

HOUSE BILL No. 5879

September 11, 2012, Introduced by Rep. Shirkey and referred to the Committee on Oversight, Reform, and Ethics.

A bill to amend 1976 PA 442, entitled "Freedom of information act," by amending sections 4, 5, and 10 (MCL 15.234, 15.235, and 15.240), as amended by 1996 PA 553.

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, the necessary copying of a public record for inspection, or
 3 for providing a copy of a public record. Subject to subsections (3)
 4 and (4) **AND SECTION 5(8)**, the fee shall be limited to actual
 5 mailing costs; ~~and to the actual incremental cost of duplication~~
 6 or publication including labor, **NOT TO EXCEED 10 CENTS PER PAGE;**
 7 the cost of search, examination, **AND** review; ~~and the deletion and~~
 8 ~~separation of~~ **COST OF DELETING AND SEPARATING** exempt from nonexempt
 9 information as provided in section 14. **A PUBLIC BODY SHALL PERMIT**

1 **AND SHALL NOT CHARGE A FEE FOR COPYING DURING AN ON-SITE INSPECTION**
2 **OF PUBLIC RECORDS UNLESS THE REQUESTOR REQUESTS THE PUBLIC BODY TO**
3 **PROVIDE THE COPIES OR THE REQUESTOR REQUESTS AND USES THE PUBLIC**
4 **BODY'S EQUIPMENT TO MAKE THE COPIES.** A search for a public record
5 may be conducted or copies of public records may be furnished
6 without charge or at a reduced charge if the public body determines
7 that a waiver or reduction of the fee is in the public interest
8 because searching for or furnishing copies of the public record can
9 be considered as primarily benefiting the general public. A public
10 record search shall be made and a copy of a public record shall be
11 furnished without charge for the first \$20.00 of the fee for each
12 request to an individual who is entitled to information under this
13 act and who submits an affidavit stating that the individual is
14 then receiving public assistance or, if not receiving public
15 assistance, stating facts showing inability to pay the cost because
16 of indigency.

17 (2) A public body may require at the time a request is made a
18 good faith deposit from the person requesting the public record or
19 series of public records, if the fee authorized under this section
20 exceeds \$50.00. The deposit shall not exceed 1/2 of the total fee.

21 (3) In calculating the cost of labor incurred in duplication
22 and mailing and the cost of examination, review, separation, and
23 deletion under subsection (1), a public body may not charge more
24 than the hourly wage of the lowest paid public body employee
25 capable of retrieving the information necessary to comply with a
26 request under this act. Fees shall be uniform and not dependent
27 upon the identity of the requesting person. A public body shall

1 utilize the most economical means available for making copies of
2 public records. A fee shall not be charged for the cost of search,
3 examination, OR review ~~, and the deletion and separation of~~ OR FOR
4 **DELETING AND SEPARATING** exempt from nonexempt information as
5 provided in section 14 unless failure to charge a fee would result
6 in unreasonably high costs to the public body because of the nature
7 of the request in the particular instance, and the public body
8 specifically identifies the nature of these unreasonably high
9 costs. A public body shall establish and publish procedures and
10 guidelines to implement this subsection.

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

16 Sec. 5. (1) Except as provided in section 3, a person desiring
17 to inspect or receive a copy of a public record shall make a
18 written request for the public record to the FOIA coordinator of a
19 public body. A written request made by facsimile, electronic mail,
20 or other electronic transmission is not received by a public body's
21 FOIA coordinator until 1 business day after the electronic
22 transmission is made.

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

27 (a) Granting the request.

1 (b) Issuing a written notice to the requesting person denying
2 the request.

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

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 subsection (2)
10 constitutes a public body's final determination to deny the
11 request. In a circuit court action to compel a public body's
12 disclosure of a public record under section 10, the circuit court
13 shall assess damages against the public body pursuant to section
14 ~~10(8)~~ 10(7) if the circuit court has done both of the following:

15 (a) Determined that the public body has not complied with
16 subsection (2).

