

**SUBSTITUTE FOR
HOUSE BILL NO. 4427**

A bill to amend 1976 PA 442, entitled "Freedom of information act," by amending sections 1, 2, 3, and 5 (MCL 15.231, 15.232, 15.233, and 15.235), section 1 as amended by 1997 PA 6, section 2 as amended by 2018 PA 68, section 3 as amended by 2018 PA 523, and section 5 as amended by 2020 PA 36.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) This act ~~shall be known and~~ may be cited as the
2 "freedom of information act".

3 (2) It is the public policy of this state that, **subject to**
4 **section 3(7) to (9)**, all persons ~~, except those persons~~
5 ~~incarcerated in state or local correctional facilities,~~ are
6 entitled to full and complete information regarding the affairs of

1 government and the official acts of those who represent them as
2 public officials and public employees, consistent with this act.
3 The people ~~shall~~**must** be informed so that they may fully
4 participate in the democratic process.

5 Sec. 2. As used in this act:

6 (a) "Cybersecurity assessment" means an investigation
7 undertaken by a person, governmental body, or other entity to
8 identify vulnerabilities in cybersecurity plans.

9 (b) "Cybersecurity incident" includes, but is not limited to,
10 a computer network intrusion or attempted intrusion; a breach of
11 primary computer network controls; unauthorized access to programs,
12 data, or information contained in a computer system; or actions by
13 a third party that materially affect component performance or,
14 because of impact to component systems, prevent normal computer
15 system activities.

16 (c) "Cybersecurity plan" includes, but is not limited to,
17 information about a person's information systems, network security,
18 encryption, network mapping, access control, passwords,
19 authentication practices, computer hardware or software, or
20 response to cybersecurity incidents.

21 (d) "Cybersecurity vulnerability" means a deficiency within
22 computer hardware or software, or within a computer network or
23 information system, that could be exploited by unauthorized parties
24 for use against an individual computer user or a computer network
25 or information system.

26 (e) "Field name" means the label or identification of an
27 element of a computer database that contains a specific item of
28 information, and includes, but is not limited to, a subject heading
29 such as a column header, data dictionary, or record layout.

1 (f) "FOIA coordinator" means either of the following:

2 (i) An individual who is a public body.

3 (ii) An individual designated by a public body ~~in accordance~~
4 ~~with~~ **under** section 6 to accept and process requests for public
5 records under this act.

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

12 (h) "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 the
15 executive branch of the state government, but does not include the
16 governor or lieutenant governor, the executive office of the
17 governor or lieutenant governor, or employees thereof.

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

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

24 (iv) Any other body that is created by state or local authority
25 or is primarily funded by or through state or local authority,
26 except that **it does not include** the judiciary, ~~including or~~
27 office of the county clerk and its employees when acting in the
28 capacity of clerk to the circuit court. ~~, is not included in the~~
29 ~~definition of public body.~~

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

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

7 (ii) All public records that are not exempt from disclosure
8 under section 13 and that are subject to disclosure under this act.

9 (j) "Software" means a set of statements or instructions that
10 when incorporated in a machine usable medium is capable of causing
11 a machine or device having information processing capabilities to
12 indicate, perform, or achieve a particular function, task, or
13 result. Software does not include computer-stored information or
14 data, or a field name if disclosure of that field name does not
15 violate a software license.

16 (k) "Unusual circumstances" means any 1 or a combination of
17 the following, but only to the extent necessary for the proper
18 processing of a request:

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

22 (ii) The need to collect the requested public records from
23 numerous field offices, facilities, or other establishments ~~which~~
24 **that** are located apart from the particular office receiving or
25 processing the request.

26 (l) "Writing" means handwriting, typewriting, printing,
27 photostating, photographing, photocopying, and every other means of
28 recording, and includes letters, words, pictures, sounds, or
29 symbols, or combinations thereof, and papers, maps, magnetic or

1 paper tapes, photographic films or prints, microfilm, microfiche,
2 magnetic or punched cards, discs, drums, hard drives, solid state
3 storage components, or other means of recording or retaining
4 meaningful content.

5 (m) "Written request" means a writing that asks for
6 information, and includes a writing transmitted by facsimile,
7 ~~electronic mail, email~~, or other electronic means.

