

# HOUSE BILL No. 4831

May 27, 1997, Introduced by Reps. Gilmer, Perricone and LaForge and referred to the Committee on House Oversight and Ethics.

A bill to amend 1976 PA 442, entitled  
"Freedom of information act,"  
by amending sections 2, 3, 5, and 10 (MCL 15.232, 15.233, 15.235,  
and 15.240), as amended by 1996 PA 553.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1       Sec. 2. As used in this act:
- 2       (a) "Field name" means the label or identification of an  
3 element of a computer data base that contains a specific item of  
4 information, and includes but is not limited to a subject heading  
5 such as a column header, data dictionary, or record layout.
- 6       (b) "FOIA coordinator" means either of the following:
- 7       (i) An individual who is a public body.
- 8       (ii) An individual designated by a public body in accordance  
9 with section 6 to accept and process requests for public records  
10 under this act.

1 (C) "LOCAL AUTHORITY" MEANS A COUNTY, CITY, TOWNSHIP, OR  
2 VILLAGE, AN INTERCOUNTY, INTERCITY, OR REGIONAL GOVERNING BODY, A  
3 SCHOOL DISTRICT, SPECIAL DISTRICT, MUNICIPAL CORPORATION, OR A  
4 BOARD, DEPARTMENT, COMMISSION, COUNCIL, OR AGENCY OF AN ENTITY  
5 DESCRIBED IN THIS SUBDIVISION.

6 (D) ~~-(c)-~~ "Person" means an individual, corporation, limited  
7 liability company, partnership, firm, organization, association,  
8 governmental entity, or other legal entity. Person does not  
9 include an individual serving a sentence of imprisonment in a  
10 state or county correctional facility in this state or any other  
11 state, or in a federal correctional facility.

12 (E) ~~-(d)-~~ "Public body" means any of the following:

13 (i) A state officer, employee, agency, department, division,  
14 bureau, board, commission, council, authority, or other body in  
15 the executive branch of the state government, but does not  
16 include the governor or lieutenant governor, the executive office  
17 of the governor or lieutenant governor, or employees thereof.

18 (ii) An agency, board, commission, or council in the legis-  
19 lative branch of the state government.

20 (iii) A ~~county, city, township, village, intercounty,~~  
21 ~~intercity, or regional governing body, council, school district,~~  
22 ~~special district, or municipal corporation, or a board, depart-~~  
23 ~~ment, commission, council, or agency thereof~~ LOCAL AUTHORITY.

24 (iv) Any other body which is created by state or local  
25 authority or which is primarily funded by or through state or  
26 local authority.

1 (v) The judiciary, including the office of the county clerk  
2 and employees thereof when acting in the capacity of clerk to the  
3 circuit court, is not included in the definition of public body.

4 (F) ~~(e)~~ "Public record" means a writing prepared, owned,  
5 used, in the possession of, or retained by a public body in the  
6 performance of an official function, from the time it is  
7 created. Public record does not include computer software. This  
8 act separates public records into the following 2 classes:

9 (i) Those that are exempt from disclosure under section 13.

10 (ii) All public records that are not exempt from disclosure  
11 under section 13 and which are subject to disclosure under this  
12 act.

13 (G) ~~(f)~~ "Software" means a set of statements or instruc-  
14 tions that when incorporated in a machine usable medium is  
15 capable of causing a machine or device having information pro-  
16 cessing capabilities to indicate, perform, or achieve a particu-  
17 lar function, task, or result. Software does not include  
18 computer-stored information or data, or a field name if disclo-  
19 sure of that field name does not violate a software license.

20 (H) ~~(g)~~ "Unusual circumstances" means any 1 or a combina-  
21 tion of the following, but only to the extent necessary for the  
22 proper processing of a request:

23 (i) The need to search for, collect, or appropriately  
24 examine or review a voluminous amount of separate and distinct  
25 public records pursuant to a single request.

26 (ii) The need to collect the requested public records from  
27 numerous field offices, facilities, or other establishments which

1 are located apart from the particular office receiving or  
2 processing the request.

3 (I) ~~(h)~~ "Writing" means handwriting, typewriting, print-  
4 ing, photostating, photographing, photocopying, and every other  
5 means of recording, and includes letters, words, pictures,  
6 sounds, or symbols, or combinations thereof, and papers, maps,  
7 magnetic or paper tapes, photographic films or prints, microfilm,  
8 microfiche, magnetic or punched cards, discs, drums, or other  
9 means of recording or retaining meaningful content.

10 (J) ~~(i)~~ "Written request" means a writing that asks for  
11 information, and includes a writing transmitted by facsimile,  
12 electronic mail, or other electronic means.

