

PREPARED BY THE OFFICE OF  
THE ATTORNEY GENERAL  
CURRENT THROUGH JULY 2007

**MICHIGAN'S  
FREEDOM  
OF  
INFORMATION  
ACT**

ATTORNEY GENERAL

## Attorney General

*July 2007*

*Dear Citizen:*

*This pamphlet has been prepared to help you understand your rights under Michigan's Freedom of Information Act. The Freedom of Information Act gives citizens the right of access to most public records. If access is wrongfully denied, citizens are authorized to bring suit to compel disclosure and may be awarded damages and reasonable attorney fees.*

*As the chief law enforcement officer for Michigan, I encourage you to know your rights by reading the enclosed information. If you have questions or concerns about your rights under the Freedom of Information Act, please feel free to give my office a call.*

*Sincerely yours,*

*Attorney General for the  
State of Michigan*

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# I

## SUMMARY OF MICHIGAN'S FREEDOM OF INFORMATION ACT

The following is a summary of the basic provisions of the Freedom of Information Act (FOIA). The actual text of the statute follows in Section II.

### **Basic Intent:**

The FOIA regulates and sets requirements for the disclosure of public records by all public bodies in the state.

### **Key Definitions:**

“Public body” means a state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof. It also includes:

- an agency, board, commission, or council in the legislative branch of state government;
- a county, city, township, village, inter-county, inter-city, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof; or
- any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

“Public record” means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function from the time it is created.

### **Coverage:**

The FOIA sets requirements for the disclosure of public records by all public bodies in the state. All state agencies, county and other local governments, school boards, other boards, departments, commissions, councils, and public colleges and universities are covered.

### **Public Records Open to Disclosure:**

In general, all records except those specifically cited as exceptions are covered by the FOIA. The records covered include minutes of open meetings, officials' voting records, staff manuals, final orders or decisions in contested cases and the records on which they were made, and promulgated rules. Other written statements which implement or interpret laws, rules, or policies, including, but not limited to, guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions, are also covered.

It does not matter what form the record is in. The act applies to any handwriting, typewriting, printing, photostating, photographing, photocopying and every other means of recording. It includes letters, words, pictures, sounds, or symbols, or combinations thereof, as well as papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content. It does not include computer software.

### **Public Records Exempt from Disclosure:**

The FOIA permits, but does not require, a public body to withhold from public disclosure the following categories of public records under the Act:

- Specific personal information about an individual if the release would constitute a clearly unwarranted invasion of that individual's privacy.
- Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:
  - interfere with law enforcement proceedings;
  - deprive a person of the right to a fair trial or impartial administrative adjudication;
  - constitute an unwarranted invasion of personal privacy;
  - disclose the identity of a confidential source or, if the record is compiled by a criminal law enforcement agency in the course of

- a criminal investigation, disclose confidential information furnished only by a confidential source;
  - disclose law enforcement investigative techniques or procedures;  
or
  - endanger the life or physical safety of law enforcement personnel.
- Public records which, if disclosed, would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this Act outweighs the public interest in nondisclosure.
  - Records that may be exempted from disclosure by another statute. (Note: statutes which expressly prohibit public disclosure of records generally supersede the FOIA.)
  - A public record or information which is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the consideration originally giving rise to the exempt nature of the public record remains applicable.
  - Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy.
  - Information subject to attorney-client privilege.
  - Information subject to such privileges as physician-patient, or other privilege recognized by statute or court rule.
  - Pending public bids to enter into contracts.
  - Appraisals of real property to be acquired by a public body.
  - Test questions and answers, scoring keys, and other examination instruments.

- Medical, counseling, or psychological facts which would reveal an individual's identity.
- Communications and notes between and within 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. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.
- Law enforcement communication codes and employment plans unless the public interest in disclosure outweighs the public interest in nondisclosure.
- Information that would reveal the location of archeological sites.
- Product testing data developed by agencies buying products where only one bidder meets the agency's specifications.
- A student's college academic transcript where the student is delinquent on university loans.
- Records of any campaign committee, including any committee that receives moneys from a state campaign fund. (These records are open to the public under the Michigan Campaign Finance Act.)
- Public records of a law enforcement agency where disclosure would identify an informer or undercover agent, reveal the home address or telephone number of an officer or agent, disclose personnel records of law enforcement agencies, reveal the contents of staff manuals, endanger the safety of law enforcement officers or their families, or identify residences that law enforcement officers are requested to check in the absence of their owners.
- Records pertaining to an investigation of a health care professional conducted by the Department of Community Health pursuant to the Public Health Code before a complaint is issued.
- Records of a public body's security measures.

- Records relating to a civil action in which the requesting person and the public body are parties.
- Records that would disclose the social security number of an individual.
- Applications, including letters of recommendation and references, for president of an institution of higher learning if the records could be used to identify the candidate. However, records pertaining to persons identified as finalists, except letters of recommendation and references, are not exempt.
- Records of measures designed to protect the security and safety of persons or property in the event of a terrorist threat.

#### **Availability of Public Records:**

A request must be made in writing and provided to the FOIA coordinator of the public body. A FOIA coordinator may designate another individual to act on his or her behalf to accept requests for processing.

A person may ask to inspect, copy, or receive a copy of a public record. There are no qualifications such as residency or age that must be met in order to make a request. However, prisoners in state, county, or federal correctional facilities are not entitled to make requests.

Not more than five business days after receiving a request, the public body must respond to a request for a public record. The public agency can notify the requester in writing and extend the time for an additional 10 business days.

A person also has the right to subscribe to future issuances of public records, which are created, issued, or disseminated on a regular basis. A subscription is valid for up to six months, at the request of the subscriber, and is renewable.

The public body has a responsibility to provide reasonable facilities so that persons making a request may examine and take notes from public records. The facilities must be available during the normal business hours of the public body.



**Fees for Public Records:**

A public body may charge a fee for the necessary copying of a public record for inspection or providing a copy of a public record to a requester. A public body may also charge for search, examination, and review and the separation of exempt information in those instances where failure to charge a fee would result in unreasonably high costs to the public body. The fee must be limited to actual duplication, mailing, and labor costs. The first \$20 of a fee must be waived for a person who is receiving public assistance or presents facts showing inability to pay because of indigency.

**Denial of a Record:**

If a request for a record is denied, written notice of the denial must be provided to the requester within five business days, or within 15 business days if an extension is taken. A failure to respond at all constitutes a denial.

When a request is denied, the public body must provide the requester with a full explanation of the reasons for the denial and the requester's right to submit a written appeal to the head of the public body or to seek judicial review. Notification of the right to judicial review must include notification of the right to receive attorney fees and collect damages.

**Enforcement:**

A person may appeal a final decision to deny a request to the head of the public body. The head of the public body has 10 days to respond to the appeal. Under unusual circumstances, an additional 10 days may be taken.

A person also has the right to commence an action in circuit court to compel disclosure of public records. The suit must be filed within 180 days after the public body's final determination to deny a request.

The action may be brought in the county where the requester lives, the county where the requester does business, the county where the public document is located, or a county where the agency has an office.

**Penalties for Violation of the Act:**

If the circuit court finds that the public body has arbitrarily and capriciously violated the FOIA by refusal or delay in disclosing or providing copies of a public record, it may, in addition to any actual or compensatory

damages, award punitive damages of \$500 to the person seeking the right to inspect or receive a copy of a public record.

**Effective Date:**

April 13, 1977.

**II**  
**FREEDOM OF INFORMATION ACT**  
**ACT 442 OF 1976**

AN ACT to provide for public access to certain public records of public bodies; to permit certain fees; to prescribe the powers and duties of certain public officers and public bodies; to provide remedies and penalties; and to repeal certain acts and parts of acts.

**HISTORY:** 1976, Act 442, Eff. April 13, 1977.

**Popular Name:** Act 442

**Popular Name:** FOIA

*The People of the State of Michigan enact:*

**15.231. Short title; public policy.**

Sec. 1. (1) This act shall be known and may be cited as the “Freedom of Information Act.”

(2) It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this Act. The people shall be informed so that they may fully participate in the democratic process.

**15.232. Definitions.**

Sec. 2. As used in this Act:

(a) “Field name” means the label or identification of an element of a computer data base that contains a specific item of information, and includes but is not limited to a subject heading such as a column header, data dictionary, or record layout.

(b) “FOIA coordinator” means either of the following:

(i) An individual who is a public body.

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

(c) “Person” means an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.

(d) “Public body” means any of the following:

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

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

(iii) A county, city, township, village, inter-county, inter-city, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.

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

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

(e) “Public record” means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. Public record does not include computer software. This Act separates public records into the following 2 classes:

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

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

(f) “Software” means a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result. Software does not include

computer-stored information or data, or field name if disclosure of that field name does not violate a software license.

(g) “Unusual circumstances” means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

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

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

(h) “Writing” means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

(i) “Written request” means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.

**15.233. Public records; right to inspect, copy, or receive; subscriptions; forwarding requests; file; inspection and examination; memoranda or abstracts; rules; compilation, summary, or report of information; creation of new public record; certified copies.**

Sec. 3. (1) Except as expressly provided in section 13, upon providing a public body’s FOIA coordinator with a written request that describes a public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy, or receive copies of the requested public record of the public body. A person has a right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to 6 months, at the request of the subscriber, and shall be renewable. An employee of a public body who

receives a request for a public record shall promptly forward that request to the freedom of information act coordinator.

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

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

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

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

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

**15.234. Fee; waiver or reduction; affidavit; deposit; calculation of costs; limitation; provisions inapplicable to certain public records.**

Sec. 4. (1) A public body may charge a fee for a public record search, the necessary copying of a public record for inspection, or for providing a copy of a public record. Subject to subsections (3) and (4), the fee shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14. A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public. A public record search

shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request to an individual who is entitled to information under this Act and who submits an affidavit stating that the individual is then receiving public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency.

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

(3) In calculating the cost of labor incurred in duplication and mailing and the cost of examination, review, separation, and deletion under subsection (1), a public body may not charge more than the hourly wage of the lowest paid public body employee capable of retrieving the information necessary to comply with a request under this act. Fees shall be uniform and not dependent upon the identity of the requesting person. A public body shall utilize the most economical means available for making copies of public records. A fee shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14 unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs. A public body shall establish and publish procedures and guidelines to implement this subsection.

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

**15.235. Request to inspect or receive copy of public record; response to request; failure to respond; damages; contents of notice denying request; signing notice of denial; notice extending period of response; action by requesting person.**

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

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

(a) Granting the request.

