

HOUSE BILL NO. 5312

January 08, 2020, Introduced by Rep. Garrett and referred to the Committee on Oversight.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending the title and sections 4 and 5 (MCL 15.234 and 15.235),
section 4 as amended by 2018 PA 523 and section 5 as amended by
2018 PA 105, and by adding section 4a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE
2 An act to provide for public access to certain public records
3 of public bodies; ~~to permit certain fees;~~ to prescribe the powers



1 and duties of certain public officers and public bodies; to provide
2 remedies and penalties; and to repeal ~~certain~~ acts and parts of
3 acts.

4 Sec. 4. (1) ~~A~~**Subject to section 4a, a** public body may charge
5 a fee for a public record search, for the necessary copying of a
6 public record for inspection, or for providing a copy of a public
7 record if it has established, makes publicly available, and follows
8 procedures and guidelines to implement this section as described in
9 subsection (4). Subject to subsections (2), (3), (4), (5), and (9),
10 the fee must be limited to actual mailing costs, and to the actual
11 incremental cost of duplication or publication including labor, the
12 cost of search, examination, review, and the deletion and
13 separation of exempt from nonexempt information as provided in
14 section 14. Except as otherwise provided in this act, if the public
15 body estimates or charges a fee in accordance with this act, the
16 total fee must not exceed the sum of the following components:

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

27 (b) That portion of labor costs, including necessary review,
28 if any, directly associated with the separating and deleting of
29 exempt information from nonexempt information as provided in



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

27 (c) For public records provided to the requestor on nonpaper
28 physical media, the actual and most reasonably economical cost of
29 the computer discs, computer tapes, or other digital or similar



1 media. The requestor may stipulate that the public records be
2 provided on nonpaper physical media, electronically mailed, or
3 otherwise electronically provided to him or her in lieu of paper
4 copies. This subdivision does not apply if a public body lacks the
5 technological capability necessary to provide records on the
6 particular nonpaper physical media stipulated in the particular
7 instance.

8 (d) For paper copies of public records provided to the
9 requestor, the actual total incremental cost of necessary
10 duplication or publication, not including labor. The cost of paper
11 copies shall be calculated as a total cost per sheet of paper and
12 shall be itemized and noted in a manner that expresses both the
13 cost per sheet and the number of sheets provided. The fee must not
14 exceed 10 cents per sheet of paper for copies of public records
15 made on 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper. A
16 public body shall utilize the most economical means available for
17 making copies of public records, including using double-sided
18 printing, if cost saving and available.

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

1 be rounded down.

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

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



(a) An individual who is entitled to information under this act and who submits an affidavit stating that the individual is indigent and receiving specific public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency. If the requestor is eligible for a requested discount, the public body shall fully note the discount on the detailed itemization described under subsection (4). If a requestor is ineligible for the discount, the public body shall inform the requestor specifically of the reason for ineligibility in the public body's written response. An individual is ineligible for this fee reduction if any of the following apply:

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

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

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

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

(ii) Is made for a reason wholly consistent with the mission

1 and provisions of those laws under section 931 of the mental health
2 code, 1974 PA 258, MCL 330.1931.

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

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

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



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

20 (5) If the public body directly or indirectly administers or
21 maintains an official internet presence, any public records
22 available to the general public on that internet site at the time
23 the request is made are exempt from any charges under subsection
24 (1)(b). If the FOIA coordinator knows or has reason to know that
25 all or a portion of the requested information is available on its
26 website, the public body shall notify the requestor in its written
27 response that all or a portion of the requested information is
28 available on its website. The written response, to the degree
29 practicable in the specific instance, must 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),~~ **5(2)**, the public body
24 may require a good-faith deposit from the person requesting
25 information before providing the public records to the requestor if
26 the entire fee estimate or charge authorized under this section
27 exceeds \$50.00, based on a good-faith calculation of the total fee
28 described in subsection (4). Subject to subsection (10), the
29 deposit must not exceed 1/2 of the total estimated fee, and a

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

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

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

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

24 (ii) The written request included language that conveyed a
25 request for information within the first 250 words of the body of a
26 letter, facsimile, electronic mail, or electronic mail attachment,
27 or specifically included the words, characters, or abbreviations
28 for "freedom of information", "information", "FOIA", "copy", or a
29 recognizable misspelling of such, or appropriate legal code



1 reference for this act, on the front of an envelope, or in the
2 subject line of an electronic mail, letter, or facsimile cover
3 page.