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

19 (4) A written notice denying a request for a public record in
20 whole or in part is a public body's final determination to deny the
21 request or portion of that request. The written notice shall
22 contain:

23 (a) An explanation of the basis under this act or other
24 statute for the determination that the public record, or portion of
25 that public record, is exempt from disclosure, if that is the
26 reason for denying all or a portion of the request.

27 (b) A certificate that the public record does not exist under

1 the name given by the requester or by another name reasonably known
2 to the public body, if that is the reason for denying the request
3 or a portion of the request.

4 (c) A description of a public record or information on a
5 public record that is separated or deleted pursuant to section 14,
6 if a separation or deletion is made.

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

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

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

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

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

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

24 (a) Grant the request.

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

27 (c) Grant the request in part and issue a written notice to

1 the requesting person denying the request in part.

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

6 (a) Appeal the denial to the head of the public body pursuant
7 to section 10.

8 (b) Commence an action in circuit court, pursuant to section
9 10.

10 (8) IF A PUBLIC BODY DOES NOT DENY A REQUEST FOR RECORDS, BUT
11 FAILS TO MAKE THE REQUESTED RECORDS AVAILABLE FOR INSPECTION OR TO
12 PROVIDE A COPY OF THE REQUESTED RECORDS UNTIL AFTER THE TIME
13 SPECIFIED IN SUBSECTION (2), THE FEE PERMITTED UNDER SECTION 4 IS
14 REDUCED BY 20% OF THE ORIGINAL FEE FOR EACH DAY AFTER THE DEADLINE
15 THAT THE RECORD OR COPY IS NOT MADE AVAILABLE. A PUBLIC BODY SHALL
16 NOT CHARGE A FEE FOR A RECORD PRODUCED MORE THAN 5 DAYS AFTER THE
17 DEADLINE. THE DEADLINES IN SUBSECTION (2) ARE EXTENDED AND NO
18 CHARGE REDUCTION IS REQUIRED UNDER THIS SUBSECTION DURING THE TIME
19 THAT A DEPOSIT REQUIRED UNDER SECTION 4(2) REMAINS UNPAID, EXCEPT
20 THAT WHILE AN APPEAL REQUESTING A FEE REDUCTION IS PENDING, THE
21 REQUIRED DEPOSIT SHALL NOT EXCEED \$500.00.

22 Sec. 10. (1) If a public body makes a final determination to
23 deny all or a portion of a request **OR TO IMPOSE A FEE IN EXCESS OF**
24 **THE FEES PERMITTED UNDER SECTION 4**, the requesting person may do 1
25 of the following at his or her option:

26 (a) Submit to the head of the public body a written appeal
27 that specifically states the word "appeal" and identifies the

1 reason or reasons for reversal of the denial **OR FOR A REDUCTION IN**
2 **FEEES.**

3 (b) Commence an action in the circuit court to compel the
4 public body's disclosure of the public records within 180 days
5 after a public body's final determination to deny a request.

6 (C) **IF THE AMOUNT OF FEES EXCEEDS 10 CENTS PER PAGE OR IF THE**
7 **FEES FOR SEARCH, EXAMINATION, REVIEW, AND DELETING AND SEPARATING**
8 **EXEMPT FROM NONEXEMPT INFORMATION EXCEEDS \$100.00 CUMULATIVELY FOR**
9 **ALL REQUESTS SUBMITTED BY THE REQUESTING PERSON TO THE PUBLIC BODY**
10 **IN A 6-MONTH PERIOD, COMMENCE AN ACTION IN THE CIRCUIT COURT FOR A**
11 **FEE REDUCTION WITHIN 180 DAYS OF THE PUBLIC BODY'S NOTIFICATION TO**
12 **THE PERSON OF THE FEE AMOUNT.**

13 (2) Within 10 days after receiving a written appeal pursuant
14 to subsection (1)(a), the head of a public body shall do 1 of the
15 following:

16 (a) Reverse the disclosure denial **OR GRANT THE REQUESTED FEE**
17 **REDUCTION, AS APPLICABLE.**

18 (b) Issue a written notice to the requesting person upholding
19 the disclosure denial **OR THE AMOUNT OF THE FEES, AS APPLICABLE.**

20 (c) Reverse the disclosure denial in part and issue a written
21 notice to the requesting person upholding the disclosure denial in
22 part.