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

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

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

(3) Failure to respond to a request pursuant to subsection (2) constitutes a public body's final determination to deny the request. In a circuit court action to compel a public body's disclosure of a public record under section 10, the circuit court shall assess damages against the public body pursuant to section 10(8) [section 10(7)-correct citation] if the circuit court has done both of the following:

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

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



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

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

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

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

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

(i) 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 disclosure denial.

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

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

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

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

(a) Grant the request.

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

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

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

- (a) Appeal the denial to the head of the public body pursuant to section 10.
- (b) Commence an action in circuit court, pursuant to section 10.

#### **15.236. FOIA coordinator.**

Sec. 6. (1) A public body that is a city, village, township, county, or state department, or under the control of a city, village, township, county, or state department, shall designate an individual as the public body's FOIA coordinator. The FOIA coordinator shall be responsible for accepting and processing requests for the public body's public records under this act and shall be responsible for approving a denial under section 5(4) and (5). In a county not having an executive form of government, the chairperson of the county board of commissioners is designated the FOIA coordinator for that county.

(2) For all other public bodies, the chief administrative officer of the respective public body is designated the public body's FOIA coordinator.

(3) A FOIA coordinator may designate another individual to act on his or her behalf in accepting and processing requests for the public body's public records, and in approving a denial under section 5(4) and (5).

#### **15.240. Options by requesting person; appeal; orders; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.**

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 1 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 10 days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 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 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 1 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 award 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.

**15.241. Matters required to be published and made available by state agencies; form of publications; effect on person of matter not published and made available; exception; action to compel compliance by state agency; order; attorneys' fees, costs, and disbursements; jurisdiction; definitions.**

Sec. 11. (1) A state agency shall publish and make available to the public all of the following:

(a) Final orders or decisions in contested cases and the records on which they were made.

(b) Promulgated rules.

(c) Other written statements which implement or interpret laws, rules, or policy, including but not limited to guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions.

(2) Publications may be in pamphlet, loose-leaf, or other appropriate form in printed, mimeographed, or other written matter.

(3) Except to the extent that a person has actual and timely notice of the terms thereof, a person shall not in any manner be required to resort to, or be adversely affected by, a matter required to be published and made available, if the matter is not so published and made available.

(4) This section does not apply to public records which are exempt from disclosure under section 13.

(5) A person may commence an action in the circuit court to compel a state agency to comply with this section. If the court determines that the state agency has failed to comply, the court shall order the state agency to comply and shall award reasonable attorneys' fees, costs, and disbursements to the person commencing the action. The circuit court for the county in which the state agency is located shall have jurisdiction to issue the order.

(6) As used in this section, "state agency," "contested case," and "rules" shall have the same meanings as ascribed to those terms in Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

**15.243. Exemptions from disclosure; public body as a school district or public school academy; withholding of information required by law or in possession of executive office.**

Sec. 13. (1) A public body may exempt from disclosure as a public record under this act any of the following:

(a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.

(b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

(i) Interfere with law enforcement proceedings.

(ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.

(iii) Constitute an unwarranted invasion of personal privacy.

(iv) Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.

(v) Disclose law enforcement investigative techniques or procedures.

(vi) Endanger the life or physical safety of law enforcement personnel.

(c) A public record that if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this Act outweighs the public interest in nondisclosure.

(d) Records or information specifically described and exempted from disclosure by statute.

(e) A public record or information described in this section that is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable.

(f) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if:

(i) The information is submitted upon a promise of confidentiality by the public body.

(ii) The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.

(iii) A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This

subdivision does not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.

(g) Information or records subject to the attorney-client privilege.

(h) Information or records subject to the physician-patient privilege, the psychologist-patient privilege, the minister, priest or Christian Science practitioner privilege, or other privilege recognized by statute or court rule.

(i) 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 the submission of bids or proposals has expired.

(j) Appraisals of real property to be acquired by the public body until either of the following occurs:

(i) An agreement is entered into.

(ii) Three years have elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.

(k) Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment, or academic examination, unless the public interest in disclosure under this Act outweighs the public interest in nondisclosure.

(l) Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation, including health information, as defined in 45 CFR 160.103.

(m) 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. This exemption does not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of section 8(h) of the Open Meetings Act, 1976 PA 267, MCL 15.268. As used in this subdivision,

“determination of policy or action” includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under 1947 PA 336, MCL 423.201 to 423.217.

(n) Records of law enforcement communication codes, or plans for deployment of law enforcement personnel, that if disclosed would prejudice a public body’s ability to protect the public safety unless the public interest in disclosure under this Act outweighs the public interest in nondisclosure in the particular instance.

(o) Information that would reveal the exact location of archeological sites. The Department of History, Arts, and Libraries may promulgate rules in accordance with the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to provide for the disclosure of the location of archaeological sites for purposes relating to the preservation or scientific examination of sites.

(p) Testing data developed by a public body in determining whether bidders’ products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only 1 bidder has met the specifications. This subdivision does not apply after 1 year has elapsed from the time the public body completes the testing.

(q) Academic transcripts of an institution of higher education established under section 5, 6, or 7 of article VIII of the state constitution of 1963, if the transcript pertains to a student who is delinquent in the payment of financial obligations to the institution.

(r) Records of a campaign committee including a committee that receives money from a state campaign fund.

(s) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would do any of the following:

(i) Identify or provide a means of identifying an informant.

(ii) Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.



(iii) Disclose the personal address or telephone number of active or retired law enforcement officers or agents or a special skill that they may have.

(iv) Disclose the name, address, or telephone numbers of family members, relatives, children, or parents of active or retired law enforcement officers or agents.

(v) Disclose operational instructions for law enforcement officers or agents.

(vi) Reveal the contents of staff manuals provided for law enforcement officers or agents.

(vii) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies.

(viii) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informant.

(ix) Disclose personnel records of law enforcement agencies.

(x) Identify or provide a means of identifying residences that law enforcement agencies are requested to check in the absence of their owners or tenants.

(t) Except as otherwise provided in this subdivision, records and information pertaining to an investigation or a compliance conference conducted by the department under article 15 of the Public Health Code, 1978 PA 368, MCL 333.16101 to 333.18838, before a complaint is issued. This subdivision does not apply to records or information pertaining to 1 or more of the following:

(i) The fact that an allegation has been received and an investigation is being conducted, and the date the allegation was received.

(ii) The fact that an allegation was received by the department; the fact that the department did not issue a complaint for the allegation; and the fact that the allegation was dismissed.

(u) Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body.

(v) Records or information relating to a civil action in which the requesting party and the public body are parties.

(w) Information or records that would disclose the social security number of any individual.

(x) Except as otherwise provided in this subdivision, an application for the position of president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, materials submitted with such an application, letters of recommendation or references concerning an applicant, and records or information relating to the process of searching for and selecting an individual for a position described in this subdivision, if the records or information could be used to identify a candidate for the position. However, after 1 or more individuals have been identified as finalists for a position described in this subdivision, this subdivision does not apply to a public record described in this subdivision, except a letter of recommendation or reference, to the extent that the public record relates to an individual identified as a finalist for the position.

(y) Records or information of measures designed to protect the security or safety of persons or property, whether public or private, including, but not limited to, building, public works, and public water supply designs to the extent that those designs relate to the ongoing security measures of a public body, capabilities and plans for responding to a violation of the Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.543a to 750.543z, emergency response plans, risk planning documents, threat assessments, and domestic preparedness strategies, unless disclosure would not impair a public body's ability to protect the security or safety of persons or property or unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance.

(2) A public body shall exempt from disclosure information that, if released, would prevent the public body from complying with 20 U.S.C. 1232g, commonly referred to as the Family Educational Rights and Privacy Act of 1974. A public body that is a local or intermediate school district or a public school academy shall exempt from disclosure directory information, as defined by 20 U.S.C. 1232g, commonly referred to as the Family Educational Rights and Privacy Act of 1974, requested for the purpose of surveys,

marketing, or solicitation, unless that public body determines that the use is consistent with the educational mission of the public body and beneficial to the affected students. A public body that is a local or intermediate school district or a public school academy may take steps to ensure that directory information disclosed under this subsection shall not be used, rented, or sold for the purpose of surveys, marketing, or solicitation. Before disclosing the directory information, a public body that is a local or intermediate school district or a public school academy may require the requester to execute an affidavit stating that directory information provided under this subsection shall not be used, rented, or sold for the purpose of surveys, marketing, or solicitation.

(3) This Act does not authorize the withholding of information otherwise required by law to be made available to the public or to a party in a contested case under the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) Except as otherwise exempt under subsection (1), this Act does not authorize the withholding of a public record in the possession of the executive office of the governor or lieutenant governor, or an employee of either executive office, if the public record is transferred to the executive office of the governor or lieutenant governor, or an employee of either executive office, after a request for the public record has been received by a state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of government that is subject to this Act.

**15.243a. Salary records of employee or other official of institution of higher education, school district, intermediate school district, or community college available to public on request.**

Sec. 13a. Notwithstanding section 13, an institution of higher education established under section 5, 6, or 7 of article 8 of the state constitution of 1963; a school district as defined in section 6 of Act No. 451 of the Public Acts of 1976, being section 380.6 of the Michigan Compiled Laws; an intermediate school district as defined in section 4 of Act No. 451 of the Public Acts of 1976, being section 380.4 of the Michigan Compiled Laws; or a community college established under Act No. 331 of the Public Acts of 1966, as amended, being sections 389.1 to 389.195 of the Michigan Compiled Laws shall upon request

make available to the public the salary records of an employee or other official of the institution of a higher education, school district, intermediate school district, or community college.

**15.244. Separation of exempt and nonexempt material; design of public record; description of material exempted.**

Sec. 14. (1) If a public record contains material which is not exempt under section 13, as well as material which is exempt from disclosure under section 13, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

(2) When designing a public record, a public body shall, to the extent practicable, facilitate a separation of exempt from nonexempt information. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, the public body shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

**15.245. Repeal of §§ 24.221, 24.222, and 24.223.**

Sec. 15. Sections 21, 22 and 23 of Act No. 306 of the Public Acts of 1969, as amended, being sections 24.221, 24.222 and 24.223 of the Michigan Compiled Laws, are repealed.

**15.246. Effective date.**

Sec. 16. This act shall take effect 90 days after being signed by the governor.

**III**  
**ATTORNEY GENERAL OPINIONS**  
**RELATING TO THE**  
**FREEDOM OF INFORMATION ACT**

There are numerous Opinions of the Attorney General (OAG) that explain various applications of the Freedom of Information Act (FOIA). While these opinions are binding on state agencies they are not binding on the courts or on local units of government. Copies of OAG's may be obtained by visiting [www.mi.gov/ag](http://www.mi.gov/ag), or by writing me at:

Attorney General  
525 West Ottawa St.  
Williams Building, 7th Floor  
P.O. Box 30212  
Lansing, Michigan 48909

**Attorney General Opinion No. 7172, p. 20, March 17, 2005.**

Under section 5 of the FOIA, the five business days within which a public body must respond to a request for a public record means five consecutive weekdays, other than Saturdays, Sundays, or legal holidays, regardless of when the particular public body is open for public business.

