

**Agenda for ICRC Meeting
Thursday, 10/1**

1. Call to Order 9:00a (4 mins)
2. Roll Call 9:04a (2 mins)
3. Adoption of the Agenda 9:06a (2 mins)
4. Review and Approval of minutes 9:08a (2 mins)
5. Public Comment 9:10-9:25a (15 mins)
6. Old Business 9:25-11:30a
 - a. MDOS update on administrative items from last Friday 9:25-9:30a (5 mins)
 - i. Email addresses, phones, compensation
 - ii. Scheduling webinars
 - iii. Requests and correspondence for commission
 - iv. Job postings
 - b. OMA/FOIA Presentation from Thomas Quasarano, AG Office 9:30a-10:15a (45 mins)
 - i. 20 minute presentation
 - ii. 25 minute Q & A

5 minute break 10:15a-10:20a (5 min)

 - c. Subcommittees 10:20-11:20a (40 mins)
 - i. Form subcommittee to review executive director position?
 - d. Thank you notes 11:20-11:30a (10 mins)

5 minute break 11:30a-11:35a (5 min)
7. New Business 11:35- 12:30p
 - a. Code of Conduct 11:35-12:00p (25 mins)
 - i. Edits/additions to the draft code of conduct provided by MDOS?
 - ii. Approve code of conduct
 - b. Communications Director Position 12:00 – 12:25p (25 mins)
 - i. Review draft provided by MDOS, edit
 - ii. Approve
 - c. Final thoughts, next meeting agenda 12:25p-12:30pm (5mins)
 - i. Executive Director review
 - ii. Further rules, policies
8. Adjourn @12pm

THE OPEN MEETINGS ACT (OMA),
MCL 15.261 et seq: AN OVERVIEW

Prepared by Thomas Quasarano, Assistant Attorney General, State Operations Division (517) 335-7573, July 2020.

As an overview, this document does not discuss every section and subsection of the OMA. It is intended to be used as a quick reference. The OMA should be read and reviewed in full. Any comments herein are given at the division level and are not the opinion of the Attorney General.

Basic Intent: The OMA promotes governmental accountability and fosters openness in government to enhance responsible decision making by requiring certain meetings of certain public bodies to be open to the public. OMA Preamble.

Key Definitions: “‘Public body’ means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function . . .” “‘Meeting’ means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy . . .” “‘Decision’ means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.” MCL 15.262. In short, the OMA requires that *all decisions*¹ and *deliberations*² of a public

¹ In addition to the definition of *decision* in MCL 15.262, see <https://en.oxforddictionaries.com/> - *decision*: The action or process of deciding something or of resolving a question; a formal judgment.

² Where the Legislature has not defined the terms used in a statute, courts can consult dictionary definitions to determine their “ordinary and generally accepted meanings.” *People v Morey*, 461 Mich 325, 330 (1999); MCL 8.3a. See <https://en.oxforddictionaries.com/> - *deliberation*: Long and careful consideration; slow and careful movement or thought. Note that MCL 15.267 and MCL 15.268 permit deliberations in a closed session but any decisions must be made at an open meeting.

body shall be made at a meeting open to the public.³ MCL 15.263(2) and (3).

Public Notice Requirements: A meeting of a public body cannot be held unless public notice is given consistent with the OMA. MCL 15.264 and MCL 15.265.

Closed Sessions: The OMA allows a public body to meet in closed session but only for one or more of the permitted purposes specified in the OMA. A closed session must be conducted during the course of an open meeting and closed to the public only for the period of the closed session. MCL 15.267 and MCL 15.268.

ICRC: The Constitution states that “The commission shall conduct *all* of its business at open meetings.” Article IV, Section 6(10).

Question: Does this mean that the ICRC is not allowed to go into closed session?

Minutes: At a minimum, the minutes must show the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. MCL 15.269.

Enforcement and Penalties for Violation of the Act: “A decision made by a public body may be invalidated if the public body has not complied with the requirements of sections 3(1), (2), and (3) in making the decision or if failure to give notice in accordance with section 5 has interfered with substantial compliance with section 3(1), (2), and (3) and the court finds that the noncompliance or failure has impaired the rights of the public under this act.” MCL 15.270(2). Injunctive relief also is available. MCL 15.271(2). “A public official who intentionally violates this act is guilty of a misdemeanor [punishable by fines and imprisonment;]” and also may be “personally liable in a civil action for actual and exemplary damages . . .” MCL 15.272 and 15.273.

