

CHAPTER 19

**FREEDOM
OF
INFORMATION ACT**

MCL 15.231 *et seq.*

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19:1 PURPOSE OF FOIA

The purpose of the Freedom of Information Act (FOIA) is to make full and complete information regarding the affairs and official acts of government available to all persons so that the public may fully participate in the democratic process.

19:2 REQUIREMENTS FOR A FOIA REQUEST

FOIA states that upon written request, a person has the right to inspect, copy or receive copies of the requested public record of a public body. A public body must provide a certified copy of a public record when requested.

The written request must describe the record sufficiently to enable the public body to find the record. A written request includes any writing that asks for information, and can include requests by facsimile or e-mail.

A citizen can request copies of a “public record,” which can include any writing prepared, owned, used in the possession of, or retained by a public body in the performance of an official function. A citizen also has the right to subscribe to future issuance of public records that are created on a regular basis. However, FOIA does not require a public body to make a compilation, summary or report of information.

19:3 RESPONDING TO A FOIA REQUEST

A public body shall respond to a request for information within five business days after the public body receives the request. The public body can respond to the request in one of the following ways:

- Grant the request
- Deny the request in writing (failure to respond constitutes denial)
- Grant the request in part and deny the request in writing
- Issue a notice extending the time period for responding for up to ten additional business days

19:3.1 Denying a Request

A denial of a FOIA request or any part of a FOIA request must contain the following:

- An explanation of the basis of the exemption or a certificate that the public record does not exist
- A description of the record that is being denied if only a portion of the request is denied

- Full explanation of the right to either appeal or to seek judicial review
- Notice of the right to receive attorneys' fees and damages if the court finds noncompliance with the Act

19:3.2 Extension of Time

If a public body issues an extension of time to respond to the FOIA request, the extension must specify the reasons for the exemption and the date by which the public body will either grant or deny the request.

19:4 INSPECTIONS OF PUBLIC RECORDS

A public body must furnish a requesting person a reasonable opportunity for inspection and examination of public records. The public body also must furnish reasonable facilities for the person to make notes regarding the public records during the usual business hours.

A public body may make reasonable rules regarding inspection of documents in order to protect the public records and to prevent excessive and unreasonable interference with the discharge of its functions.

19:5 FEES

A public body may charge a fee for a public record search equal to the actual mailing costs, the actual costs of duplication, and the cost of labor incurred in duplication and mailing calculated by the hourly rate of the lowest paid public body capable of retrieving the information.

The public body shall establish and publish procedures and guidelines to implement the calculation of fees.

Before information is provided, a public body can request a deposit, if the fee for the request is estimated to exceed \$50.00. The deposit cannot exceed one half of the estimated total fee.

Public records can be furnished without requiring a fee or at a reduced fee if the public body decides that doing so would be for the benefit of the general public. Public records shall be furnished free of charge due to indigency if an affidavit is submitted stating that the individual is currently receiving public assistance or otherwise shows an inability to pay the cost because of indigency.

19:6 EXEMPTIONS

A public body may deny a request based on one of several exemptions. Some of the exemptions are as follows:

- Information of a personal nature that would be considered an invasion of privacy.
- Records specifically exempted by statute.
- Information that if released would prevent compliance with the Family Educational Rights and Privacy Act.
- Information or records subject to the attorney-client privilege.
- Information or records subject to the physician-patient privilege, the psychologist-patient privilege, the minister, priest, or Christian Science practitioner privilege, or other privileges recognized by statute or court rule.
- A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the deadline for submission of bids or proposals has expired.
- Appraisals or real property to be acquired by the public body until (i) an agreement is entered into; or (ii) three years has elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet been terminated.
- Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action.
- Testing data developed by a public body in determining whether a bidders' products meet the specifications for purchase of those products by the public body.
- Records of any campaign committee including any committee that receives money from a state campaign fund.
- Records or information relating to a civil action in which the requesting party and the public body are parties.
- Information or records that would disclose the social security number of any individual.

19:7 VIOLATIONS OF FOIA

If a public body denies the request, the person can either submit a written appeal to the head of the public body or commence an action in circuit court. Within ten days of a written

appeal, the head of the public body must do one of the following:

- Reverse the disclosure denial
- Issue a written notice upholding the denial
- Reverse the denial in part and issue a written notice upholding the denial in part
- Under unusual circumstances, issue a notice extending the time to respond to the appeal for ten additional days

If the court determines that the disclosure was not exempt, and the information was wrongfully denied, the court may order the disclosure of the information. If the denial was considered arbitrary or capricious, the court may also order compensatory damages, punitive damages of up to \$500.

APPENDIX

Document List

1. Sample Denial Letter
2. Sample Deposit Letter
3. Sample Extension Letter

◆ ◆ **SAMPLE** ◆ ◆
DENIAL LETTER

**NAME AND ADDRESS
OF REQUESTING PARTY**

Re: FOIA Request

Dear **INSERT NAME OF REQUESTING PARTY**:

Your request for information pursuant to the Freedom of Information Act dated **INSERT DATE OF REQUEST**, was received by our office on **INSERT DATE REQUEST WAS RECEIVED**. A description of the items you have requested are as follows:

INSERT REQUEST FOR INFORMATION AS STATED BY REQUESTING PARTY

Your request dated **INSERT DATE OF REQUEST** is denied.