**Attorney General Opinion No. 7095, p. 64, December 6, 2001.**

Under the FOIA, a public body may not impose a more restrictive schedule for access to its public records for certain persons than it does for the public generally, based solely upon the purpose for which the records are sought.

**Attorney General Opinion No. 7087, p. 45, August 21, 2001.**

The board of trustees of a retirement system established and administered by a home rule city charter is a public body subject to the Open Meetings Act and the FOIA.

**Attorney General Opinion No. 7083, p. 32, June 7, 2001.**

The FOIA permits a public body to charge a fee for the actual incremental cost of duplicating or publishing a record, including labor directly attributable to those tasks, even when the labor is performed by a public

employee during business hours and does not add extra costs to the public body's normal budget.

Under section 4(3) of the FOIA, a public body may not charge a fee for the cost of its search, examination, review, and the deletion and separation of exempt from nonexempt information, unless failure to charge a fee would result in unreasonably high costs to the public body. This fee limitation, however, does not apply to a public body's costs incurred in the necessary copying or publication of a public record for inspection, or for providing a copy of a public record and mailing the copy.

The phrase "unreasonably high costs," as used in section 4(3) of the FOIA, prohibits a public body from charging a fee for the costs of search, examination, review, and deletion and separation of exempt from nonexempt information unless the costs incurred by a public body for those activities in the particular instance would be excessive and beyond the normal or usual amount for those services.

**Attorney General Opinion No. 7066, p. 156, November 7, 2000.**

An urban redevelopment corporation organized under the Urban Redevelopment Corporations Law is a public body subject to the Open Meetings Act and the FOIA.

**Attorney General Opinion No. 7017, p. 27, May 13, 1999.**

When establishing fees chargeable under the FOIA, a public body may include in the calculation of labor costs fringe benefits paid to employees.

**Attorney General Opinion No. 6977, p. 131, April 1, 1998.**

A public body may require that its fees be paid in full prior to actual delivery of the copies. However, a public body may not refuse to process a subsequent FOIA request on the ground that the requestor failed to pay fees charged for a prior FOIA request.

A public body may refuse to process a FOIA request if the requestor fails to pay a good faith deposit properly requested by the public body pursuant to section 4(2) of the FOIA.

Although the FOIA does not specify a limitations period within which a public body must commence a lawsuit to collect fees charged for complying

with a records request, the 6-year limitations period applicable to contract claims governs such a cause of action.

**Attorney General Opinion No. 6970, p. 106, January 28, 1998.**

Under the FOIA, the Auditor General may, in the discharge of his duties to audit the state and its departments, access nonexempt public records of local units of government under the FOIA.

**Attorney General Opinion No. 6965, p. 93, January 16, 1998.**

The state Insurance Bureau, in response to a request made under the FOIA, must provide copies of copyrighted manuals of rules and rates which are in its possession and are required by law to be filed by insurers with the bureau, without first obtaining the permission of the copyright holder.

**Attorney General Opinion No. 6942, p. 40, July 3, 1997.**

A private, voluntary, unincorporated association of lake property owners is not a public body subject to the FOIA.

A corporation formed under the Summer Resort Owners Corporation Act, 1929 PA 137, MCL 455.201 *et seq*, MSA 21.751 *et seq*, is a public body subject to the provisions of the FOIA.

**Attorney General Opinion No. 6923, p. 224, October 23, 1996.**

Section 4(2) of the FOIA permits a public body to charge a deposit of not more than one-half of the projected total fee if that fee exceeds \$50.00. A public body may establish a fee in advance of compiling the records responsive to a request under the FOIA, so long as, the fee represents the actual cost of responding to the request based on prior experience, and it is calculated in accordance with section 4 of the FOIA.

**Attorney General Opinion No. 6820, p. 196, October 11, 1994.**

The records maintained by the Department of State Police on the STATIS computer system meet the definition of a “public record” set forth in section 2(c) of the FOIA. Therefore, that department must search the STATIS computer system when it responds to a FOIA request. It must also allow the examination of or produce copies of all documents it finds, unless the records sought fall within one or more of the specific exemptions set forth in section 13 of the FOIA. Although participating law enforcement agencies other than

the Department of State Police have remote computer terminals, which allow them access to the STATIS computer, those records are not writings in the possession of those agencies within the meaning of the FOIA, sections 2(c) and (e), unless those records are saved to a computer storage device or printed by the participating agency. Thus, law enforcement agencies other than the Department of State Police are not obligated under the FOIA to search the STATIS system for records except for those records which they contributed to that system.

**Attorney General Opinion No. 6766, p. 52, August 19, 1993.**

A public body may not deny a FOIA request simply because the requester has previously obtained the identical records under the Act. A public body need not provide a waiver of fees to an indigent person requesting additional copies of identical documents previously provided with a waiver of fees pursuant to a prior request under the FOIA.

**Attorney General Opinion No. 6668, p. 409, November 28, 1990.**

A public officer's or employee's routine performance evaluation is not exempt from disclosure, even when the evaluation is discussed in a closed meeting held pursuant to the Open Meetings Act.

**Attorney General Opinion No. 6613, p. 299, March 14, 1990.**

While the personal files of the Auditor General are exempt from disclosure, the general files, records, and final audit reports prepared by the Auditor General's staff are subject to FOIA disclosure, except where a portion is specifically exempted by statute.

**Attorney General Opinion No. 6563, p. 27, January 26, 1989.**

The FOIA does not apply to a private nonprofit corporation.

**Attorney General Opinion No. 6504, p. 295, March 4, 1988.**

Surveys, comments, and other information received by the Qualifications Advisory Committee in its performance evaluation of worker's compensation magistrates are confidential by statute, MCL 418.212(1)(g), and, therefore, are exempt from disclosure under the FOIA.

**Attorney General Opinion No. 6390, p. 375, September 26, 1986.**

State legislators are exempt from the FOIA.



**Attorney General Opinion No. 6389, p. 374, September 24, 1986.**

The FOIA does not require a sheriff to furnish jail booking records to a private security firm if the sheriff determines disclosure would constitute a clearly unwarranted invasion of privacy.

**Attorney General Opinion No. 6087, p. 698, July 28, 1982.**

Records of a public body showing the number of days a public employee is absent from work are not exempt from disclosure under the FOIA.

**Attorney General Opinion No. 6064, p. 641, April 30, 1982.**

A school district must furnish the records of a student upon request of another school district in which the student is enrolled as an incident to the operation of free public elementary and secondary schools required by the Michigan Constitution 1963, art. 8, section 2, and is precluded from withholding the records because the student or his or her parents is indebted to the school district possessing the records for fees or other charges.

**Attorney General Opinion No. 6042, p. 584, February 25, 1982.**

A township is not required to enact its own FOIA in order to comply with the state FOIA.

**Attorney General Opinion No. 6023, p. 518, January 8, 1982.**

Copies of receipts maintained by a register of deeds for amounts paid as real estate transfer taxes fall within the mandatory exemption from disclosure established by the Real Estate Transfer Tax Act, 1966 P.A. 134, section 11b, and are exempt from disclosure under the FOIA.

**Attorney General Opinion No. 6019, p. 507, December 29, 1981.**

Employment records disclosing salary history and employment dates are subject to disclosure under the FOIA.

**Attorney General Opinion No. 5832, p. 1125, December 18, 1980.**

A public body is not required to disclose both the questions and answers of a sheriff's promotional test unless the public body finds it in the public interest to disclose both the test questions and answers.

**Attorney General Opinion No. 5797, p. 1038, October 14, 1980.**

Since the Law Enforcement Information Network Policy Council does not receive and maintain records in the LEIN system, it does not possess copies of records and as a result has no material to furnish persons seeking such records under the FOIA.

**Attorney General Opinion No. 5760, p. 935, August 26, 1980.**

Rules promulgated by the Ethics Board require that records and files concerning dismissed complaints or terminated investigations be suppressed or expunged. This rule is consistent with the privacy exemption of the FOIA since records would be suppressed only if a determination was made that the complaints were unfounded.

**Attorney General Opinion No. 5725, p. 842, June 23, 1980.**

The confidentiality mandated by the Banking Code of 1969 is not limited to facts and information furnished by state chartered banks but applies to all facts and information received by the Financial Institutions Bureau. Such facts and information are not subject to disclosure pursuant to the FOIA.

**Attorney General Opinion No. 5632, p. 563, January 24, 1980.**

The meetings of a board of education expelling a student from school must list a student's name. Unedited minutes must be furnished to the public on request in accordance with law.

**Attorney General Opinion No. 5608, p. 496, December 17, 1979.**

The exemption contained in section 13(1)(m) of the FOIA for communications and notes within a public body or between public bodies of an advisory nature does not constitute an exemption for the purposes of the Open Meetings Act in view of a specific statutory provision which states that this exemption does not constitute an exemption for the purposes of section 8(h) of the Open Meetings Act.

**Attorney General Opinion No. 5593, p. 468, November 14, 1979.**

File photographs routinely taken of criminal suspects by law enforcement agencies are public records as defined by the FOIA. To the extent that the release of a photograph of a person would constitute a clearly unwarranted invasion of personal privacy, a public body may refuse to permit a person to inspect or make copies of the photograph.