³ Though not a term of art in the OMA, the word *discussion* is popularly used to describe communications that take place at public body meetings. See <https://en.oxforddictionaries.com/> - *discussion*: The action or process of talking about something, typically to exchange ideas; a conversation about a certain topic. While *discussion*, as the word is commonly understood, occurs at meetings, to avoid misconstruction, it is recommended that the word not be used in place of *deliberation* and *decision*.



LETTER TO ACADEMIC PRESENTERS

October 1, 2020

Dear [NAME],

We, the Commissioners of Michigan's Independent Citizens Redistricting Commission, would like to extend to you our most sincere gratitude for taking time to meet with us during our first convening on September [17th or 18th].

As Commissioners, we are excited and humbled to be responsible for redistricting in our state. Our success depends on our ability to learn important information from experts like you.

We offer our thanks to you and your fellow panelists for taking the time to meet and engage with us. The presentation and material you offered to the Commission was clear, thoughtful, and exceptional in quality. You have done us, and the State of Michigan, a great service.

Your expertise in redistricting and election law was exceedingly valuable to each of us, and the wisdom shared will aid us tremendously as we embark upon our journey as Redistricting Commissioners. We also extend our appreciation for your generous offer to continue providing information and guidance to us on future occasions, should we need it.

Thank you again for all your efforts. We look forward to future meetings and conversations.

With gratitude,

The Michigan Independent Citizens Redistricting Commission



LETTER TO CALIFORNIA AND ARIZONA COMMISSIONERS

October 1, 2020

Dear [NAME],

I hope you and yours are well.

We, the Commissioners of Michigan's Independent Citizens Redistricting Commission, would like to extend to you our most sincere gratitude for taking time to meet with us during our first convening on September 17th.

As Commissioners, we are excited and humbled to be responsible for redistricting in our state. Our success depends on our ability to learn important information from experts like you.

We offer our thanks to you and your fellow panelists for taking the time to meet and engage with us. The presentation and material you offered to us was clear, thoughtful, and exceptional in quality. You have done us, and the state of Michigan, a great service.

Sharing your experiences and lessons learned as a former commissioner in [California/Arizona] provided us with key insights on what to expect in our new roles, both personally and professionally. This insight was exceedingly valuable to each of us, and the wisdom shared will aid us tremendously as we embark upon our journey as Redistricting Commissioners. We also extend our appreciation for your generous offer to continue providing information and guidance to us on future occasions, should we need it.

Thank you again for all your efforts. We look forward to future meetings and conversations.

With gratitude,

The Michigan Independent Citizens Redistricting Commission

Draft Code of Conduct (Appendix 4 on pg. 36 of Orientation materials)

The draft code of conduct below is meant as a reference and starting point for the Commission to consider as you begin to formulate your next steps, procedures and policies.

Sections “D” and “K” are drawn directly from the California CRC [Code of Conduct](#).

- A. Commissioners shall perform their duties in a manner that is impartial and reinforces public confidence in the integrity of the redistricting process.
- B. Commissioners shall demonstrate honesty, integrity, and professionalism in their duties.
- C. Commissioners shall conduct themselves in a manner which reflects positively on the Commission and shall put the responsibilities and integrity of the Commission above personal or political gain.
- D. Commissioners shall not support or oppose specific ballot measures and/or legislative bills prior to November 1, 2021. Lobbying under the IRS definition is not permitted.
- E. Commissioners shall actively foster an environment of thoughtful and purposeful bi-partisan collegiality at all times.
- F. Commissioners shall be respectful, tolerant and impartial towards their colleagues, staff, fellow governmental agency partners and the public.
- G. Commissioners shall uphold and abide by the Michigan Constitution, the Commissioner Code of Conduct and all rules and regulations set forth or enacted by the Commission.
- H. Commissioners shall refuse to engage in or sanction activities for personal gain at the expense of the Commission or in violation of government code or the rules and procedures enacted by the Commission.
- I. Commissioners shall conduct its public hearings in a manner that invites wide public participation throughout the state.
- J. Commissioners shall maintain transparency in process and procedure so as to instill public confidence in the Commission and redistricting process.
- K. Commissioners shall actively seek bipartisan and non-partisan representation in their presentations and demonstrations at Commission meetings, public hearings or third-party speaking engagements.

