

HOUSE BILL NO. 4445

April 10, 2019, Introduced by Reps. Iden, Steven Johnson, Howell and Bellino 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 2018 PA 523.

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



1 must be limited to actual mailing costs, and to the actual
2 incremental cost of duplication or publication including labor, the
3 cost of search, examination, review, and the deletion and
4 separation of exempt from nonexempt information as provided in
5 section 14. Except as otherwise provided in this act, if the public
6 body estimates or charges a fee in accordance with this act, the
7 total fee must not exceed the sum of the following components:

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

18 (b) That portion of labor costs, including necessary review,
19 if any, directly associated with the separating and deleting of
20 exempt information from nonexempt information as provided in
21 section 14. For services performed by an employee of the public
22 body, the public body shall not charge more than the hourly wage of
23 its lowest-paid employee capable of separating and deleting exempt
24 information from nonexempt information in the particular instance
25 as provided in section 14, regardless of whether that person is
26 available or who actually performs the labor. If a public body does
27 not employ a person capable of separating and deleting exempt
28 information from nonexempt information in the particular instance
29 as provided in section 14 as determined by the public body's FOIA



1 coordinator on a case-by-case basis, it may treat necessary
2 contracted labor costs used for the separating and deleting of
3 exempt information from nonexempt information in the same manner as
4 employee labor costs when calculating charges under this
5 subdivision if it clearly notes the name of the contracted person
6 or firm on the detailed itemization described under subsection (4).
7 Total labor costs calculated under this subdivision for contracted
8 labor costs must not exceed an amount equal to 6 times the state
9 minimum hourly wage rate determined under section 4 of the improved
10 workforce opportunity wage act, 2018 PA 337, MCL 408.934. Labor
11 costs under this subdivision shall be estimated and charged in
12 increments of 15 minutes or more, with all partial time increments
13 rounded down. A public body shall not charge for labor directly
14 associated with redaction under section 14 if it knows or has
15 reason to know that it previously redacted the public record in
16 question and the redacted version is still in the public body's
17 possession.

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

28 (d) For paper copies of public records provided to the
29 requestor, the actual total incremental cost of necessary

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

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

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

28 (2) When calculating labor costs under subsection (1)(a), (b),
29 or (e), fee components shall be itemized in a manner that expresses

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

21 (a) An individual who is entitled to information under this
22 act and who submits an affidavit stating that the individual is
23 indigent and receiving specific public assistance or, if not
24 receiving public assistance, stating facts showing inability to pay
25 the cost because of indigency. If the requestor is eligible for a
26 requested discount, the public body shall fully note the discount
27 on the detailed itemization described under subsection (4). If a
28 requestor is ineligible for the discount, the public body shall
29 inform the requestor specifically of the reason for ineligibility

1 in the public body's written response. An individual is ineligible
2 for this fee reduction if any of the following apply:

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

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

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

18 (i) Is made directly on behalf of the organization or its
19 clients.

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

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

25 (3) A fee as described in subsection (1) shall not be charged
26 for the cost of search, examination, review, and the deletion and
27 separation of exempt from nonexempt information as provided in
28 section 14 unless failure to charge a fee would result in
29 unreasonably high costs to the public body because of the nature of



1 the request in the particular instance, and the public body
2 specifically identifies the nature of these unreasonably high
3 costs.

4 (4) A public body shall establish procedures and guidelines to
5 implement this act and shall create a written public summary of the
6 specific procedures and guidelines relevant to the general public
7 regarding how to submit written requests to the public body and
8 explaining how to understand a public body's written responses,
9 deposit requirements, fee calculations, and avenues for challenge
10 and appeal. The written public summary shall be written in a manner
11 so as to be easily understood by the general public. If the public
12 body directly or indirectly administers or maintains an official
13 internet presence, it shall post and maintain the procedures and
14 guidelines and its written public summary on its website. A public
15 body shall make the procedures and guidelines publicly available by
16 providing free copies of the procedures and guidelines and its
17 written public summary both in the public body's response to a
18 written request and upon request by visitors at the public body's
19 office. A public body that posts and maintains procedures and
20 guidelines and its written public summary on its website may
21 include the website link to the documents in lieu of providing
22 paper copies in its response to a written request. A public body's
23 procedures and guidelines must include the use of a standard form
24 for detailed itemization of any fee amount in its responses to
25 written requests under this act. The detailed itemization must
26 clearly list and explain the allowable charges for each of the 6
27 fee components listed under subsection (1) that compose the total
28 fee used for estimating or charging purposes. Other public bodies
29 may use a form created by the department of technology, management,



1 and budget or create a form of their own that complies with this
2 subsection. A public body that has not established procedures and
3 guidelines, has not created a written public summary, or has not
4 made those items publicly available without charge as required in
5 this subsection is not relieved of its duty to comply with any
6 requirement of this act and shall not require deposits or charge
7 fees otherwise permitted under this act until it is in compliance
8 with this subsection. Notwithstanding this subsection and despite
9 any law to the contrary, a public body's procedures and guidelines
10 under this act are not exempt public records under section 13.