**Attorney General Opinion No. 5500, p. 255, July 23, 1979.**

The following responses to specific inquiries are found in the above opinion:

- a. A summary of the FOIA. p. 255
- b. A government agency does not fall within the meaning of “person” for purposes of obtaining information under the FOIA. p. 261
- c. The Civil Service Commission is subject to the provisions of the FOIA. p. 261
- d. Since the President’s Council of State Colleges and Universities is wholly funded by state universities and colleges, it is a public body as defined by the FOIA. p. 262
- e. A board of trustees of a county hospital may refuse to make available records of its proceedings or reports received and records compiled, which would constitute a clearly unwarranted invasion of an individual’s privacy under section 13(1)(a), involve disclosure of medical, counseling or psychological facts or evaluations concerning a named individual under section 13(m); or involve disclosure that would violate physician-patient or psychologist-patient privilege under section 13(1)(i). p. 263
- f. Transcripts of depositions taken in the course of an administrative hearing are subject to disclosure to a person who was not a party to the proceeding, as there is no specific exemption in section 13(1) or any other statute which exempts a deposition or a document referring to the deposition from disclosure. These documents may, however, contain statements, which are exempt from disclosure and therefore, pursuant to section 14, where a person who is not a party to the proceeding requests a copy, it will be necessary to separate the exempt material and make only the nonexempt records available. p. 263
- g. Stenographer’s notes or the tape recordings or dictaphone records of a municipal meeting used to prepare minutes are public records under the ACT and must be made available to the public. p. 264

- h. Computer software developed by and in the possession of a public body is not a public record. p. 264
- i. Although a state university must release a report of the performance of its official functions in its files, regardless of who prepared it, if a report prepared by an outside agency is retained only by the private agency, it is not subject to public disclosure. p. 265
- j. Copyrighted materials are not subject to the ACT. p. 266 [But see *Blue Cross/Blue Shield v Insurance Bureau*, 104 Mich App 113 (1981).]
- k. A request for data which refers only to an extensive period of time and contains no other reference by which the public record may be found does not comply with the requirement of section 3 that the request describe the public record sufficiently to enable the public body to find it. p. 268
- l. If a public body maintains a file of the names of employees which it has fired or suspended over a certain designated period of time, it must disclose the list if requested. p. 268
- m. A public body may charge a fee for providing a copy of a public record. p. 268
- n. The five-day response provision begins the day after the public body has received the request sufficiently describing the public record. If the request does not contain sufficient information describing the public record, it may be denied on that ground. Subsequently, if additional information is provided that sufficiently describes the public record, the period within which the response must be made dates from the time that the additional information is received. p. 269
- o. A school board may meet in closed session pursuant to the Open Meetings Act to consider matters which are exempt from disclosure under the FOIA. p. 270
- p. The names and addresses of students may be released unless the parent of the student or the student has informed the institution in writing that such information should not be released. p. 282

- q. A law enforcement agency may refuse to release the name of a person who has been arrested, but not charged, in a complaint or information, with the commission of a crime. p. 282
- r. Since motor vehicle registration lists have not been declared to be confidential, they are required to be open to public inspection. p. 300

**Attorney General Opinion No. 5465, p. 104, March 26, 1979.**

The Insurance Commissioner is required to charge a rate for making copies of public records requested in accordance with the FOIA.

**Attorney General Opinion No. 5436, p. 31, February 1, 1979.**

Since certain records are protected from disclosure by the Social Welfare Act, they are exempt from disclosure under section 13(1)(d) of the FOIA, which exempts records that are exempt from disclosure by statute.

**Attorney General Opinion No. 5419, p. 758, December 29, 1978.**

The office of county sheriff is subject to the provisions of the FOIA.

**Attorney General Opinion No. 5297, p. 430, April 28, 1978.**

Records subject to the confidentiality provisions of the Child Protection Law, MCL 722.621 *et seq.*, are exempt from disclosure under the FOIA, sections 13(1)(a) and 13(1)(d).

**Attorney General Opinion No. 5183-A, p. 97, April 18, 1977.**

The FOIA's definition of public body includes single member bodies.

**Attorney General Opinion No. 5156, p. 66, March 24, 1977.**

Unless exempt from disclosure by law, records of the Brown-McNeeley Insurance Fund are public records.

## IV COURT OPINIONS ON THE FREEDOM OF INFORMATION ACT

Michigan courts have rendered decisions which, when “reported,” become precedent and are the law of the state until changed by a higher court or by the Legislature. The following list contains decisions of Michigan’s appellate courts regarding FOIA. Court opinions may be obtained from law libraries or from the courts of record at a nominal fee.

NOTE: In May 2000, the Michigan Legislature relettered subsection 13(1) of the FOIA. Changes are made below.

### **Detroit Free Press, Inc v Dep’t of Attorney General, 271 Mich App 418; 722 NW2d 277 (2006).**

Plaintiff was not a “prevailing party” as that term is defined under the FOIA where the trial court did not order the disclosure of any public records and the dispute centered entirely on the FOIA processing fee charged for copies of records. Therefore, plaintiff was not entitled to the attorney fees and costs awarded by the trial court under section 10(6) of the FOIA.

### **Coblentz v City of Novi, 475 Mich 558; 719 NW2d 73 (2006).**

Defendant was not required to produce certain records described in plaintiff’s FOIA request where defendant’s uncontroverted affidavit stated that the records did not exist. Plaintiff was entitled to the non-disclosed exhibits that accompanied a settlement agreement between defendant and a third party, where plaintiff’s FOIA request described the records sufficiently to enable defendant to find the records and where no exemption from disclosure applied. Plaintiff also was entitled to records exempted by defendant under section 13(1)(f) of the FOIA where defendant did not record a description of the records in a central place within a reasonable time after the records came into defendant’s possession. Fees to recoup the labor costs incurred in processing FOIA requests do not include the cost of independent contractors.

### **Herald Co, Inc v Eastern Michigan Univ Bd of Regent, 475 Mich 463; 719 NW2d 19 (2006).**

The advisory, non-factual portions of a letter written by defendant’s vice president of finance to a member of the Board of Regents were exempt as

frank communications under section 13(1)(m) of the FOIA, where the balance of competing interests favored nondisclosure.

**Detroit Free Press v City of Southfield, 269 Mich App 275; 713 NW2d 28 (2005).**

The pension income amounts of police and firefighter pension recipients reflect specific governmental decisions regarding retirees' continuing compensation for public service. Therefore, the pension amounts are more comparable to public salaries than to private assets and do not constitute private information exempt from disclosure under the FOIA, and the public interest in disclosure outweighs a public interest in nondisclosure.

**Lapeer County Abstract & Title Co v Lapeer County Register of Deeds, 264 Mich App 167; 691 NW2d 11 (2004).**

While the FOIA grants a general right to receive copies of public records, nothing in the FOIA requires a public body to provide copies in a microfilm format rather than in the form of a paper copy. Furthermore, the Inspection of Records Act specifically provides that, in response to a request for a reproduction of a record of a register of deeds, the register of deeds may select the medium used to reproduce the record.

**Krug v Ingham County Sheriff's Office, 264 Mich App 475; 691 NW2d 50 (2004).**

Defendant was not entitled to issue blanket denials of all FOIA requests relating to open case files without actually reviewing the case first to determine what information is exempt. A defendant should treat a lawsuit objecting to a FOIA request denial as a continuing request for information and release the records if the defendant determines that the information has become nonexempt during the course of the FOIA litigation.

**Stone Street Capital, Inc v Michigan Bureau of State Lottery, 263 Mich App 683; 689 NW2d 541 (2004).**

The names, addresses, and other personal information of persons who have received lottery winnings directly, by assignment, or by other judgment are exempt from disclosure under the FOIA as the information is entirely unrelated to any inquiry regarding the inner working of government and would constitute a clearly unwarranted invasion of an individual's privacy.

Public disclosure of such personal information has the potential to endanger individuals.

**Breighner v Michigan High School Athletic Ass'n, Inc, 471 Mich 217; 683 NW2d 639 (2004).**

The Michigan High School Athletic Association, Inc. (MHSAA), is not a “public body” within the meaning of the FOIA that is funded “by or through” a governmental authority, rather it is an independent, nonprofit corporation primarily funded through its own activities. Therefore, the MHSAA is not subject to the FOIA’s provisions.

**Local Area Watch v City of Grand Rapids, 262 Mich App 136; 683 NW2d 745 (2004).**

Under the Open Meetings Act, minutes of closed session meetings may only be disclosed by court order under that Act. Further, under the FOIA, a public body is not required to disclose records protected from disclosure to the public by other statutes. Where the plaintiff sought disclosure of closed meeting minutes, the defendant did not violate the FOIA for withholding them where there was not a judicial determination that the minutes were subject to disclosure under the Open Meetings Act.

There is no basis for the imposition of sanctions under the FOIA for the destruction of executive session minutes that are exempt from disclosure under another statute.

Plaintiff only partially prevailed where during the litigation defendant disclosed some documents that were withheld before litigation, and thus, it was within the trial court’s discretion to award attorney fees and costs.

**City of Warren v City of Detroit, 261 Mich App 165; 680 NW2d 57 (2004).**

The computer software formula used to set water rates is merely computer-stored information or data and, thus, is a public record under the FOIA. The FOIA’s exception of “software” would allow for nondisclosure of the set of computer statements or instructions that are used to utilize the formula and data; however, the formula itself is distinct information separate from the software.



**Title Office, Inc v Van Buren Co Treasurer, 469 Mich 516; 676 NW2d 207 (2004).**

Fees for electronic copies of property tax records requested from a county treasurer are computed according to the Transcripts and Abstracts of Records Act (TARA), as an exception under the FOIA, section 4(1). “Transcripts,” as used in the TARA, is intended to apply to any reproduction of a record on file in the treasurer’s office, including electronic copies.

**Landry v City of Dearborn, 259 Mich App 416; 674 NW2d 697 (2003).**

Section 13(1)(s)(ix) of the FOIA permits nondisclosure of law enforcement personnel records. The meaning of the term “personnel records” in that section includes all records used by law enforcement agencies in the selection or hiring of officers, as well as the applications received by the city from unsuccessful applicants. The public interest in disclosing the information did not outweigh the public interest in not disclosing the information.

**Meredith Corp v City of Flint, 256 Mich App 703; 671 NW2d 101 (2003).**

Where an action for disclosure of public records is initiated pursuant to the FOIA, the prevailing party’s entitlement to an award of reasonable attorney fees, costs, and disbursements includes all such fees, costs, and disbursements related to achieving production of the public records.

**Sclafani v Domestic Violence Escape, 255 Mich App 260; 660 NW2d 97 (2003).**

Section 2(d)(iv) of the FOIA states that a public body is “any other body which is created by state or local authority or which is primarily funded by or through state or local authority.” The court found that Domestic Violence Escape (DOVE), a non-profit group that educates citizens about domestic violence and provides several services to victims, was a public body and therefore was subject to FOIA because a state or local government authority provided 50% or more of its funding. “Primary funding,” as required under the statute, can be provided by multiple sources.

**Key v Township of Paw Paw, 254 Mich App 508; 657 NW2d 546 (2002).**

The public body complied with the FOIA when the FOIA coordinator denied a request for information because the information sought could not be located.

When a public body timely claims the additional 10 business days for a response as provided in section 5(2)(d) of the FOIA, the new response deadline is 15 business days after the receipt of the request, regardless of when the notice of extension is issued.

**Thomas v City of New Baltimore, 254 Mich App 196; 657 NW2d 530 (2002).**

Where a person sues under the FOIA and prevails in an action to compel disclosure, the person must be awarded costs and fees, “even though the action has been rendered moot by acts of the public body in disposing of the documents.”