DRAFT Communications and Outreach Director Job Posting Michigan Independent Citizens Redistricting Commission

Date Posted: Monday, October 5, 2020

Applications Due: Monday, October 26, 2020 no later than 5:00pm.

Background:

Every 10 years following the U.S. Census, district lines for political offices must be redrawn in states across the country to accurately reflect their population. In Michigan, a randomly selected commission of citizens is responsible for drawing U.S. Congressional and Michigan State House and Senate district lines. Voters amended the state constitution in the November 2018 general election to make citizens — not legislators or special interests — responsible for drawing district lines (called “redistricting”). The commission is composed of 13 randomly selected Michigan registered voters: four who affiliate with the Democratic Party, four who affiliate with the Republican Party, and five who do not affiliate with either major political party.

In September 2020, the randomly-selected Commission convened for the first time and voted to proceed with their first hire for an Communications Director of the Commission. The Communications Director will assist the Commission in all of their duties as they embark on a new process involving new redistricting criteria and requiring transparency and public engagement throughout the map drawing process. Final maps must be completed and approved by November 1, 2021.

General Position Description and Responsibilities:

At the direction of the Commission and with guidance and oversight from the Executive Director and legal counsel, the Communications Director is responsible for serving as the director and manager of Commission communications with the media and the public at large.

This individual will be an additional public servant and face for the citizen redistricting process, and accordingly must exhibit the highest standards of excellence, integrity, and nonpartisan commitment. As the staff spokesperson for the Commission, the Communications Director will support the work of the Commission and help facilitate meaningful and transparent engagement with the media and the public. The ideal candidate is a strong spokesperson and leader with excellent interpersonal and writing skills, public speaking experience, and substantial knowledge of media and politics in Michigan.

The responsibilities of the Communications Director will include the following:

- Develop, create and manage a public information campaign and program to meaningfully engage various audiences in the work of the Commission, including the media and general public.
- Consult and advise the Commission and Executive Director on potential media issues and topic areas.
- Draft and edit press releases, public-facing emails, and other Commission materials for distribution to groups, email lists, and the press corps.
- Schedule and coordinate media interviews.

- Create messaging guidance and content direction for the Commission’s website, social media accounts, public meetings and public educational materials.
- Facilitate positive community and media relations with the public on behalf of the Commission.
- Field and respond to media inquiries, and build positive interactions and relations with members of the media.
- Create and implement an external communications strategy in coordination with other Commission staff.

Qualifications:

The Communications Director must demonstrate capacity for high-level analysis and proactive strategy for communications issues associated with the Commission and the redistricting process more broadly.

These qualifications include:

- Minimum 5 years professional experience in communications or public relations.
- Ability to communicate effectively with various stakeholders and constituencies, including strong written and verbal communication skills.
- Experience drafting and preparing press releases, talking points and briefings.
- Demonstrated ability and experience in proactive media planning and message development to diverse set of stakeholders and constituencies.

Desired Skills and Abilities:

It is expected that the Communications Director will be highly competent, organized and experienced professional. This skillset includes:

- Ability to manage complex projects and issues with overlapping, competing, or evolving priorities.
- Experience working with politically- and socially-controversial topics and environments.
- Experience working with constituency-based media sources for diverse racial and ethnic communities and stakeholders.
- Experience managing staff and/or media consultants or contractors on designated public information or media campaigns.
- Experience working with a wide range of stakeholders, media members and constituency groups with positive professionalism.
- Familiarity with Open Meetings Act meetings and requirements.

Additional information:

This position is a limited-term hire of 1.5-2 years. After the completion of the mapping process by the year 2022, the Commission will evaluate whether to renew a contract for Communications Director or if the responsibilities of the role are no longer required.

Article IV Sec. 6 (4) of the Michigan Constitution states, “The commission shall have procurement and contracting authority and may hire staff and consultants for the purposes of this section, including legal representation.”

Accordingly, the Michigan Department of State will collect applications for presentation to the Michigan Independent Citizens Redistricting Commission. The Commission is fully autonomous and will review, interview, and select the Communications Director. The Department of State will not review, score, or select applicants. Employees of the Commission will serve at the pleasure of the Commission.

