



HOUSE BILL No. 5497

December 14, 1995, Introduced by Reps. Brater, Brewer, LaForge, Olshove, Schroer, Freeman, Kelly, Kaza, Martinez, Dobronski, Cherry, DeHart, Baird, Anthony, Bobier, Fitzgerald, Munsell, Wetters, Yokich, Prusi, Pitoniak and Jaye and referred to the Committee on House Oversight and Ethics.

A bill to amend section 10 of Act No. 442 of the Public Acts of 1976, entitled
"Freedom of information act,"
being section 15.240 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 10 of Act No. 442 of the Public Acts of
2 1976, being section 15.240 of the Michigan Compiled Laws, is
3 amended to read as follows:

4 Sec. 10. (1) If a public body makes a final determination
5 to deny ALL OR A PORTION OF a request, ~~or a portion thereof,~~
6 the requesting person may commence an action in the circuit court
7 to compel disclosure of the public records. If the court deter-
8 mines that the public records are not exempt from disclosure, the
9 court shall order the public body to cease withholding or to
10 produce ALL OR A PORTION OF a public record ~~or a portion~~

1 ~~thereof~~ wrongfully withheld, regardless of the location of the
2 public record. ~~The circuit court for~~ CIRCUIT COURT VENUE FOR
3 AN ACTION DESCRIBED IN THIS SECTION IS IN the county in which the
4 complainant resides or has his principal place of business, or
5 ~~the circuit court for~~ IN the county in which the public record
6 or an office of the public body is located. ~~shall have jurisdic-~~
7 ~~tion to issue the order.~~ The court shall determine the matter de
8 novo and the burden is on the public body to sustain its denial.
9 The court, on its own motion, may view the public record in con-
10 troversy in private before reaching a decision. Failure to
11 comply with an order of the court may be punished as contempt of
12 court.

13 (2) An action under this section arising from the denial of
14 an oral request may not be commenced unless the requesting person
15 confirms the oral request in writing not less than 5 days before
16 commencement of the action.

17 (3) An action commenced pursuant to this section and
18 ~~appeals therefrom~~ AN APPEAL FROM THAT ACTION shall be assigned
19 for hearing and trial or for argument at the earliest practicable
20 date and expedited in every way. AN APPEAL FROM AN ACTION COM-
21 MENCED UNDER THIS SECTION THAT IS FILED IN THE COURT OF APPEALS
22 SHALL BE DECIDED BY THE COURT OF APPEALS NOT LATER THAN 180 DAYS
23 AFTER THE FILING OF THAT APPEAL.

24 (4) If a person asserting the right to inspect or ~~to~~
25 receive a copy of ALL OR A PORTION OF a public record ~~or a por-~~
26 ~~tion thereof~~ prevails in an action commenced pursuant to this
27 section, the court shall award reasonable attorneys' fees, costs,

1 and disbursements. If the person prevails in part, the court may
2 in its discretion award reasonable attorneys' fees, costs, and
3 disbursements or an appropriate portion ~~thereof~~ OF FEES, COSTS,
4 AND DISBURSEMENTS INCURRED BY THE PREVAILING PERSON. The award
5 shall be assessed against the public body liable for damages
6 under subsection (5).

7 (5) In an action commenced pursuant to this section, if the
8 circuit court finds that the public body has arbitrarily and
9 capriciously violated this act by refusal or delay in disclosing
10 or providing copies of a public record, the court shall, in addi-
11 tion to any actual or compensatory damages, award punitive dam-
12 ages in ~~the~~ AN amount of ~~\$500.00~~ NOT LESS THAN \$1,000.00 OR
13 MORE THAN \$10,000.00 to the person seeking the right to inspect
14 or receive a copy of a public record. The damages shall not be
15 assessed against an individual, but shall be assessed against the
16 next succeeding public body ~~—~~ THAT IS not an individual ~~—~~ ~~pur-~~
17 ~~suant to whose public function the public record was~~ AND THAT
18 kept or maintained THE PUBLIC RECORD AS PART OF ITS PUBLIC
19 FUNCTION.