**Detroit News, Inc v Policemen and Firemen Retirement Sys. of the City of Detroit, 252 Mich App 59; 651 NW2d 127 (2002).**

The words of the FOIA state “a public body means any of the following.” Thus, any of the entities listed in the statute are included as public bodies under the Act. The Policemen and Firemen Retirement System is a public body because it is a body which is “created by state or local authority or which is primarily funded by or through state or local authority.”

**Sutton v City of Oak Park, 251 Mich App 345; 650 NW2d 404 (2002).**

Internal investigation records may be exempt as personnel records of a law enforcement agency if the public interest favors nondisclosure over disclosure.

An exemption not addressed by the trial court may be addressed by the appellate court if the issue on appeal is a question of law, and the facts necessary for its resolution are presented.

**Detroit Free Press v City of Warren, 250 Mich App 164; 645 NW2d 71 (2002).**

The names of public officials and employees associated with information concerning grand jury proceedings constitute information concerning matters of legitimate public concern. It is not information of a personal nature that is exempt from disclosure under section 13 of the FOIA.

**Scharret v City of Berkley, 249 Mich App 405; 642 NW2d 685 (2002).**

According to section 5 of the FOIA, a public body is required to respond to a request for information within five business days after receiving the request, and its failure to timely respond constitutes its final determination to deny the request and is a violation of the FOIA.

In addition, nothing in the FOIA states that the resubmission of a request denied by virtue of the public body's failure to respond divests the requesting person of the ability to exercise the options granted under section 10 of the FOIA.

To get an award of attorney fees and costs under the FOIA, the action must be reasonably necessary to compel disclosure, and the action must have substantial causative effect on the delivery of the information to the requestor.

**Proctor v White Lake Twp Police, 248 Mich App 457; 639 NW2d 332 (2001).**

The FOIA is not unconstitutional simply because it excludes prisoners from obtaining information. Application of the FOIA exclusion does not deprive prisoners of their fundamental right to access the courts or their First Amendment rights. The principles involving access to the courts do not support a right to inspect police department records.

**MacKenzie v Wales Twp, 246 Mich App 311; 631 NW2d 769 (2001).**

A township must grant access to computer tapes used to prepare property tax notices for the township even though the tapes were created by, and in the possession of, another entity. Because the township used the tapes, albeit indirectly, in performing an official function, the tapes fall within the statutory definition of public records.

**Detroit Free Press v Dep't of Consumer & Industry Services, 246 Mich App 311; 631 NW2d 769 (2001).**

Consumer complaints filed with the Department of Consumer and Industry Services against property insurers and health insurers contain information of a personal nature. Disclosure of the names and addresses of the complainants may be withheld, when requested pursuant to FOIA, because disclosure of the information would constitute a clearly unwarranted

invasion of the individuals' privacy. Other information in the complaints should, however, be disclosed because it could further the public's knowledge of how the agency is complying with its statutory function.

**Oakland County Treasurer v Title Office, Inc, 245 Mich App 196; 627 NW2d 317 (2001).**

Electronic records are writings as defined by the FOIA. Public bodies are required to provide public records in the format requested. If there is no explicit statutory language that provides fees for electronic records, the records must be provided using the FOIA fee requirements.

**Baker, P.C. v City of Westland, 245 Mich App 90; 627 NW2d 27 (2001).**

Accident reports containing the names, addresses, injury codes, and accident dates for injured and deceased accident victims do not have to be released when requested under the FOIA. Involvement in an automobile accident is an intimate detail of a person's private life. Disclosure of the information would not contribute significantly to the public's understanding of the operations or activities of the government and, therefore, would be a clearly unwarranted invasion of privacy.

The FOIA's privacy exemption may be applied to deceased private citizens and their families where there is no public interest in disclosure.

**Kent County Sheriff's Ass'n v Sheriff, 463 Mich 353; 616 NW2d 677 (2000).**

The FOIA provides citizens with broad rights to obtain public records limited only by the coverage of the statute and its exemptions. The fact that another body of law potentially gives an additional basis for access to records, in this case the Public Employment Relations Act, does not limit the applicability of the FOIA or the jurisdiction of the circuit court to consider relief under the FOIA.

Internal investigation records of a law enforcement agency may be exempt as personnel records under section 13(1)(s)(ix) of the FOIA where it is sufficiently established that public interest favors nondisclosure over disclosure.

**Herald Co v City of Bay City, 463 Mich 111; 614 NW2d 873 (2000).**

The FOIA does not establish detailed requirements for a valid request. If a citizen submits a request for the names, current job titles, and cities of residence for job candidates, and the city possesses records containing the information, the city is obligated to provide the records even though they were not specifically described in the request.

The fact of application for a public job, or the typical background information that may be contained in an application, is not information of a personal nature protected under section 13(1)(a) of the FOIA. If embarrassing or intimate personal information is contained in an application, the public body is under a duty to separate the exempt material and make the nonexempt material available to the public.

Disclosure of information concerning the final candidates for a public position would serve the purpose of the FOIA because disclosure would facilitate the public's access to information regarding the affairs of government.

**Detroit Free Press v Dep't of State Police, 243 Mich App 218; 622 NW2d 313 (2000).**

The State Police is not required to disclose information regarding state legislators who applied for concealed weapons permits. Legislators who apply for a concealed weapons permit are exercising a right guaranteed to all. The fact that a person has requested and/or secured permission to carry a concealed weapon is an intimate and potentially embarrassing detail of one's private life. Disclosure of the information would not contribute significantly to the public's understanding of the operations or activities of the government and, therefore, would be a clearly unwarranted invasion of privacy.

With regard to counties, information about concealed weapons permits could conceivably assist the public in understanding the operations, activities, and affairs of local gun boards. Whether public officials are treated more favorably than others by gun boards is a legitimate concern. This concern, however, can be addressed without identifying the individuals who sought the permits.

**Kocher v Dep't of Treasury, 241 Mich App 378; 615 NW2d 767 (2000).**

The addresses of unclaimed property holders maintained by the Michigan Department of Treasury fall within the definition of personal information, and their release would constitute a clearly unwarranted invasion of privacy. Disclosure of the information would not enhance the public's understanding of the operations or activities of the government.

**Messenger v Dep't of Consumer & Industry Services, 238 Mich App 524; 606 NW2d 38 (1999).**

Investigation undertaken by the state public body did not fit the definition of investigation found in the Public Health Code as referenced in section 13(1)(t) of the FOIA.

**Mager v Dep't of State Police, 460 Mich 134; 595 NW2d 142 (1999).**

State Police is not required to provide the names and addresses of registered handgun owners. Gun ownership is information that meets both elements of the FOIA privacy exemption, section (13)(1)(a). Gun registration information is of a "personal nature," and the disclosure of such information would constitute a "clearly unwarranted" invasion of the individual's privacy.

**Manning v City of East Tawas, 234 Mich App 244; 593 NW2d 649 (1999).**

When making an in camera determination whether to compel disclosure under the FOIA, a trial court may order disclosure of nonexempt information and may provide for the redaction of exempt information.

**Messenger v Ingham County Prosecutor, 232 Mich App 633; 591 NW2d 393 (1998).**

The privilege for attorney work product is recognized by court rule, MCR 2.302(B)(3)(a), and incorporated into the FOIA through section 13(1)(h). When information sought pursuant to the FOIA is identified as attorney work product, it is not subject to disclosure.

**McCartney v Attorney General, 231 Mich App 722; 587 NW2d 824 (1998).**

Letters forwarded by the Governor to the Attorney General for the purpose of seeking legal advice were protected by the attorney-client privilege, and thus, by section 13(1)(g) of the FOIA. Internal memoranda

within the Attorney General's office containing recommendations, opinions, and strategies with regard to legal advice requested by the Governor are exempt from disclosure by section 13(1)(m) of the FOIA to the extent that they are preliminary, nonfactual, and part of the deliberative process.

**Connoisseur Communication of Flint v University of Michigan, 230 Mich App 732; 584 NW2d 647 (1998).**

The University of Michigan properly denied a FOIA request for the vehicle records of a student athlete. The information was protected pursuant to the Family Education Rights and Privacy Act (FERPA) and, therefore, exempt from disclosure under the FOIA, section 13(2).

**State Defender Union Employees v Legal Aid & Defender Ass'n of Detroit, 230 Mich App 426; 584 NW2d 359 (1998).**

An organization "primarily funded by or through state or local authority" is a public body pursuant to the FOIA. Primarily funded means the receipt of government grants or subsidies. An otherwise private organization is not a public body merely because public monies paid in exchange for goods or services comprise a majority of the organization's revenues.

**Herald Co v Kalamazoo, 229 Mich App 376; 581 NW2d 295 (1998).**

Law enforcement exemptions of the Michigan FOIA are more restrictive than parallel provisions of the federal FOIA. The correct standard under the Michigan FOIA is whether a document "would" interfere with law enforcement proceedings or disclose investigative techniques or procedures.

An investigation will not be considered "on-going" for the purposes of the FOIA without an active, on-going, law enforcement investigation. In the absence of such activities, the investigation cannot be considered open although the period of limitations may still be running.

**Bradley v Saranac Community Schools Board of Education, Lansing Ass'n of School Adm'rs v Lansing School District, 455 Mich 285; 565 NW2d 650 (1997).**

The Michigan FOIA does not have a specific exemption for personnel records. Thus, the personnel records of non-law enforcement public employees generally are available to the public. Information that falls within one of the exemptions of the FOIA may be redacted.

The privacy exemption under section 13(1)(a) of the FOIA consists of two elements, both of which must be met in order for an exemption to apply. First, the information must be of a “personal nature.” Second, the disclosure must be a “clearly unwarranted invasion of privacy.”

Performance appraisals, disciplinary actions, and complaints relating to employees’ accomplishments in their public jobs do not reveal intimate or embarrassing details of their private lives and, therefore, they are not records of a “personal nature.”

Performance evaluations of public employees are not counseling evaluations protected from disclosure by the FOIA, section 13(1)(l).

Section 13(1)(m) of the FOIA provides an exemption for communications passing within or between public bodies. Documents in the possession of a school district prepared by parents are not within the scope of this exemption. Further, the exemption must be asserted by a public body rather than by a private individual.

**Herald Co v Ann Arbor Public Schools, 224 Mich App 266; 568 NW2d 411 (1997).**

Once a document that is the subject of a FOIA lawsuit has been disclosed, the subject of the controversy disappears and becomes moot.

