

SENATE BILL NO. 839

March 12, 2020, Introduced by Senators MOSS, MCBROOM, LUCIDO, BULLOCK, BAYER, POLEHANKI, MCMORROW, IRWIN, GEISS, BRINKS, MCCANN, RUNESTAD, WOJNO, BARRETT, HERTEL and HOLLIER and referred to the Committee on Oversight.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
(MCL 15.231 to 15.246) by adding section 24.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 24. (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**

1 (4). Subject to subsections (2), (3), (4), (5), and (9), the fee
2 must be limited to actual mailing costs and to the actual
3 incremental cost of duplication or publication, including labor,
4 the cost of search, examination, review, and the deletion and
5 separation of exempt from nonexempt information as provided in
6 section 29e. Except as otherwise provided in this part, if the
7 public body estimates or charges a fee in accordance with this
8 part, the total fee must not exceed the sum of the following:

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

19 (b) That portion of labor costs, including necessary review,
20 if any, directly associated with the separating and deleting of
21 exempt information from nonexempt information as provided in
22 section 29e. For services performed by an employee of the public
23 body, the public body shall not charge more than the hourly wage of
24 its lowest-paid employee capable of separating and deleting exempt
25 information from nonexempt information in the particular instance
26 as provided in section 29e, regardless of whether that person is
27 available or who actually performs the labor. Labor costs under
28 this subdivision shall be estimated and charged in increments of 15
29 minutes or more, with all partial time increments rounded down. A

1 public body shall not charge for labor directly associated with
2 redaction under section 29e if it knows or has reason to know that
3 it previously redacted the public record in question and the
4 redacted version is still in the public body's possession.

5 (c) For public records provided to the requestor on nonpaper
6 physical media, the actual and most reasonably economical cost of
7 the computer discs, computer tapes, or other digital or similar
8 media. The requestor may stipulate that the public records be
9 provided on nonpaper physical media, electronically mailed, or
10 otherwise electronically provided to him or her in lieu of paper
11 copies. This subdivision does not apply if a public body lacks the
12 technological capability necessary to provide records on the
13 particular nonpaper physical media stipulated in the particular
14 instance.

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

26 (e) The cost of labor directly associated with duplication or
27 publication, including making paper copies, making digital copies,
28 or transferring digital public records to be given to the requestor
29 on nonpaper physical media or through the internet or other

1 electronic means as stipulated by the requestor. The public body
2 shall not charge more than the hourly wage of its lowest-paid
3 employee capable of necessary duplication or publication in the
4 particular instance, regardless of whether that person is available
5 or who actually performs the labor. Labor costs under this
6 subdivision may be estimated and charged in time increments of the
7 public body's choosing. However, all partial time increments shall
8 be rounded down.

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

15 (2) When calculating labor costs under subsection (1)(a), (b),
16 or (e), fee components shall be itemized in a manner that expresses
17 both the hourly wage and the number of hours charged. The public
18 body may also add up to 50% to the applicable labor charge amount
19 to cover or partially cover the cost of fringe benefits if it
20 clearly notes the percentage multiplier used to account for
21 benefits in the detailed itemization described in subsection (4).
22 Subject to the 50% limitation, the public body shall not charge
23 more than the actual cost of fringe benefits, and overtime wages
24 shall not be used in calculating the cost of fringe benefits.
25 Overtime wages shall not be included in the calculation of labor
26 costs unless overtime is specifically stipulated by the requestor
27 and clearly noted on the detailed itemization described in
28 subsection (4). A search for a public record may be conducted or
29 copies of public records may be furnished without charge or at a

1 reduced charge if the public body determines that a waiver or
2 reduction of the fee is in the public interest because searching
3 for or furnishing copies of the public record can be considered as
4 primarily benefiting the general public. A public record search
5 shall be made and a copy of a public record shall be furnished
6 without charge for the first \$20.00 of the fee for each request by
7 either of the following:

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

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

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

28 (b) A nonprofit organization formally designated by the state
29 to carry out activities under subtitle C of the developmental

1 disabilities assistance and bill of rights act of 2000, Public Law
2 106-402, and the protection and advocacy for mentally ill
3 individuals act of 1986, Public Law 99-319, or their successors, if
4 the request meets all of the following requirements:

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

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

10 (iii) Is accompanied by documentation of its designation by this
11 state, if requested by the public body.

12 (3) A fee as described in subsection (1) shall not be charged
13 for the cost of search, examination, review, and the deletion and
14 separation of exempt from nonexempt information as provided in
15 section 29e unless failure to charge a fee would result in
16 unreasonably high costs to the public body because of the nature of
17 the request in the particular instance and the public body
18 specifically identifies the nature of these unreasonably high
19 costs.