Finally, Article IV Sec. 6 (11) of the Constitution states, “The commission, its members, staff, attorneys, and consultants shall not discuss redistricting matters with members of the public outside of an open meeting of the commission, except that a commissioner may communicate about redistricting matters with members of the public to gain information relevant to the performance of his or her duties if such communication occurs (a) in writing or (b) at a previously publicly noticed forum or town hall open to the general public.” Individuals interested in serving as the Communications Director should be aware of compliance with this guidance.

Work Location:

Position location flexible in the immediate term due to the uncertainty presented by the COVID-19 pandemic. Frequent travel will likely be required.

Salary range: Approximately \$97,645 - \$132,749

Contact Information:

All inquiries should be sent to Michigan Department of State. To apply, please email your resume and cover letter to Redistricting@Michigan.gov with the subject line “Communications Director Application.”

Equal Opportunity Statement

The Commission will provide equal employment opportunity for all persons regardless of race, religion, color, sex, sexual orientation, height, weight, marital status, partisan considerations, national origin, age, genetic information or disability that is unrelated to the person’s ability to perform the job. The Commission is committed to promoting equal employment opportunity by employing and advancing persons based on merit, ability, and potential for development.

THE FREEDOM OF INFORMATION ACT (FOIA): A SUMMARY

Prepared by Thomas Quasarano, Assistant Attorney General, State Operations Division, (517) 335-7573, July 2020.

As a summary, this document does not include every subsection of the FOIA. It is intended to be used as a quick reference. The FOIA should be read and reviewed in full. Use of this document is not a substitute for consulting with your Department's FOIA Coordinator. Emphasis has been added throughout this summary. Any comments herein are given at the division level and are not the opinion of the Attorney General.

Section 1, MCL 15.231 - Core purpose.

“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.*” MCL 15.231(2).

Section 2, MCL 15.232 - Some definitions.

“Public body’ means . . . (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, intercounty, intercity, 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.” MCL 15.232(h).

“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 . . . 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 the act.” MCL 15.232(i).

ICRC: The Constitution states that “The commission shall receive for consideration written submission of proposed redistricting plans and any supporting materials, including underlying data, from any member of the

public. These written submissions are public records.” Article IV, Section 6(8).

“‘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.*” MCL 15.232(l).

Section 3, MCL 15.233 - The requester’s right of access.

“[U]pon 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 request from a person, other than an individual who qualifies as indigent under section 4(2)(a), *must include the requesting person’s complete name, address, and contact information*, and, if the request is made by a person other than an individual, the complete name, address, and contact information of the person's agent who is an individual. An address must be written in compliance with United States Postal Service addressing standards. Contact information must include a valid telephone number or electronic mail address. A person has a *right to subscribe to future issuances* of public records that are created, issued, or disseminated on a regular basis . . . An employee of a public body who receives a request for a public record shall promptly forward that request to the [FOIA] coordinator.” MCL 15.233(1).

“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.” MCL 15.233(3).

“This act *does not require* a public body to make a compilation, summary, or report of information [or] to create a new public record.” MCL 15.233(4) and (5).

Section 4, MCL 15.234 – Fees.

“A public body *may charge a fee* for a public record search, for the necessary copying of a public record for inspection, or for providing a copy of a public record if it has established, makes publicly available, and follows procedures and guidelines to implement this section . . . 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 . . .” MCL 15.234(1).

“[I]f the public body estimates or charges a fee in accordance with this act . . . (a) . . . The public body *shall not charge more* than the hourly wage of its lowest-paid employee capable of searching for, locating, and examining the public records in the particular instance regardless of whether that person is available or who actually performs the labor . . . (b) . . . A public body *shall not charge for* labor directly associated with redaction under section 14 if it knows or has reason to know that it previously redacted the public record in question and the redacted version is still in the public body’s possession.” MCL 15.234(1).

“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 by . . . (a) An individual who is entitled to information under this act and who submits an affidavit stating that the individual is indigent and receiving specific public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency . . . (b) A nonprofit organization formally designated by the state to carry out activities under subtitle C of the developmental disabilities assistance and bill of rights act of 2000 Public Law 106-402 . . .” MCL 15.234(2).

“A fee . . . shall not be charged for the cost of 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 because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs.” MCL 15.234(3).

A public body *shall establish procedures and guidelines* to implement this act and shall create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests . . . A public body’s procedures and guidelines shall include the use of a standard form for *detailed itemization* of any fee amount . . .” MCL 15.234(4).

