
19 amount under subsection (1) for the copies of public records that
20 the public body made available to the individual as a result of
21 that written request, the public body may require a deposit of up
22 to 100% of the estimated fee before it begins a full public record
23 search for any subsequent written request from that individual if
24 all of the following apply:

25 (a) The final fee for the prior written request was not more
26 than 105% of the estimated fee.

27 (b) The public records made available contained the

1 information being sought in the prior written request and are still
2 in the public body's possession.

3 (c) The public records were made available to the individual,
4 subject to payment, within the time frame estimate described under
5 subsection ~~(7)~~-(8) .

6 (d) Ninety days have passed since the public body notified the
7 individual in writing that the public records were available for
8 pickup or mailing.

9 (e) The individual is unable to show proof of prior payment to
10 the public body.

11 (f) The public body calculates a detailed itemization, as
12 required under subsection (4), that is the basis for the current
13 written request's increased estimated fee deposit.

14 (12) A public body shall no longer require an increased
15 estimated fee deposit from an individual as described under
16 subsection (11) if any of the following apply:

17 (a) The individual is able to show proof of prior payment in
18 full to the public body.

19 (b) The public body is subsequently paid in full for the
20 applicable prior written request.

21 (c) Three hundred sixty-five days have passed since the
22 individual made the written request for which full payment was not
23 remitted to the public body.

24 (13) A deposit required by a public body under this act is a
25 fee.