

METHOD OF RESPONSE TO FOIA REQUEST

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

House Bill 4468 as reported from committee

Sponsor: Rep. Steven Johnson

1st Committee: Oversight

2nd Committee: Ways and Means

Complete to 9-10-19

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

(Enacted as Public Act 36 of 2020)

BRIEF SUMMARY: House Bill 4468 would allow a person, when making a request for a copy of a public record under the Freedom of Information Act (FOIA), to ask that any written response to the request be made by email, fax, or first-class mail.

FISCAL IMPACT: The bill would not have a substantial fiscal impact on state or local units of government. State departments are currently authorized to include the cost of postage in FOIA request fees if the total cost of the request exceeds \$20. Any increase in the cost of postage resulting from the bill would either be offset by a corresponding fee increase or could be absorbed by current department funding levels.

THE APPARENT PROBLEM:

Currently, a request for a copy of a public record can be made on paper or submitted to the appropriate public body by fax, email, or other electronic transmission. The person requesting the document can also specify in which format the public document should be provided—on paper, by email, by fax, or by another electronic manner such as a thumb drive or computer disc. However, FOIA does not currently specify the manner the public body is to use if it responds to the request by issuing a denial, asking for more information, or extending the deadline to respond to the request, other than that the response must be in writing and provided within a certain time frame.

According to committee testimony, some requests submitted by email specifying that the documents also be provided by email have generated written responses delivered via first-class mail. This can be problematic for several reasons, and especially so if the requestor is regularly checking his or her email or fax machine for a response sent in the same manner as the original request, but is not checking his or her mail. It has been suggested that FOIA be amended to allow a request for a copy of a public document to specify not only the format of the document to be provided, but also the manner in which a response to the request by the public body should be made.

THE CONTENT OF THE BILL:

Under FOIA, a person who wants to inspect or receive a copy of a public record must make a written request to the FOIA coordinator of the public body. A written request can also be made by facsimile, electronic mail, or other electronic transmission. The public body is required to respond to the request within five business days after receiving the request by granting the request, issuing a written notice denying the request in whole or in part, or

issuing a written notice extending the period (by up to ten business days) during which it may respond to the request. FOIA currently allows a requestor to stipulate that the copy of the public records he or she requested be provided on nonpaper physical media (e.g., computer disc), electronically mailed, or otherwise electronically provided in lieu of paper copies. However, no such allowance is made for stipulating how the written response by the public body to the request is to be provided.

The bill would amend FOIA to allow a person making a request for a copy of a public record to stipulate that the public body's response be electronically mailed, delivered by facsimile, or delivered by first-class mail. The bill would not apply if the public body did not have the technological capability to provide an electronically mailed response.

MCL 15.235

ARGUMENTS:

For:

A response to a FOIA request that is sent by first-class mail, when the requestor is expecting any correspondence to come in the same manner in which the request was made, may be missed, not seen in a timely manner, or confused with junk mail. Some with post office boxes may only retrieve mail sporadically. Or, if the response is sent to a wrong address, the requestor may not even know that correspondence regarding the request was lost. These scenarios also make it difficult for the requestor to know if the public body sent the response within the time periods required by statute.

Clarifying in statute that a written response by the public body could also be made in an electronic format if specified by the requestor, rather than automatically mailing the responses by first-class mail, could resolve this issue. Further, a response sent electronically could reduce the amount of paper, envelopes, and stamps used by a public body. A person would still be able to request that a written response be made by first-class mail, regardless of how a request had been submitted or in which format the copy of the document is to be provided.

Against:

No arguments opposing the bill were offered in committee.

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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.