11 (5) If the public body directly or indirectly administers or
12 maintains an official internet presence, any public records
13 available to the general public on that internet site at the time
14 the request is made are exempt from any charges under subsection
15 (1)(b). If the FOIA coordinator knows or has reason to know that
16 all or a portion of the requested information is available on its
17 website, the public body shall notify the requestor in its written
18 response that all or a portion of the requested information is
19 available on its website. The written response, to the degree
20 practicable in the specific instance, must include a specific
21 webpage address where the requested information is available. On
22 the detailed itemization described in subsection (4), the public
23 body shall separate the requested public records that are available
24 on its website from those that are not available on the website and
25 shall inform the requestor of the additional charge to receive
26 copies of the public records that are available on its website. If
27 the public body has included the website address for a record in
28 its written response to the requestor and the requestor thereafter
29 stipulates that the public record be provided to him or her in a



1 paper format or other form as described under subsection (1)(c),
2 the public body shall provide the public records in the specified
3 format but may use a fringe benefit multiplier greater than the 50%
4 limitation in subsection (2), not to exceed the actual costs of
5 providing the information in the specified format.

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

8 (7) If a verbal request for information is for information
9 that a public body believes is available on the public body's
10 website, the public employee shall, where practicable and to the
11 best of the public employee's knowledge, inform the requestor about
12 the public body's pertinent website address.

13 (8) In either the public body's initial response or subsequent
14 response as described under section 5(2)(d), the public body may
15 require a good-faith deposit from the person requesting information
16 before providing the public records to the requestor if the entire
17 fee estimate or charge authorized under this section exceeds
18 \$50.00, based on a good-faith calculation of the total fee
19 described in subsection (4). Subject to subsection (10), the
20 deposit must not exceed 1/2 of the total estimated fee, and a
21 public body's request for a deposit must include a detailed
22 itemization as required under subsection (4). The response must
23 also contain a best efforts estimate by the public body regarding
24 the time frame it will take the public body to comply with the law
25 in providing the public records to the requestor. The time frame
26 estimate is nonbinding upon the public body, but the public body
27 shall provide the estimate in good faith and strive to be
28 reasonably accurate and to provide the public records in a manner
29 based on this state's public policy under section 1 and the nature



1 of the request in the particular instance. If a public body does
2 not respond in a timely manner as described under section 5(2), it
3 is not relieved from its requirements to provide proper fee
4 calculations and time frame estimates in any tardy responses.
5 Providing an estimated time frame does not relieve a public body
6 from any of the other requirements of this act.

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

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

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

15 (ii) The written request included language that conveyed a
16 request for information within the first 250 words of the body of a
17 letter, facsimile, electronic mail, or electronic mail attachment,
18 or specifically included the words, characters, or abbreviations
19 for "freedom of information", "information", "FOIA", "copy", or a
20 recognizable misspelling of such, or appropriate legal code
21 reference for this act, on the front of an envelope, or in the
22 subject line of an electronic mail, letter, or facsimile cover
23 page.

24 (b) If a charge reduction is required under subdivision (a),
25 fully note the charge reduction on the detailed itemization
26 described under subsection (4).

27 (10) This section does not apply to public records prepared
28 under an act or statute specifically authorizing the sale of those
29 public records to the public, or if the amount of the fee for



1 providing a copy of the public record is otherwise specifically
2 provided by an act or statute.

3 (11) Subject to subsection (12), after a public body has
4 granted and fulfilled a written request from an individual under
5 this act, if the public body has not been paid in full the total
6 amount under subsection (1) for the copies of public records that
7 the public body made available to the individual as a result of
8 that written request, the public body may require a deposit of up
9 to 100% of the estimated fee before it begins a full public record
10 search for any subsequent written request from that individual if
11 all of the following apply:

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

14 (b) The public records made available contained the
15 information being sought in the prior written request and are still
16 in the public body's possession.

17 (c) The public records were made available to the individual,
18 subject to payment, within the time frame estimate described under
19 subsection (8).

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

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

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

28 (12) A public body shall no longer require an increased
29 estimated fee deposit from an individual as described under



1 subsection (11) if any of the following apply:

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

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

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

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

11 (14) If a deposit that is required under subsection (8) or
12 (11) is not received by the public body within 45 days from receipt
13 by the requesting person of the notice that a deposit is required,
14 and if the requesting person has not filed an appeal of the deposit
15 amount pursuant to section 10a, the request shall be considered
16 abandoned by the requesting person and the public body is no longer
17 required to fulfill the request. Notice of a deposit requirement
18 under subsection (8) or (11) is considered received 3 days after it
19 is sent, regardless of the means of transmission. Notice of a
20 deposit requirement under subsection (8) or (11) must include
21 notice of the date by which the deposit must be received, which
22 date is 48 days after the date the notice is sent.

