

# SENATE BILL NO. 840

March 12, 2020, Introduced by Senators MCBROOM, MOSS, 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 25.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 25. (1) Except as provided in section 23, to inspect or  
2 receive a copy of a public record under this part, a person shall  
3 submit a written request for the public record to the LORA  
4 coordinator of the public body. A written request made by  
5 facsimile, electronic mail, or other electronic transmission under

1 this part is not considered to be received by a public body's LORA  
2 coordinator until 1 business day after the electronic transmission  
3 is made. However, if a written request is sent by electronic mail  
4 and delivered to the public body's spam or junk mail folder, the  
5 request is not received until 1 day after the public body first  
6 becomes aware of the written request. The public body shall note in  
7 its records both the time a written request is delivered to its  
8 spam or junk-mail folder and the time the public body first becomes  
9 aware of that request.

10 (2) Unless otherwise agreed to in writing by the person making  
11 the request, a public body shall respond to a request for a public  
12 record within 5 business days after the public body receives the  
13 request by doing 1 of the following:

14 (a) Granting the request.

15 (b) Issuing a written notice to the requesting person denying  
16 the request.

17 (c) Granting the request in part and issuing a written notice  
18 to the requesting person denying the request in part.

19 (d) Issuing a notice extending for not more than 10 business  
20 days the time by which the public body must respond to the request.  
21 A public body shall not issue more than 1 notice of extension for  
22 each request.

23 (3) Failure to respond to a request pursuant to subsection (2)  
24 constitutes a public body's final determination to deny the request  
25 if either of the following applies:

26 (a) The failure was willful and intentional.

27 (b) The written request included language that conveyed a  
28 request for information within the first 250 words of the body of a  
29 letter, facsimile, electronic mail, or electronic mail attachment,

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

7 (4) A written notice denying a request for a public record in  
8 whole or in part is a public body's final determination to deny the  
9 request or portion of that request. The written notice shall  
10 contain all of the following:

11 (a) An explanation of the basis under this part or other  
12 statute for the determination that the public record, or portion of  
13 that public record, is exempt from disclosure, if that is the  
14 reason for denying all or a portion of the request.

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

19 (c) A description of a public record or information on a  
20 public record that is separated or deleted pursuant to section 29e,  
21 if a separation or deletion is made.

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

24 (i) Submit a written request for reconsideration to the public  
25 body's LORA coordinator that specifically states the word  
26 "reconsideration", "appeal", "redetermination", or "reverse" and  
27 identifies the reason or reasons for reversal of the disclosure  
28 denial.

29 (ii) Seek final review of the denial under section 29a.

1           (5) The individual designated under sections 26 to 28 as a  
2 LORA coordinator or under section 29 as a LORA coordinator designee  
3 shall sign the written notice of denial.

4           (6) If a public body issues a notice extending the period for  
5 a response to the request, the notice shall specify the reasons for  
6 the extension and the date by which the public body will do 1 of  
7 the following:

8           (a) Grant the request.

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

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

13           (7) If a public body makes a final determination to deny in  
14 whole or in part a request to inspect or receive a copy of a public  
15 record or portion of a public record, the requesting person may  
16 seek reconsideration or appeal of the denial as provided in section  
17 29a.

18           Enacting section 1. This amendatory act takes effect January  
19 1, 2021.

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