20 (4) A public body shall establish procedures and guidelines to
21 implement this part and shall create a written public summary of
22 the specific procedures and guidelines relevant to the general
23 public regarding how to submit written requests to the public body
24 and explaining how to understand a public body's written responses,
25 deposit requirements, fee calculations, and avenues for challenge
26 and appeal. The written public summary shall be written in a manner
27 so as to be easily understood by the general public. A public body
28 shall post and maintain the procedures and guidelines and its
29 written public summary on its website. A public body shall make the

1 procedures and guidelines publicly available by providing free
2 copies of the procedures and guidelines and its written public
3 summary both in the public body's response to a written request and
4 upon request by visitors at the public body's office. A public body
5 may include the website link to the documents in lieu of providing
6 paper copies in its response to a written request. A public body's
7 procedures and guidelines must include the use of a standard form
8 for detailed itemization of any fee amount in its responses to
9 written requests under this part. The detailed itemization must
10 clearly list and explain the allowable charges for each of the 6
11 fee components listed under subsection (1) that compose the total
12 fee used for estimating or charging purposes. A public body that
13 has not established procedures and guidelines, has not created a
14 written public summary, or has not made those items publicly
15 available without charge as required in this subsection is not
16 relieved of its duty to comply with any requirement of this part
17 and shall not require deposits or charge fees otherwise permitted
18 under this part until it is in compliance with this subsection.
19 Notwithstanding this subsection and despite any law to the
20 contrary, a public body's procedures and guidelines under this part
21 are not exempt public records under section 29d.

22 (5) Any public records available to the general public on a
23 public body's internet site at the time the request is made are
24 exempt from charge under subsection (1) (b). If the LORA coordinator
25 knows or has reason to know that all or a portion of the requested
26 information is available on its website, the public body shall
27 notify the requestor in its written response that all or a portion
28 of the requested information is available on its website. The
29 written response, to the degree practicable in the specific

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

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

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

23 (8) In either the public body's initial response or subsequent
24 response as described under section 25(2)(d), the public body may
25 require a good-faith deposit from the person requesting information
26 before providing the public records to the requestor if the entire
27 fee estimate or charge authorized under this section exceeds
28 \$50.00, based on a good-faith calculation of the total fee
29 described in subsection (4). Subject to subsection (10), the

1 deposit must not exceed 1/2 of the total estimated fee, and a
2 public body's request for a deposit must include a detailed
3 itemization as required under subsection (4). The response must
4 also contain a best efforts estimate by the public body regarding
5 the time frame it will take the public body to comply with the law
6 in providing the public records to the requestor. The time frame
7 estimate is nonbinding upon the public body, but the public body
8 shall provide the estimate in good faith and strive to be
9 reasonably accurate and to provide the public records in a manner
10 based on this state's public policy under section 21 and the nature
11 of the request in the particular instance. If a public body does
12 not respond in a timely manner as described under section 25(2), it
13 is not relieved from its requirements to provide proper fee
14 calculations and time frame estimates in any tardy responses.
15 Providing an estimated time frame does not relieve a public body
16 from any of the other requirements of this part.

17 (9) If a public body does not respond to a written request in
18 a timely manner as required under section 25(2), the public body
19 shall do the following:

20 (a) Reduce the charges for labor costs otherwise permitted
21 under this section by 5% for each day the public body exceeds the
22 time permitted under section 25(2) for a response to the request,
23 with a maximum 50% reduction, if either of the following applies:

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

25 (ii) The written request included language that conveyed a
26 request for information within the first 250 words of the body of a
27 letter, facsimile, electronic mail, or electronic mail attachment,
28 or specifically included the words, characters, or abbreviations
29 for "freedom of information", "open records", "information",

1 "LORA", "copy", or a recognizable misspelling of such, or
2 appropriate legal code reference for this part, on the front of an
3 envelope or in the subject line of an electronic mail, a letter, or
4 a facsimile cover page.

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

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

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

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

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

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

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

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

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

9 (12) A public body shall not continue to require an increased
10 estimated fee deposit from an individual as described under
11 subsection (11) if any of the following apply:

12 (a) The individual shows to the public body proof of prior
13 payment in full for the applicable prior request.

14 (b) The public body receives payment in full for the
15 applicable prior written request.

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

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

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

1 deposit requirement under subsection (8) or (11) must include
2 notice of the date by which the deposit must be received, which
3 date is 48 days after the date the notice is sent.

4 Enacting section 1. This amendatory act takes effect January
5 1, 2021.

6 Enacting section 2. This amendatory act does not take effect
7 unless Senate Bill No. 837 of the 100th Legislature is enacted into
8 law.