8 Sec. 3. (1) Except as expressly provided in section 13, **and**
9 **subject to subsections (7) to (9)**, upon providing a public body's
10 FOIA coordinator with a written request that describes a public
11 record sufficiently to enable the public body to find the public
12 record, a person has a right to inspect, copy, or receive copies of
13 the requested public record of the public body. A request from a
14 person, other than an individual who qualifies as indigent under
15 section 4(2)(a), must include the requesting person's complete
16 name, address, and contact information, and, if the request is made
17 by a person other than an individual, the complete name, address,
18 and contact information of the person's agent who is an individual.
19 An address must be written in compliance with United States Postal
20 Service addressing standards. ~~Contact~~ **Except for an individual who**
21 **makes a request under subsection (7), contact** information must
22 include a valid telephone number or ~~electronic mail email~~ address.
23 A person has a right to subscribe to future issuances of public
24 records that are created, issued, or disseminated on a regular
25 basis. A subscription is valid for up to 6 months, at the request
26 of the subscriber, and is renewable. An employee of a public body
27 who receives a request for a public record shall promptly forward
28 that request to the freedom of information act coordinator.

29 (2) A freedom of information act coordinator shall keep a copy

1 of all written requests for public records on file for ~~no~~**not** less
2 than 1 year.

3 (3) A public body shall furnish a requesting person a
4 reasonable opportunity for inspection and examination of its public
5 records, and shall furnish reasonable facilities for making
6 memoranda or abstracts from its public records during the usual
7 business hours. A public body may make reasonable rules necessary
8 to protect its public records and to prevent excessive and
9 unreasonable interference with the discharge of its functions. A
10 public body shall protect public records from loss, unauthorized
11 alteration, mutilation, or destruction.

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

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

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

22 **(7) The right to receive a copy of a public record under this**
23 **act is available to an individual incarcerated in a county, state,**
24 **or federal correctional facility in this state or any other state**
25 **only if all of the following conditions are met:**

26 (a) In addition to complying with the requirements for a
27 proper request for public records under this act, the request must
28 indicate that it is made pursuant to this subsection.

29 (b) The requested record must not be exempt under section 13.

1 (c) The requested record must contain 1 or more specific
2 references to the incarcerated individual or the individual's minor
3 child for whom the individual has not been denied parenting time
4 under the child custody act of 1970, 1970 PA 91, MCL 722.21 to
5 722.31, and the record must otherwise be accessible to the
6 individual by law.

7 (d) The requested record must be related to 1 or more of the
8 following:

9 (i) An arrest or prosecution of the incarcerated individual.

10 (ii) An arrest, a prosecution, or a juvenile adjudication of
11 the incarcerated individual's minor child as described in
12 subdivision (c).

13 (iii) An arrest, a prosecution, or a juvenile adjudication as to
14 which the incarcerated individual is an alleged victim.

15 (iv) An arrest, a prosecution, or a juvenile adjudication as to
16 which the incarcerated individual's minor child, as described in
17 subdivision (c), is an alleged victim.

18 (e) If the asserted right to disclosure of a public record
19 under this subsection is based on the record containing 1 or more
20 specific references to the incarcerated individual's minor child,
21 as described in subdivisions (c) and (d) (ii) or (iv), the request
22 must be accompanied by an affidavit of the incarcerated individual
23 attesting to both of the following:

24 (i) That the individual identified as the incarcerated
25 individual's minor child is in fact the incarcerated individual's
26 minor child.

27 (ii) That the incarcerated individual has in fact not been
28 denied parenting time of that minor child under the child custody
29 act of 1970, 1970 PA 91, MCL 722.21 to 722.31.

1 (8) The right of incarcerated individuals described in
2 subsection (7) is not intended to interfere with any properly
3 adopted rules that the department of corrections may have regarding
4 the content of mail that may be delivered to an individual
5 incarcerated in a state correctional facility in this state.

6 (9) If a public body that receives a request for a public
7 record pursuant to subsection (7) does not possess any record
8 related to an **arrest, a prosecution, or a juvenile adjudication** as
9 described in subsection (7) (c) and (d), the public body shall deny
10 the request in a response provided within 30 days after receiving
11 the request certifying that the public body does not possess any
12 record related to an **arrest, a prosecution, or a juvenile**
13 **adjudication** as described in subsection (7) (c) and (d). A public
14 body's denial made in accordance with this subsection is not
15 subject to appeal under this act.

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 **email**, or other electronic transmission is not received by a public
21 body's FOIA coordinator until 1 business day after the electronic
22 transmission is made. However, if a written request is sent by
23 ~~electronic mail~~**email** and delivered to the public body's spam or
24 junk-mail folder, the request is not received until 1 day after the
25 public body first becomes aware of the written request. The public
26 body shall note in its records both the time a written request is
27 delivered to its spam or junk-mail folder and the time the public
28 body first becomes aware of that request.