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

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

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

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

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

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

29 (d) Ninety days have passed since the public body notified the

1 individual in writing that the public records were available for
2 pickup or mailing.

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

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

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

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

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

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

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

20 (14) If a deposit that is required under subsection (8) or
21 (11) is not received by the public body within 45 days from receipt
22 by the requesting person of the notice that a deposit is required,
23 and if the requesting person has not filed an appeal of the deposit
24 amount pursuant to section 10a, the request shall be considered
25 abandoned by the requesting person and the public body is no longer
26 required to fulfill the request. Notice of a deposit requirement
27 under subsection (8) or (11) is considered received 3 days after it
28 is sent, regardless of the means of transmission. Notice of a
29 deposit requirement under subsection (8) or (11) must include



1 notice of the date by which the deposit must be received, which
2 date is 48 days after the date the notice is sent.

3 **Sec. 4a. Beginning 30 days after the effective date of the**
4 **amendatory act that added this section, notwithstanding any**
5 **provision of this act to the contrary, a public body shall not**
6 **charge any fee in connection with receiving or fulfilling a granted**
7 **written request, including, but not limited to, any fee for the**
8 **costs described in section 4.**

9 Sec. 5. (1) Except as provided in section 3, a person desiring
10 to inspect or receive a copy of a public record shall make a
11 written request for the public record to the FOIA coordinator of a
12 public body. A written request made by facsimile, electronic mail,
13 or other electronic transmission is not received by a public body's
14 FOIA coordinator until 1 business day after the electronic
15 transmission is made. However, if a written request is sent by
16 electronic mail and delivered to the public body's spam or junk-
17 mail folder, the request is not received until 1 day after the
18 public body first becomes aware of the written request. The public
19 body shall note in its records both the time a written request is
20 delivered to its spam or junk-mail folder and the time the public
21 body first becomes aware of that request.

22 (2) Unless otherwise agreed to in writing by the person making
23 the request, a public body shall respond to a request for a public
24 record within ~~5-business~~ **10 calendar** days after the public body
25 receives the request by doing 1 of the following:

26 (a) Granting the request **and producing the requested public**
27 **record.**

28 (b) Issuing a written notice to the requesting person denying
29 the request.



1 (c) Granting the request in part, ~~and~~ issuing a written notice
2 to the requesting person denying the request in part, **and, to the**
3 **extent that the request is granted, producing the requested public**
4 **record.**

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

9 (3) Failure to respond to a request ~~pursuant to~~ **under**
10 subsection (2) constitutes a public body's final determination to
11 deny the request if either of the following applies:

12 (a) The failure was willful and intentional.

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

22 (4) In a civil action to compel a public body's disclosure of
23 a public record under section 10, the court shall assess damages
24 against the public body ~~pursuant to~~ **under** section 10(7) if the
25 court has done both of the following:

26 (a) Determined that the public body has not complied with
27 subsection (2).

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



1 (5) A written notice denying a request for a public record in
2 whole or in part is a public body's final determination to deny the
3 request or portion of that request. The written notice must
4 contain:

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

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

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

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

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

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

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

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

28 ~~(7) If a public body issues a notice extending the period for~~
29 ~~a response to the request, the notice must specify the reasons for~~



~~the extension and the date by which the public body will do 1 of
the following:~~

~~(a) Grant the request.~~

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

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

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

(a) Appeal the denial to the head of the public body ~~pursuant
to~~**under** section 10.

(b) Commence a civil action, ~~pursuant to~~**under** section 10.

(8) ~~(9)~~—Notwithstanding any other provision of this act to the
contrary, a public body that maintains a law enforcement records
management system and stores public records for another public body
that subscribes to the law enforcement records management system is
not in possession of, retaining, or the custodian of, a public
record stored on behalf of the subscribing public body. If the
public body that maintains a law enforcement records management
system receives a written request for a public record that is
stored on behalf of a subscribing public body, the public body that
maintains the law enforcement records management system shall,
within 10 business days after receipt of the request, give written
notice to the requesting person identifying the subscribing public
body and stating that the requesting person shall submit the
request to the subscribing public body. As used in this subsection,
"law enforcement records management system" means a data storage



1 system that may be used voluntarily by subscribers, including any
2 subscribing public bodies, to share information and facilitate
3 intergovernmental collaboration in the provision of law enforcement
4 services.