(If there is only part of the request being denied, state specifically which parts are denied and which parts will be produced)

Reason for denial: Public Act No. 442 of 1976, as amended, **INSERT SECTION FOR EXEMPTION AND QUOTE THE LANGUAGE OF THE EXEMPTION**.

Act 442, PA 1976, The Freedom of Information Act, gives you the right to appeal this decision. The section of the Act describing the appeal process is printed below for your information.

- Sec. 10. (1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do one of the following at his or her option:
- (a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.
 - (b) Commence an action in the circuit court to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

- (2) Within ten days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do one of the following:
 - (a) Reverse the disclosure denial.
 - (b) Issue a written notice to the requesting person upholding the disclosure denial.
 - (c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.
 - (d) Under unusual circumstances, issue a notice extending for not more than ten (10) business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than one notice of extension for a particular written appeal.
- (3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing an action in circuit court under subsection(1)(b).
- (4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. The circuit court for the county in which the complainant resides or has his or her principal place of business, or the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.
- (5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.
- (6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an

appropriate portion of reasonable attorneys' fees, costs, and disbursements. The ward shall be assessed against the public body liable for damages under subsection (7).

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

Sincerely,

County Drain Commissioner

◆ ◆ **SAMPLE** ◆ ◆

DEPOSIT LETTER

**NAME AND ADDRESS
OF REQUESTING PARTY**

Re: FOIA Request

Dear **INSERT NAME OF REQUESTING PARTY:**

Your request for information pursuant to the Freedom of Information Act dated **INSERT DATE OF REQUEST**, was received by our office on **INSERT DATE REQUEST WAS RECEIVED**. A description of the items you have requested are as follows:

INSERT REQUEST FOR INFORMATION AS STATED BY REQUESTING PARTY

Your request has been approved. We have estimated that in order to comply with your request, we will have to copy **INSERT NUMBER OF DOCUMENTS TO BE COPIED**. We have also estimated that the cost of complying with the request exceeds **INSERT ESTIMATED COPYING CHARGE**. In accordance with the Freedom of Information Act, if the estimated cost of complying with the request exceeds \$50.00, the requester shall be required to make a 50% deposit of the total cost.

Therefore, if you are still interested in receiving the documents, please send a check or money order in the amount of **INSERT AMOUNT EQUAL TO 50% OF COPYING CHARGE** to this office. Please make your check payable to the _____ County Drain Commissioner. You will be billed for the balance and any additional copying and mailing fees prior to the mailing of the documents.

Sincerely,

County Drain Commissioner

◆◆SAMPLE◆◆
EXTENSION LETTER

**NAME AND ADDRESS
OF REQUESTING PARTY**

Re: FOIA Request

Dear **INSERT NAME OF REQUESTING PARTY:**

Your request for information pursuant to the Freedom of Information Act dated **INSERT DATE OF REQUEST**, was received by our office on **INSERT DATE REQUEST WAS RECEIVED**. A description of the items you have requested are as follows:

INSERT REQUEST FOR INFORMATION AS STATED BY REQUESTING PARTY

Please be advised that it is necessary to issue a ten (10) business day extension (**INSERT DATE 15 DAYS FROM DATE REQUEST WAS RECEIVED**) as permitted under Section 5(4)d of Act 442, PA 1976, the Michigan Freedom of Information Act, as amended.

Sincerely,

County Drain Commissioner

QUESTIONS AND ANSWERS

1. “Do I have to provide a citizen with information requested if he or she was already provided the information due to a previous FOIA Request?”

A: Yes. A citizen has the right to request and receive information from your office even if they have already requested it. However, the citizen has to pay the costs of providing the information each and every time it is requested.

2. “Do I have to provide a citizen with information requested if he or she has not paid for information provided from a previous request?”

A: Yes. You cannot deprive a person of receiving more information until the previous balance has been paid. However, the public body may require that its fees be paid in full prior to the actual delivery of copies.

3. “Are tape recordings of a meeting used only to prepare official minutes considered public records and available to the public upon request?”

A: Yes. The Open Meetings Act states that a public body shall keep minutes of each meeting and that the proposed and the approved minutes must be available for public inspection. However, neither FOIA nor OMA requires you to keep the tape recordings after you have used them to draft your minutes.

4. “If I want an extension of time to respond to a request, do I have to give a reason why?”

A: No. The Freedom of Information Act was recently amended so that a governmental agency can request an extension one time for not more than ten days without giving a reason. (See Appendix for sample extension letter).

5. Should my responses to Freedom of Information Act requests take place through the County’s FOIA Coordinator?

A: FOIA requires that either a public body’s FOIA Coordinator or the head of the public body must respond to the request for information. As the public body can be a drainage district, the Drain Commissioner is the head of the public body unless the County’s FOIA Coordinator is made the FOIA Coordinator for the Drain Commissioner’s office and the Drainage Districts as well. Each County’s policy should list what entities within the County for which the FOIA Coordinator is responsible. The Drain Commissioner should adopt the fee schedules from the County and post the schedules in his or her office as well.