23 (D) **GRANT A PARTIAL FEE REDUCTION AND ISSUE A WRITTEN NOTICE**
24 **TO THE REQUESTING PERSON INDICATING THE BASIS FOR SUPPORTING THE**
25 **FEES PERMITTED.**

26 (E) ~~(d)~~—Under unusual circumstances, issue a notice extending
27 for not more than 10 business days the period during which the head

1 of the public body shall respond to the written appeal. The head of
2 a public body shall not issue more than 1 notice of extension for a
3 particular written appeal.

4 (3) A board or commission that is the head of a public body is
5 not considered to have received a written appeal under subsection
6 (2) until the first regularly scheduled meeting of that board or
7 commission following submission of the written appeal under
8 subsection (1)(a). If the head of the public body fails to respond
9 to a written appeal pursuant to subsection (2), or if the head of
10 the public body upholds all or a portion of the disclosure denial
11 that is the subject of the written appeal, the requesting person
12 may seek judicial review of the nondisclosure by commencing an
13 action in circuit court under subsection (1)(b).

14 (4) In an action commenced under subsection (1)(b), a court
15 that determines a public record is not exempt from disclosure shall
16 order the public body to cease withholding or to produce all or a
17 portion of a public record wrongfully withheld, regardless of the
18 location of the public record. The circuit court for the county in
19 which the complainant resides or has his or her principal place of
20 business, or the circuit court for the county in which the public
21 record or an office of the public body is located has venue over
22 the action. **THE PUBLIC BODY SHALL NOT ASSERT AN EXEMPTION UNDER**
23 **SECTION 13 THAT IT DID NOT ASSERT IN EITHER A WRITTEN DENIAL OF THE**
24 **REQUEST UNDER SECTION 5 OR AN APPEAL UNDER SUBSECTION (1)(A).** The
25 court shall determine the matter de novo and the burden is on the
26 public body to sustain its denial. The court, on its own motion,
27 may view the public record in controversy in private before

1 reaching a decision. Failure to comply with an order of the court
2 may be punished as contempt of court.

3 (5) An action commenced under this section and an appeal from
4 an action commenced under this section shall be assigned for
5 hearing and trial or for argument at the earliest practicable date
6 and expedited in every way.

7 (6) If a person asserting the right to inspect, copy, or
8 receive a copy of all or a portion of a public record **OR THE RIGHT**
9 **TO A REDUCTION IN FEES** prevails **IN ALL OR PART** in an action
10 commenced under this section, the court shall award reasonable
11 attorneys' fees, costs, and disbursements. ~~If the person or public~~
12 ~~body prevails in part, the court may, in its discretion, award all~~
13 ~~or an appropriate portion of reasonable attorneys' fees, costs, and~~
14 ~~disbursements.~~ The award shall be assessed against the public body
15 liable for damages under subsection (7).

16 (7) If the circuit court determines in an action commenced
17 under this section that the public body has arbitrarily and
18 capriciously violated this act by refusal or delay in disclosing or
19 providing copies of a public record, the court shall award, in
20 addition to any actual or compensatory damages, punitive damages in
21 the amount of ~~\$500.00~~ **\$5,000.00** to the person seeking the right to
22 inspect or receive a copy of a public record. The damages shall not
23 be assessed against an individual, but shall be assessed against
24 the next succeeding public body that is not an individual and that
25 kept or maintained the public record as part of its public
26 function.