The privacy exemption of the FOIA allows a public body to withhold from disclosure public records of a personal nature where the information would constitute a clearly unwarranted invasion of an individual’s privacy. Information is considered personal if it concerns a particular person and his or her intimate affairs, interests, or activities. While the records sought in this case were personal in nature in that they contained information about a teacher’s family and observations about his or her conduct, the disclosure did not constitute a “clearly unwarranted” invasion of privacy because the records discussed the professional performance of a teacher in the classroom that is an issue of legitimate concern to the public.

A public body may exempt from disclosure, pursuant to section 13(1)(m), advisory communications within a public body or between public bodies to the extent that they are nonfactual and are preliminary to a final agency determination. However, if records meet these substantive tests, the public



body must also establish that the public interest in encouraging frank communications within the public body or between public bodies clearly outweighs the public interest in disclosure. In this case the public interest in disclosing records that contain public observations of a teacher who has been convicted of carrying a concealed weapon is not clearly outweighed by the public interest in encouraging frank communications within the public body.

A class of documents may be exempt from the FOIA, so long as, the exempt categories are clearly described and drawn with precision so that all documents within a category are similar in nature. Exempt material must be segregated from nonexempt material to the extent practicable.

The FOIA exempts, in section 13(1)(h), information subject to the physician-patient privilege. The purpose of the privilege is to protect the physician-patient relationship and ensure that communications between the two are confidential. Attendance records that do not contain any information that a physician acquired while treating an employee are not covered by this exemption.

The fact that an employee waives the physician-patient privilege by submitting to his or her employer attendance records that contain medical records does not mean that the privilege was waived with regard to third parties who request disclosure of the records under the FOIA.

The FOIA excludes from disclosure information protected by the attorney-client privilege. The scope of the privilege is narrow, including only those communications by the client to its advisor that are made for the purpose of obtaining legal advice. A tape recording of an interview of the teacher by the school district is not within the attorney-client privilege.

**CMU Supervisory-Technical Ass'n MEA/NEA v CMU Board of Trustees, 223 Mich App 727; 567 NW2d 696 (1997).**

A party to a lawsuit does not lose his or her or her right under the FOIA simply because the party may be able to obtain the records from a public body through the discovery phase of pending civil litigation. [But see section 13(1)(v) of the FOIA, which now exempts records or information relating to a civil action in which the requesting party and the public body are parties.]

**Oakland County Prosecutor v Dep't of Corrections, 222 Mich App 654; 564 NW2d 922 (1997).**

A prisoner's mental health records submitted to the parole board when seeking parole must be provided to a county prosecutor when requested pursuant to FOIA so that the prosecutor may determine whether the board's decision to grant parole should be appealed.

**Schroeder v Detroit, 221 Mich App 364; 561 NW2d 497 (1997).**

A person denied employment by a police department was not entitled to receive a copy of his or her psychological evaluation under the FOIA. In cases involving testing instruments as defined by section 13(1)(k) of the FOIA, release of the information is not required unless the public interest in disclosure outweighs the public interest in nondisclosure. Here, the public interest ensuring the integrity of the hiring process outweighed the public interest in disclosing the information to a candidate attempting to investigate the fairness of the test.

**Grebner v Oakland County Clerk, 220 Mich App 513; 560 NW2d 351 (1996).**

Section 10(1) of the FOIA is a combined jurisdiction and venue provision. This provision makes it clear that circuit courts have jurisdiction to hear FOIA cases and specifies the counties in which the action may be brought.

Venue for FOIA actions properly lies in the county where the complainant resides.

**Nicita v Detroit, 216 Mich App 746; 550 NW2d 269 (1996).**

Business records pertaining to a real estate development company are not exempt from disclosure pursuant to section 13(1)(a) of the FOIA where there is no indication that the records contain information of a personal nature. This section does not protect information that could conceivably lead to the revelation of personal information.

Section 13(1)(m) of the FOIA protects communications within or between a public body that are other than purely factual and are preliminary to a final agency determination of policy or action. A public agency must also show that the need for nondisclosure clearly outweighs the public interest in disclosure.

**Grebner v Clinton Charter Twp, 216 Mich App 736; 550 NW2d 265 (1996).**

Section 522(1) of the Michigan Election Law which provides for the making, certifying, and delivery of a computer tape to any person upon the payment to the clerk of the court of the cost of making, certifying, and delivering the tape, disk, or listing is not a statute “specifically authorizing the sale” of the computer tape. Therefore, the determination of the fee to be charged for obtaining the computer tape is made pursuant to section 4 of the FOIA.

**Jackson v Eastern Michigan University, 215 Mich App 240; 544 NW2d 737 (1996).**

Eastern Michigan University Foundation is primarily funded by Eastern Michigan University and, therefore, is a public body subject to the FOIA.

**Michigan Council of Trout Unlimited v Michigan Dep’t of Military Affairs, 213 Mich App 203; 539 NW2d 745 (1995).**

Notwithstanding the unique relationship between the Michigan National Guard and the federal government, which is explicitly recognized by Michigan statutes, the circuit court had jurisdiction to consider plaintiff’s actions under the Michigan FOIA seeking to obtain documents in possession of the Michigan National Guard.

While the state courts have jurisdiction, application of section 13(1)(d) of the Michigan FOIA encompasses federal regulations and the federal FOIA, both of which prohibit the release of the documents sought by plaintiff. Accordingly, plaintiff could not obtain the documents at issue.

**Thomas v State Board of Law Examiners, 210 Mich App 279; 533 NW2d 3 (1995).**

The State Board of Law Examiners is an agent of the judiciary and, therefore, not a public body subject to the disclosure requirements of the FOIA.

**Farrell v Detroit, 209 Mich App 7; 530 NW2d 105 (1995).**

Computer records are public records that are subject to disclosure pursuant to the FOIA. A public body is required to provide public records in the form requested, not just the information they contain. The providing of a

computer printout of the information contained on a computer tape does not satisfy a request for the computer tape itself.

**Local 312 of the AFSCME, AFL-CIO v Detroit, 207 Mich App 472; 525 NW2d 487 (1994).**

The Public Employment Relations Act (PERA) and the FOIA are not conflicting statutes such that the PERA would prevail over the FOIA with the result that a person involved in a labor dispute would be precluded from obtaining public records under the FOIA.

The Legislature has clearly defined the class of persons entitled to seek disclosure of public records pursuant to the FOIA. There is no sound policy reason for distinguishing between persons who are involved in litigation-type proceedings and those who are not.

The court is required to award plaintiff attorney fees and costs where the plaintiff prevails in a FOIA action.

**In re Subpoena Duces Tecum, on remand from the MI Supreme Court, 205 Mich App 700; 518 NW2d 522 (1994).**

Section 13(1)(m) of the FOIA protects from disclosure communications within or between public bodies of an advisory nature that are other than purely factual and are preliminary to a final agency determination of policy or action. The burden is on the public body to show, in each particular instance, that the public interest in encouraging frank communications between officials and employees of the public body clearly outweighs the public interest in disclosure. It is not adequate to show that the requested document falls within a general category of documents that may be protected.

**Hyson v Dep't of Corrections, 205 Mich App 422; 521 NW2d 841 (1994).**

Statements made by confidential witnesses relating to a major misconduct charge against a prison inmate may be withheld when requested pursuant to the FOIA because disclosure of the documents, even with the names of the witnesses deleted, would reveal their identities and jeopardize their personal safety within the prison. In addition, the release would prejudice the public body's ability to maintain the physical security of the penal institution.

**Mackey v Dep't of Corrections, 205 Mich App 330; 517 NW2d 303 (1994).**

A prison record about a prison inmate is exempt from disclosure under the prison security exemption of the FOIA where the record is requested by an inmate other than the one to whom the record pertains.

**The Detroit News, Inc v Detroit, 204 Mich App 720; 516 NW2d 151 (1994).**

Telephone bills paid by a public body constitute expense records of public officials and employees and are “public records” under the FOIA.

**Quatrine v Mackinaw City Public Schools, 204 Mich App 342; 514 NW2d 254 (1994).**

Public schools were not required to release records under the FOIA where written parental consent for release of records was not provided.

**Newark Morning Ledger Co v Saginaw County Sheriff, 204 Mich App 215; 514 NW2d 213 (1994).**

Internal affairs investigation records of a law enforcement agency constitute personnel records, which are exempt from disclosure unless the public interest in disclosure outweighs the public interest in nondisclosure. The mere location of a public record in a personnel file is not determinative as to its status in a personnel record.

In determining what is a “personnel record” under the FOIA, the court looked to the definition of that term in the Bullard-Plawecki Employee Right to Know Act (ERKA). While the purpose of the FOIA and the ERKA are different, the Legislature’s clearly expressed intent in the ERKA to prohibit access by an employee to any internal investigations relating to that employee indicates an intent to not allow public access to such records.

**Densmore v Dep't of Corrections, 203 Mich App 363; 512 NW2d 72 (1994).**

A public body does not need to provide additional copies of records it has already provided unless the requester can demonstrate why the copy already provided was not sufficient.

**Booth Newspapers, Inc v University of Michigan Board of Regents, 444 Mich 211; 507 NW2d 422 (1993).**

To exempt information under the FOIA, section 13(1)(a), information must be of a “personal nature,” and disclosure of that information must constitute “clearly unwarranted” invasion of privacy. Travel expense records of members of a public body do not constitute “records of a personal nature.”

The privacy exemption does not permit the withholding of information that conceivably could lead to the revelation of personal information. Therefore, a public body may not withhold travel expense records because their disclosure might lead to information concerning the candidates interviewed by board members.

**Walen v Dep’t of Corrections, 443 Mich 240; 505 NW2d 519 (1993).**

A prison disciplinary hearing falls within the definition of “contested case” and, therefore, pursuant to the FOIA, section 11(1), must be published and made available to the public. The Department of Corrections satisfied the publication requirement by retaining the final orders and decisions from disciplinary hearings in prisoners’ files.

**Patterson v Allegan County Sheriff, 199 Mich App 638; 502 NW2d 368 (1993).**

A booking photograph of a county jail inmate kept in the files of a county sheriff is a public record under the FOIA; such photographs may not be withheld from disclosure on the basis of the privacy exemption found in 13 (1)(a).

**Yarbrough v Dep’t of Corrections, 199 Mich App 180; 501 NW2d 207 (1993).**

Records compiled in the course of an internal investigation into a sexual harassment are “investigating records compiled for law enforcement purposes” within the meaning of said terms at section 13(1)(b) of the FOIA.

**Hubka v Pennfield Twp, 197 Mich App 117; 494 NW2d 800 (1992).**

Letters sent by a township attorney to a township board that contain information obtained by the attorney from township employees under compulsion and promises of confidentiality are protected from disclosure under the FOIA by the attorney-client privilege. Likewise, the opinions,

conclusions, and recommendations of the attorney, based on the information, are protected.