29 (2) Unless otherwise agreed to in writing by the person making

1 the request, a public body shall, subject to ~~subsection~~**subsections**
2 (10) **and (11) and section 3(9)**, respond to a request for a public
3 record within 5 business days after the public body receives the
4 request by doing 1 of the following:

5 (a) Granting the request.

6 (b) Issuing a written notice to the requesting person denying
7 the request.

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

10 (d) Issuing a notice extending for not more than 10 business
11 days the period during which the public body shall respond to the
12 request. A public body shall not issue more than 1 notice of
13 extension for a particular request. **This subdivision does not apply**
14 **to a response that is subject to subsection (11).**

15 (3) Failure to respond to a request under subsection (2)
16 constitutes a public body's final determination to deny the request
17 if either of the following applies:

18 (a) The failure was willful and intentional.

19 (b) The written request included language that conveyed a
20 request for information within the first 250 words of the body of a
21 letter, facsimile, ~~electronic mail, email~~, or ~~electronic mail email~~
22 attachment, or specifically included the words, characters, or
23 abbreviations for "freedom of information", "information", "FOIA",
24 "copy", or a recognizable misspelling of such, or appropriate legal
25 code reference to this act, on the front of an envelope or in the
26 subject line of an ~~electronic mail, email~~, letter, or facsimile
27 cover page.

28 (4) In a civil action to compel a public body's disclosure of
29 a public record under section 10, the court shall assess damages

1 against the public body under section 10(7) if the court has done
2 both of the following:

3 (a) Determined that the public body has not complied with
4 subsection (2).

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

7 (5) 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 must
10 contain:

11 (a) An explanation of the basis under this act 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 under section 14, if a
21 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 to the head of the public body a written appeal that
25 specifically states the word "appeal" and identifies the reason or
26 reasons for reversal of the disclosure denial.

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

28 (e) Notice of the right to receive ~~attorneys'~~**attorney** fees
29 and damages as provided in section 10 if, after judicial review,

1 the court determines that the public body has not complied with
2 this section and orders disclosure of all or a portion of a public
3 record.

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

6 (7) If a public body issues a notice extending the period for
7 a response to the request, the notice must specify the reasons for
8 the extension and the date by which the public body will do 1 of
9 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 (8) 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 public
17 record or portion of that public record, the requesting person may
18 do either of the following:

19 (a) Appeal the denial to the head of the public body under
20 section 10.

21 (b) Commence a civil action, under section 10.

22 (9) Notwithstanding any other provision of this act to the
23 contrary, a public body that maintains a law enforcement records
24 management system and stores public records for another public body
25 that subscribes to the law enforcement records management system is
26 not in possession of, retaining, or the custodian of, a public
27 record stored on behalf of the subscribing public body. If the
28 public body that maintains a law enforcement records management
29 system receives a written request for a public record that is

1 stored on behalf of a subscribing public body, the public body that
2 maintains the law enforcement records management system shall,
3 within 10 business days after receipt of the request, give written
4 notice to the requesting person identifying the subscribing public
5 body and stating that the requesting person ~~shall~~**must** submit the
6 request to the subscribing public body. As used in this subsection,
7 "law enforcement records management system" means a data storage
8 system that may be used voluntarily by subscribers, including any
9 subscribing public bodies, to share information and facilitate
10 intergovernmental collaboration in the provision of law enforcement
11 services.

12 (10) A person making a request under subsection (1) may
13 stipulate that the public body's response under subsection (2) be
14 ~~electronically mailed,~~**emailed**, delivered by facsimile, or
15 delivered by first-class mail. This subsection does not apply if
16 the public body lacks the technological capability to provide an
17 ~~electronically mailed~~**emailed** response.

18 (11) If the department of corrections, **Michigan state police**,
19 or a local law enforcement agency receives a request submitted
20 pursuant to section 3(7) by an individual incarcerated in a state
21 correctional facility in this state or a local correctional
22 facility in this state, the department of corrections, **Michigan**
23 **state police**, or local law enforcement agency shall respond to the
24 request in the manner prescribed in subsection (2)(a) to (c) within
25 30 days after the department of corrections, **Michigan state police**,
26 or local law enforcement agency receives the request. This
27 subsection does not apply to a request that is properly denied
28 under section 3(9).