13 Sec. 3. (1) Except as expressly provided in section 13,  
14 upon providing a public body's FOIA coordinator with ~~a~~ AN ORAL  
15 OR written request that describes a public record sufficiently to  
16 enable the public body to find the public record, a person has a  
17 right to inspect, copy, or receive copies of the requested public  
18 record of the public body. A person has a right to subscribe to  
19 future issuances of public records that are created, issued, or  
20 disseminated on a regular basis. A subscription shall be valid  
21 for up to 6 months, at the request of the subscriber, and shall  
22 be renewable. An employee of a public body who receives a  
23 WRITTEN request for a public record shall promptly forward that  
24 request to the freedom of information act coordinator OR THAT  
25 COORDINATOR'S DESIGNEE.

1 (2) A freedom of information act coordinator shall keep a  
2 copy of all written requests for public records on file for no  
3 less than 1 year.

4 (3) A public body shall furnish a requesting person a rea-  
5 sonable opportunity for inspection and examination of its public  
6 records, and shall furnish reasonable facilities for making memo-  
7 randa or abstracts from its public records during the usual busi-  
8 ness hours. A public body may make reasonable rules necessary to  
9 protect its public records and to prevent excessive and unreason-  
10 able interference with the discharge of its functions. A public  
11 body shall protect public records from loss, unauthorized alter-  
12 ation, mutilation, or destruction.

13 (4) This act does not require a public body to make a compi-  
14 lation, summary, or report of information, except as required in  
15 section 11.

16 (5) This act does not require a public body to create a new  
17 public record, except as required in section 11, and to the  
18 extent required by this act for the furnishing of copies, or  
19 edited copies pursuant to section 14(1), of an already existing  
20 public record.

21 (6) The custodian of a public record shall, upon ~~written~~  
22 request, furnish a requesting person a certified copy of a public  
23 record.

24 Sec. 5. (1) Except as provided in section 3, a person  
25 desiring to inspect or receive a copy of a public record shall  
26 make ~~a~~ AN ORAL OR written request for the public record to the  
27 PUBLIC BODY'S FOIA coordinator ~~of a public body~~ OR THAT

1 COORDINATOR'S DESIGNEE. A written request made by facsimile,  
2 electronic mail, or other electronic transmission is not received  
3 by a public body's FOIA coordinator until 1 business day after  
4 the electronic transmission is made.

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

9 (a) Granting the request.

10 (b) Issuing a written notice to the requesting person deny-  
11 ing the request.

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

14 (d) Issuing a notice extending for not more than 10 business  
15 days the period during which the public body shall respond to the  
16 request. A public body shall not issue more than 1 notice of  
17 extension for a particular request.

18 (3) Failure to respond to a request ~~pursuant to~~ IN ACCORD-  
19 ANCE WITH subsection (2) constitutes a public body's final deter-  
20 mination to deny the request. In a circuit court action to  
21 compel a public body's disclosure of a public record under sec-  
22 tion 10, the circuit court shall assess damages against the  
23 public body pursuant to section 10(8) if the circuit court has  
24 done both of the following:

25 (a) Determined that the public body has not complied with  
26 subsection (2).

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

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

7 (a) An explanation of the basis under this act or other  
8 statute for the determination that the public record, or portion  
9 of that public record, is exempt from disclosure, if that is the  
10 reason for denying all or a portion of the request.

11 (b) A certificate that the public record does not exist  
12 under the name given by the requester or by another name reason-  
13 ably known to the public body, if that is the reason for denying  
14 the request or a portion of the request.

15 (c) A description of a public record or information on a  
16 public record that is separated or deleted pursuant to section  
17 14, if a separation or deletion is made.

18 (d) A full explanation of the requesting person's right to  
19 do either of the following, AS APPLICABLE:

20 (i) ~~Submit~~ IF THE PUBLIC BODY IS NOT A LOCAL AUTHORITY,  
21 SUBMIT to the head of the public body a written appeal that spe-  
22 cifically states the word "appeal" and identifies the reason or  
23 reasons for reversal of the disclosure denial.

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

25 (e) Notice of the right to receive attorneys' fees and dam-  
26 ages as provided in section 10 if, after judicial review, the  
27 circuit court determines that the public body has not complied

1 with this section and orders disclosure of all or a portion of a  
2 public record.

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

6 (6) If a public body issues a notice extending the period  
7 for a response to the request, the notice shall specify the rea-  
8 sons for the extension and the date by which the public body will  
9 do 1 of the following:

10 (a) Grant the request.

11 (b) Issue a written notice to the requesting person denying  
12 the request.