“If the FOIA coordinator knows or has reason to know that all or a portion of the requested information is *available on its website*, the public body shall notify the

requestor in its written response that all or a portion of the requested information is available on its website. The written response, to the degree practicable in the specific instance, shall include a specific webpage address where the requested information is available.” MCL 15.234(5).

“[T]he public body *may require a good-faith deposit* from the person requesting information before providing the public records to the requestor if the entire fee estimate or charge authorized under this section exceeds \$50.00, based on a good-faith calculation of the total fee . . . the deposit shall not exceed 1/2 of the total estimated fee . . . [t]he response *shall also contain a best efforts estimate* by the public body regarding the time frame it will take the public body to comply with the law in providing the public records to the requestor.” MCL 15.234(8).

“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.” MCL 15.234(10).

“If a deposit that is required . . . is not received by the public body within 45 days from receipt by the requesting person of the notice that a deposit is required, and if the requesting person has not filed an appeal of the deposit amount pursuant to section 10a, the request shall be considered abandoned by the requesting person and the public body is no longer required to fulfill the request. Notice of a deposit requirement . . . is considered received 3 days after it is sent. Notice of a deposit requirement . . . must include notice of the date by which the deposit must be received, which date is 48 days after the date the notice is sent.” MCL 15.234(14)

Section 5, MCL 15.235 - The public body’s response to a 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 . . .” MCL 15.235(2).

“*Failure to respond* to a request . . . constitutes a public body’s final determination to deny the request if either of the following applies: (a) The failure was willful and intentional. (b) The written request included language that conveyed a request for information within the first 250 words . . . or specifically included the words, characters, or abbreviations for ‘freedom of information’, ‘information’, ‘FOIA’, ‘copy’ . . .” MCL 15.235(3).

“A written notice denying a request for a public record in whole or in part . . . *must 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 . . . (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 . . . (c) A description of a public record or information on a public record that is separated or deleted . . . (d) A full explanation of the requesting person’s [remedial rights.]” MCL 15.235(5).

Section 6, MCL 15.236 - The FOIA coordinator.

“A public body . . . 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* . . . An FOIA coordinator may designate another individual to act on his or her behalf . . .” MCL 15.236(1) and (3).

Section 10, MCL 15.240 - Remedies as to disclosure denials.

“If a public body makes a final determination to deny all or a portion of a request, *the requesting person may* . . . (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 a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, 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.” MCL 15.240(1).

“Within 10 business days after receiving a written appeal . . . the head of a public body shall do 1 of the following: (a) Reverse the disclosure denial. (b) Issue a written notice . . . upholding the disclosure denial. (c) Reverse the disclosure denial in part and issue a written notice . . . 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 . . .” MCL 15.240(2).

“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.” MCL 15.240(6).

“If the court determines . . . 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 order the public body to pay a civil fine* of \$1,000.00, which

shall be deposited into the general fund of the state treasury. The court *shall award*, in addition to any actual or compensatory damages, punitive *damages* in the amount of \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record.” MCL 15.240(7)

Section 10a and b, MCL 15.240(a) and (b) - Remedies as to fees charged; remedies as to willful violation of the act.

“If a public body requires a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4, *the requesting person may . . .* (a) If the public body provides for fee appeals . . . submit to the head of the public body a written appeal for a fee reduction that specifically states the word ‘appeal’ and identifies how the required fee exceeds the amount permitted under the public body’s available procedures and guidelines or section 4. (b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, in the court of claims, for a fee reduction . . . within 45 days after receiving the notice of the required fee or a determination of an appeal to the head of a public body. If a civil action is commenced against the public body under this subdivision, the public body is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.” MCL 15.240a(1).

“Within 10 business days after receiving a written appeal . . . the head of a public body shall do 1 of the following: (a) Waive the fee. (b) Reduce the fee and issue a written determination . . . indicating the specific basis under section 4 that supports the remaining fee. The determination shall include a certification . . . that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and section 4. (c) Uphold the fee and issue a written determination . . . indicating the specific basis under section 4 that supports the required fee. The determination shall include a certification . . . that the statements in the determination are accurate and that the fee amount complies with the public body’s publicly available procedures and guidelines and section 4. (d) Issue a notice extending for not more than 10 business days the period during which the head of the public body must respond to the written appeal . . .” MCL 15.240a(2).

“If the requesting person prevails in an action commenced under this section by receiving a reduction of 50% or more of the total fee, the *court may*, in its discretion, award all or an appropriate portion of reasonable attorneys’ fees, costs, and disbursements.” MCL 15.240a(6).