**Wilson v Eaton Rapids, 196 Mich App 671; 493 NW2d 433 (1992).**

A public body's attempt to reconcile a contractual obligation to maintain the confidentiality of a resignation agreement with its statutory obligation under FOIA does not constitute arbitrary and capricious behavior.

A party prevails under the FOIA, and is therefore, entitled to an award of costs and reasonable attorney fees, only if the action was necessary to and had a substantial causative effect on delivery or access to the documents.

**Swickard v Wayne County Medical Examiner, 196 Mich App 98; 492 NW2d 497 (1992).**

A party who prevails completely in an action asserting the right to inspect or receive a copy of a public record under the FOIA is entitled to reasonable attorney fees, costs, and disbursements. No time limit is imposed upon a prevailing party for requesting attorney fees.

**Nicita v Detroit, 194 Mich App 657; 487 NW2d 814 (1992).**

Section 13(1)(i) of the FOIA does not exempt bids with respect to development projects from disclosure once a developer has been chosen.

**Shellum v MESC, 194 Mich App 474; 487 NW2d 490 (1992).**

Information held by MESC concerning the calculated unemployment insurance tax contribution rate of an employer is exempt from disclosure under 13(1)(d) of the FOIA because it utilizes information obtained from the employer, which is protected by statute and administrative rule.

**Swickard v Wayne County Medical Examiner, 438 Mich 536; 475 NW2d 304 (1991).**

In making a determination whether a disclosure of requested information would constitute an invasion of privacy one looks to constitutional law and common-law as well as customs, mores, or ordinary views of the community.

The release of autopsy reports and toxicology test results are not unwarranted infringements on the right to privacy of either the deceased or

the deceased's family. The autopsy reports and toxicology test results are not within the doctor-patient privilege.

**Michigan Tax Management Services Co v City of Warren, 437 Mich 506; 473 NW2d 263 (1991).**

When a prevailing party in a FOIA action is awarded "reasonable" attorney fees, the trial court is obligated to make an independent determination with regard to the amount of the fees. The standard utilized by an appellate court to review such a determination is abuse of discretion.

**Favors v Dep't of Corrections, 192 Mich App 131; 480 NW2d 604 (1991).**

The form used in determining whether a prisoner should be awarded disciplinary credits was exempt from disclosure under section 13(1)(m) of the FOIA in that it covered other than purely factual materials, was advisory in nature and preliminary to final agency determination of policy or action. The public interest in encouraging frank communications within the Department of Corrections (DOC) clearly outweighed the public interest in disclosure of worksheet forms.

The trial court failed to comply with the technical requirements of the FOIA because it did not require the DOC to bear the burden of proving that a public record was exempt. However, that failure did not require reversal of a grant of summary disposition for the DOC in inmate's action where the DOC clearly reached the correct result.

**Lepp v Cheboygan Area Schools, 190 Mich App 726; 476 NW2d 506 (1991).**

Where the requested information pertains to the party making the request, it is unreasonable to refuse disclosure on the grounds of invasion of privacy.

**Clerical-Technical Union of MSU v MSU Board of Trustees, 190 Mich App 300; 475 NW2d 373 (1991).**

The home addresses of donors to Michigan State University are information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of privacy.



**The Detroit News, Inc v Detroit, 185 Mich App 296; 460 NW2d 312 (1990).**

The minutes of a closed city council meeting, held in violation of the Open Meetings Act, are public records and are available upon request under the FOIA.

The oral opinions of an attorney are not public records subject to the FOIA and, therefore, cannot be used to justify a closed meeting of a public body.

**Wayne County Prosecutor v Detroit, 185 Mich App 265; 460 NW2d 298 (1990).**

For purposes of the FOIA, a county prosecutor is a person as defined in the Act. This allows him or her, in his or her official capacity, to request documents from public bodies under the FOIA.

**Traverse City Record Eagle v Traverse City Area Public Schools, 184 Mich App 609; 459 NW2d 28 (1990).**

A tentative bargaining agreement between a school district and the union which represents its employees was held to be exempt from disclosure pursuant to section 13(1)(m) of the FOIA, which exempts communication and notes within a public body or between public bodies which are advisory, nonfactual, and preliminary to a final decision. The public interest in encouraging frank communications between the employer and its employees, which leads to effective negotiations, in this case outweighs the public interest in disclosure.

**Hartzell v Mayville Community School District, 183 Mich App 782; 455 NW2d 411 (1990).**

The FOIA requires disclosure of the fact that a requested document does not exist. A plaintiff in a FOIA action that is forced to file a lawsuit to ascertain that a document does not exist is a prevailing party entitled to an award of costs and reasonable attorney fees.

**Tallman v Cheboygan Area Schools, 183 Mich App 123; 454 NW2d 171 (1990).**

A public body may charge a fee for providing a copy of a public record. Section 4 of the Act provides a method for determining the charge for records, and a public body is obligated to arrive at its fees pursuant to that section.

**Booth Newspapers, Inc v Kalamazoo School District, 181 Mich App 752; 450 NW2d 286 (1989).**

The trial court appropriately ordered the release of tenure charges and a settlement agreement concerning allegations of sexual misconduct against an unmarried teacher in redacted form. The records were redacted to prevent the identity of the teacher and the students involved from being disclosed in order to protect their privacy.

The FOIA confers discretion upon a court to award an appropriate portion of the reasonable attorney fees incurred by a party that has prevailed in part. When a plaintiff prevails only as to a portion of the request, the award of fees should be fairly allocable to that portion.

**Kincaid v Dep't of Corrections, 180 Mich App 176; 446 NW2d 604 (1989).**

A public body bears the burden of proof in demonstrating a proper justification for the denial of a FOIA request.

A request for disclosure of information under the FOIA must describe the requested records sufficiently to enable the public body to find them; when a request is denied because of an insufficient description, the requesting person may (1) rewrite the request with additional information, or (2) file suit in circuit court where the sole issue would be the sufficiency of information to describe the records desired.

A FOIA request by an inmate, which erroneously states the date of a guilty determination on a misconduct or the hearing date with respect to which records are sought, reasonably and sufficiently describes the records sought. A public body acts in an arbitrary and capricious manner by repeatedly refusing to look for a record so described.

**Post-Newsweek Stations, Michigan, Inc v Detroit, 179 Mich App 331; 445 NW2d 529 (1989).**

In claiming an exemption under the FOIA, for interference with law enforcement proceedings, the burden of proof is on the public body claiming the exemption. The exemption must be interpreted narrowly and the public body must separate exempt material from nonexempt and make nonexempt information available. Exempt information must be described with

particularity indicating how the information would interfere with law enforcement proceedings.

When analyzing claims of exemption under the FOIA, a trial court must make sure it receives a complete particularized justification for a denial of a request, or hold *in camera* hearings to determine whether this justification exists. The court may allow counsel for the requesting party to examine, *in camera*, under special agreement, the contested material.

**Easley v University of Michigan, 178 Mich App 723; 444 NW2d 820 (1989).**

A public body must have in its possession or control a copy of the requested document before it can be produced or before a court can order its production.

**Payne v Grand Rapids Police Chief, 178 Mich App 193; 443 NW2d 481 (1989).**

A record of a law enforcement investigation may be exempt from disclosure under the FOIA where disclosure would interfere with law enforcement proceedings. However, the agency must demonstrate how disclosure of particular records or kinds of records would amount to interference on the basis of facts and not merely conclusory statements that recite the language of the FOIA.

A court can consider allowing plaintiff's counsel to have access to contested records *in camera* under special agreement as a means to resolve a FOIA lawsuit.

**Booth Newspapers, Inc v Kent County Treasurer, 175 Mich App 523; 438 NW2d 317 (1989).**

Tax records indicating the monthly or quarterly tax payments made by individual hotels and motels under a county hotel/motel tax do not fall within the FOIA's privacy exemption.

**Hagen v Dep't of Education, 431 Mich 118; 427 NW2d 879 (1988).**

The decisions of the State Tenure Commission are matters of public record. When a private hearing is requested by a teacher as provided under the Teacher Tenure Act, the decision may be withheld during the

administrative stage of the teacher's appeal. Once a final administrative decision is reached, the decision may not be withheld from disclosure.

**Oakland Press v Pontiac Stadium Building Authority, 173 Mich App 41; 433 NW2d 317 (1988).**

The release of names and addresses of licensees doing business with a public body is not an unwarranted invasion of privacy.

**Haskins v Oronoko Twp Supervisor, 172 Mich App 73; 431 NW2d 210 (1988).**

A trial court complies with the holding in *The Evening News Ass'n v City of Troy*, 417 Mich 481; 339 NW2d 421 (1983), where it conducts an *in camera* inspection of the records sought and determines that certain records are exempt from disclosure under narrowly drawn statutory exemptions designed to protect the identity of confidential informants.

**Kubick v Child & Family Services of Michigan, 171 Mich App 304; 429 NW2d 881 (1988).**

While there is no bright-line rule to determine what constitutes "primarily funded" to determine if a body is a "public body" as defined at section 2(d) of the FOIA, a private nonprofit corporation which receives less than half of its funding from government sources is not a public body which is primarily funded by or through state or local authority. Accordingly, such corporation is not subject to the requirements of the FOIA regarding the disclosure of information by public bodies.

**Kearney v Dep't of Mental Health, 168 Mich App 406; 425 NW2d 161 (1988).**

The FOIA exempts from disclosure records exempted from disclosure by other statutory authority. Mental Health treatment records are exempt under the Mental Health Code. However, treatment records may be disclosed where the holder of the record and the patient consent.

Persons requesting records under the FOIA are not entitled to free copies of the records. The holder of a public record may charge a fee for providing copies. There is, however, a waiver of the first \$20.00 for those who, by affidavit, can show an inability to pay because of indigency.

**State Employees Ass'n v Dep't of Management & Budget, 428 Mich 104; 404 NW2d 606 (1987).**

The disclosure of the home addresses of state employees to a recognized employee organization does not constitute a clearly unwarranted invasion of privacy.

**Residential Ratepayer Consortium v Public Service Commission, 168 Mich App 476; 425 NW2d 98 (1987).**

An administrative agency does not waive its defenses in a circuit court action to compel disclosure of documents under the FOIA because they were not raised at the administrative level.

**Detroit Free Press, Inc v Oakland County Sheriff, 164 Mich App 656; 418 NW2d 124 (1987).**

Booking photographs of persons arrested, charged with felonies, and awaiting trial are not protected from release as an unwarranted invasion of personal privacy.

**Mithrandir v Dep't of Corrections, 164 Mich App 143; 416 NW2d 352 (1987).**

Because of the special circumstances surrounding prison security and the confinement of prisoners, the Department of Corrections may set limits on a prisoner's right to examine nonexempt records.