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

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

19 (a) ~~Appeal~~ IF THE PUBLIC BODY IS NOT A LOCAL AUTHORITY,  
20 APPEAL the denial to the head of the public body ~~pursuant to~~ IN  
21 ACCORDANCE WITH section 10.

22 (b) Commence an action in circuit court, ~~pursuant to~~ IN  
23 ACCORDANCE WITH section 10.

24 Sec. 10. (1) If a public body makes a final determination  
25 to deny all or a portion of a request, the requesting person may  
26 do 1 of the following, AS APPLICABLE, at his or her option:



1       (a) ~~Submit~~ IF THE PUBLIC BODY IS NOT A LOCAL AUTHORITY,  
2 SUBMIT to the head of ~~the~~ THAT public body a written appeal  
3 that specifically states the word "appeal" and identifies the  
4 reason or reasons for reversal of the denial.

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

8       (2) AN ACTION UNDER THIS SECTION THAT ARISES FROM THE DENIAL  
9 OF AN ORAL REQUEST MAY NOT BE COMMENCED UNLESS THE REQUESTING  
10 PERSON CONFIRMS THE ORAL REQUEST IN WRITING NOT LESS THAN 5 DAYS  
11 BEFORE COMMENCEMENT OF THE ACTION.

12       (3) ~~-(2)-~~ Within 10 days after receiving a written appeal  
13 pursuant to subsection (1)(a), the head of a public body  
14 DESCRIBED IN SUBSECTION (1)(A) shall do 1 of the following:

15       (a) Reverse the disclosure denial.

16       (b) issue a written notice to the requesting person uphold-  
17 ing the disclosure denial.

18       (c) Reverse the disclosure denial in part and issue a writ-  
19 ten notice to the requesting person upholding the disclosure  
20 denial in part.

21       (d) Under unusual circumstances, issue a notice extending  
22 for not more than 10 business days the period during which the  
23 head of the public body shall respond to the written appeal. The  
24 head of a public body shall not issue more than 1 notice of  
25 extension for a particular written appeal.

26       (4) ~~-(3)-~~ A board or commission that is the head of a public  
27 body is not considered to have received a written appeal under

1 subsection ~~-(2)-~~ (3) until the first regularly scheduled meeting  
2 of that board or commission following submission of the written  
3 appeal under subsection (1)(a). If the head of the public body  
4 fails to respond to a written appeal pursuant to subsection ~~-(2)-~~  
5 (3), or if the head of the public body upholds all or a portion  
6 of the disclosure denial that is the subject of the written  
7 appeal, the requesting person may seek judicial review of the  
8 nondisclosure by commencing an action in circuit court under  
9 subsection (1)(b).

10 (5) ~~-(4)-~~ In an action commenced under subsection (1)(b), a  
11 court that determines a public record is not exempt from disclo-  
12 sure shall order the public body to cease withholding or to  
13 produce all or a portion of a public record wrongfully withheld,  
14 regardless of the location of the public record. The circuit  
15 court for the county in which the complainant resides or has his  
16 or her principal place of business, or the circuit court for the  
17 county in which the public record or an office of the public body  
18 is located has venue over the action. The court shall determine  
19 the matter de novo and the burden is on the public body to sus-  
20 tain its denial. The court, on its own motion, may view the  
21 public record in controversy in private before reaching a  
22 decision. Failure to comply with an order of the court may be  
23 punished as contempt of court.

24 (6) ~~-(5)-~~ An action commenced under this section and an  
25 appeal from an action commenced under this section shall be  
26 assigned for hearing and trial or for argument at the earliest  
27 practicable date and expedited in every way.

1       (7) ~~-(6)-~~ If a person asserting the right to inspect, copy,  
2 or receive a copy of all or a portion of a public record prevails  
3 in an action commenced under this section, the court shall award  
4 reasonable attorneys' fees, costs, and disbursements. If the  
5 person or public body prevails in part, the court may, in its  
6 discretion, award all or an appropriate portion of reasonable  
7 attorneys' fees, costs, and disbursements. The award shall be  
8 assessed against the public body liable for damages under subsec-  
9 tion ~~-(7)-~~ (8).

10       (8) ~~-(7)-~~ If the circuit court determines in an action com-  
11 menced under this section that the public body has arbitrarily  
12 and capriciously violated this act by refusal or delay in dis-  
13 closing or providing copies of a public record, the court shall  
14 award, in addition to any actual or compensatory damages, puni-  
15 tive damages in the amount of \$500.00 to the person seeking the  
16 right to inspect or receive a copy of a public record. The dam-  
17 ages shall not be assessed against an individual, but shall be  
18 assessed against the next succeeding public body that is not an  
19 individual and that kept or maintained the public record as part  
20 of its public function.