**Walloon Lake Water System, Inc v Melrose Twp, 163 Mich App 726; 415 NW2d 292 (1987).**

A public body does not escape liability under the FOIA merely because a capricious act on its part rendered the lawsuit moot. This is particularly true when actions of the public body include direct violation of the FOIA, i.e., not giving a written explanation of the refusal as required and willfully disposing of the material knowing that a suit is pending under the FOIA for disclosure.

**Laracey v Financial Institutions Bureau, 163 Mich App 437; 414 NW2d 909 (1987).**

Attorney who filed pro se action is not entitled to recover attorney fees in a FOIA lawsuit.

**DeMaria Building Co, Inc v Dep't of Management & Budget, 159 Mich App 729; 407 NW2d 72 (1987).**

The exemption found in 13(1)(m) of the FOIA, for communications and notes within a public body or between public bodies, does not apply to an outside consultant's report to a public body.

**In re Buchanan, 152 Mich App 706; 394 NW2d 78 (1986).**

The common-law right of access to court records is not without limitation.

**Health Central v Comm'r of Insurance, 152 Mich App 336; 393 NW2d 625 (1986).**

HMOs have no standing to raise common-law right of privacy claims. Such claims can only be asserted by individuals whose privacy has been invaded. The right of privacy does not protect artificial entities.

**Curry v Jackson Circuit Court, 151 Mich App 754; 391 NW2d 476 (1986).**

The term "resides" as used in the FOIA, when applied to a prisoner, refers to the prisoner's intended domicile. Such a place may be the county where the prisoner last lived before being sent to prison or the county where the prison is located. Factors such as the possibility of parole and how the prisoner has ordered his or her personal business transactions will be considered relevant to corroboration of a prisoner's stated intention relative to domicile.

**Milford v Gilb, 148 Mich App 778; 384 NW2d 786 (1985).**

Under the FOIA, a public body may exempt from disclosure 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. The public body bears the burden of proof that a statutory exception applies to the item requested.

**Paprocki v Jackson County Clerk, 142 Mich App 785; 371 NW2d 450 (1985).**

Under 10(1) of the FOIA, the term "resides," when applied to a prisoner, refers to the place where the prisoner last lived before being sent to prison; "resides" must be interpreted to mean a person's legal residence or domicile at the time of his or her incarceration.

**Cashel v Regents of the University of Michigan, 141 Mich App 541; 367 NW2d 841 (1985).**

Where a person seeking to inspect records will take more than two weeks to complete inspection, he or she may be assessed labor costs incurred by a public body to supervise his or her inspection.

**Soave v Michigan Dep't of Education, 139 Mich App 99; 360 NW2d 194 (1984).**

Because federal agency regulations have the force and effect of federal statutory law, a state agency may properly withhold a record under the FOIA, 13(1)(d), if that record is exempt from disclosure under a federal agency regulation.

**Capitol Information Ass'n v Ann Arbor Police Dep't, 138 Mich App 655; 360 NW2d 262 (1984).**

Plaintiff's request, seeking "all correspondence" between local police department and "all federal law enforcement/investigative" agencies, was "absurdly overboard" and failed to sufficiently identify specific records as required by the FOIA, 3(1).

**Hoffman v Bay City School District, 137 Mich App 333; 357 NW2d 686 (1984).**

Where an attorney conducted an investigation into the business and finance practices of a school district and orally reported his or her opinion regarding the investigation to the school board but did not share the actual documents, the investigative file itself is not a public record of the board.

**Mullin v Detroit Police Dep't, 133 Mich App 46; 348 NW2d 708 (1984).**

Defendant properly exempted a computer tape containing personal information on persons involved in traffic accidents. Disclosure of the tape would have been a clearly unwarranted invasion of privacy.

**Evening News Ass'n v City of Troy; 417 Mich 481; 339 NW2d 421 (1983).**

A general claim that records are involved in an ongoing criminal investigation and that their disclosure would "interfere with law enforcement proceedings" is not sufficient to sustain an exemption under the FOIA, section 13(1)(b). A public body must indicate factually and in detail how a

particular document or category of documents satisfies the exemption; mere conclusory allegations are not sufficient.

**Dawkins v Dep't of Civil Service, 130 Mich App 669; 344 NW2d 43 (1983).**

If a plaintiff in a FOIA case prevails only in part, she may be awarded either all of her court costs and attorney fees or only that portion fairly allocable to the successful portion of her case. The fact that the defendant's refusal to disclose the records was made in good faith and was not arbitrary or capricious, has no bearing whatever on the plaintiff's right to recover these costs.

**Bechtel Power Corp v Dep't of Treasury, 128 Mich App 324; 340 NW2d 297 (1983).**

Tax information may be protected against disclosure under 13(1)(a) and 13(1)(d) of the FOIA.

**Pennington v Washtenaw County Sheriff, 125 Mich App 556; 336 NW2d 828 (1983).**

Failure to respond to a request is treated as a final decision to deny the request. A plaintiff need only make a showing in circuit court that the request was made and denied. The burden is on the defendant to show a viable defense. Nondisclosure based upon the privacy exemption of 13(1)(b)(iii) is limited to intimate details of a highly personal nature.

**Perlongo v Iron River Cooperative TV, 122 Mich App 433; 332 NW2d 502 (1983).**

A private non-stock, non-profit cable television corporation is not a "public body" for purposes of either the Open Meetings Act or the FOIA, even though it is licensed, franchised, or otherwise regulated by the government.

**Tobin v Michigan Civil Service Comm'n, 416 Mich 661; 331 NW2d 184 (1982).**

The FOIA does not compel a public body to conceal information at the insistence of one who opposes its release.



**Kestenbaum v Michigan State University, 414 Mich 510; 327 NW2d 783 (1982).**

An equally divided Supreme Court affirmed the lower court in holding that a list of names and addresses of students on a computer tape would appear to be a public record, but the nature of the information is personal and falls within an enumerated exception. Public disclosure of the tape would constitute a clearly unwarranted invasion of a person's privacy.

**Ballard v Dep't of Corrections, 122 Mich App 123; 332 NW2d 435 (1982).**

A film made by the Department of Corrections (DOC) showing a prisoner being forcibly removed from his or her prison cell is a public record and must be disclosed. Exemption asserted by the DOC did not outweigh the public interest in disclosure.

**International Union, UPGWA v Dep't of State Police, 118 Mich App 292; 324 NW2d 611 (1982), aff'd by equally divided court, 422 Mich 432 (1985).**

The exemption of a list of names and home addresses of private security guards from disclosure to a union seeking that list for collective bargaining purposes is not justified. The public purpose of collective bargaining outweighs the employees' interest in the privacy of this information. However, the union is ordered not to engage in further disclosure of the list for other unrelated purposes.

**Cashel v Smith, 117 Mich App 405; 324 NW2d 336 (1982).**

Depositions may sometimes be appropriate in FOIA cases, but they must be justified. The Legislature intended that the flow of information from public bodies and persons should not be impeded by long court process.

**Palladium Publishing Co v River Valley School District, 115 Mich App 490; 321 NW2d 705 (1982).**

The name of a student suspended by the action of a board of education will appear in the meeting minutes and is not information exempt from disclosure under the FOIA.

**Ridenour v Dearborn Board of Education, 111 Mich App 798; 314 NW2d 760 (1981).**

Public disclosure of performance evaluation of school administrators is not an intrusion of privacy as defined by the FOIA because people have a strong interest in public education and because taxpayers are increasingly holding administrators accountable for expenditures of tax money.

**Local 79, Service Employees Intern'l Union v Lapeer County General Hospital, 111 Mich App 441; 314 NW2d 648 (1981).**

The proper forum in which to seek relief from a violation of the FOIA is the circuit court and not the Michigan Employment Relations Commission, notwithstanding labor-related issues.

**Schinzel v Wilkerson, 110 Mich App 600; 313 NW2d 167 (1981).**

A plaintiff appearing in propria persona who prevails in an action commenced pursuant to the FOIA is entitled to an award of his or her actual expenditures but is not entitled to an award of attorney fees.

**Blue Cross/Blue Shield v Insurance Bureau, 104 Mich App 113; 304 NW2d 499 (1981).**

Information may be revealed under the FOIA despite claim of exemption. A decision to deny disclosure of exempt records is committed to discretion of agency and should not be disturbed unless abuse of discretion is found. Trade secret exemption does not apply to information required by law or as a condition of receiving a government contract, license, or benefit.

**Jordan v Martimucci, 101 Mich App 212; 300 NW2d 325 (1980).**

A plaintiff who brings an action under the FOIA for punitive damages for delay in disclosure of requested information must demonstrate that he or she has received the requested information as a result of a court-ordered disclosure and that the defendant acted arbitrarily and capriciously in failing to comply with the disclosure request in a timely manner.

**Nabkey v Kent Community Action Program, Inc, 99 Mich App 480; 298 NW2d 11 (1980).**

No award of attorney fees is possible where a prevailing plaintiff under the FOIA is not represented by an attorney.

**Bredemeier v Kentwood Board of Education, 95 Mich App 767; 291 NW2d 199 (1980).**

The FOIA does not require that information be recorded by a public body, but if it is, it must be disclosed. Attorney fees, costs, and disbursements are awarded to prevailing party under the FOIA. However, to prevail, a party must show at a minimum that bringing a court action was necessary and had a causative effect on delivery of the information. Lack of court-ordered disclosure precludes an award of punitive damages under the FOIA.

**Penokie v Michigan Technological University, 93 Mich App 650; 287 NW2d 304 (1979).**

Disclosure of the names and salaries of employees of the defendant university is not a “clearly unwarranted” invasion of personal privacy under the FOIA.

**Booth Newspapers, Inc v Regents of University of Michigan, 93 Mich App 100; 286 NW2d 55 (1979).**

The written opinion of a public body’s attorney is exempt from disclosure under the FOIA and may serve as a basis for closing a meeting under the Open Meetings Act.

**Williams v Martimucci, 88 Mich App 198; 276 NW2d 876 (1979).**

Action of the manager of general office services at a state prison in denying inmate’s request for copies of certain documents in inmate’s file because inmate did not pay the \$3 fee for the cost of processing the request was not arbitrary and capricious, since the manager checked the institutional indigency list for the month and found that the inmate’s name was not on it.

**Alpena Title, Inc v Alpena County, 84 Mich App 308; 269 NW2d 578 (1978).**

A county board of commissioners may charge a reasonable fee for access to and the copying of county tract index information in accordance with the statute regarding fees for the inspection of such records.

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## NOTES