“If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by charging an excessive fee, the court *shall order* the public body to pay a civil fine of \$500.00, which shall be

deposited in the general fund of the state treasury. The court *may also award*, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the fee reduction.” MCL 15.240a(7).

“If the court determines, in an action commenced under this section, that a public body *willfully and intentionally* failed to comply with this act . . . the court *shall order* the public body . . . to pay a civil fine of not less than \$2,500.00 or more than \$7,500.00 for each occurrence . . .” MCL 15.240b.

Section 11, MCL 15.241 - Matters to be published and made available.

“A state agency *shall publish and make publicly available* . . . (a) Final orders or decisions in contested cases and the records on which they were made. (b) Promulgated rules. (c) Other written statements that implement or interpret laws, rules, or policy . . .” MCL 15.241(1).

Section 13(1)(a) through (aa), MCL 15.243(1)(a) through (aa) - Exemptions from disclosure.

A public body *may exempt* certain information:

Records fall under four general categories of exemption:

- Records of a personal nature, the release of which would constitute a clearly unwarranted invasion of an individual’s privacy.
- Records, the release of which would impair the safety or security of a public institution or the safe and efficient operation of a police or military authority.
- Records exempted on the basis of public policy.
- Records exempted by other statutes.

Exemptions for records of a personal nature:

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

(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.

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

Exemptions for records related to security:

- (c) Records related to maintaining the physical security of custodial or penal institutions.
- (n) Records of law enforcement communication codes or plans of law enforcement deployment.
- (s) Other law enforcement agency records.
- (u) Records of security measures, security plans, and security codes.
- (y) Records related to the ongoing security measures for responding to a violation of the Michigan Anti-Terrorism Act.
- (z) Information that would identify or provide a means of identifying a person that may, as a result of disclosure of the information, become a victim of a cybersecurity incident or that would disclose a person's cybersecurity plans or cybersecurity-related practices, procedures, methods, results, organizational information system infrastructure, hardware, or software.
- (aa) Research data on road and attendant infrastructure collected, measured, recorded, processed, or disseminated by a public agency or private entity, or information about software or hardware created or used by the private entity for such purposes.

Exemptions for records related to public policy:

- (b) Investigating records compiled for law enforcement purposes.
- (f) Trade secrets or commercial or financial information.
- (g) Information or records subject to the attorney-client privilege.
- (h) Information or records subject to the physician-patient privilege or other privilege recognized by statute or court rule.
- (i) A bid or proposal to enter into a contract or agreement.
- (j) Appraisals of real property acquired by the public body.

(k) Test questions and answers, and other examination instruments used to administer a license, public employment, or academic examination.

(m) Communications within a public body or between public bodies of an advisory nature.

(v) Records relating to a civil action between the requester and the public body.

Exemptions for records protected under other statutes, state or federal, and under federal regulations.¹

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

(e) A record, which is received by a public body from another public body that considers the record as otherwise legally exempt from public disclosure, may remain exempt when the considerations originally giving rise to the exempt nature of the public record remain applicable.

Section 13(2), MCL 15.243(2) Records regulated by the Family Educational Rights and Privacy Act.

Other exemptions fitting into one or more general categories.

(o) Information that would reveal the exact location of archeological sites.

(p) Testing data re: bidders' products meeting specifications for purchase.

(q) Academic transcripts of an institution of higher education.

(r) Records of a campaign committee.

(t) Records re: investigations by the Michigan Department of Licensing and Regulatory Affairs under the Public Health Code.

(x) Records re: application for president of an institution of higher education.

¹ This is to ensure the confidentiality of records exempted from public disclosure under other Michigan statutes, as well as by federal statutes and regulations. The other statutes are too numerous to include in this summary.

Exemptions with conditions:

- a) *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 . . .
- (f) Trade secrets, or commercial or financial information voluntarily provided to an agency for use in developing governmental policy *if* . . .

Exemptions based on a balancing test:

The balanced interests: “Unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.”

- (c) Records of custodial or penal institutions. Records related to maintaining the physical security of custodial or penal institutions.
- (k) Test questions and answers, and other examination instruments used to administer a license, public employment, or academic examination.
- (m) Communications within a public body or between public bodies of an advisory nature.
- (n) Records of law enforcement communication codes or plans of law enforcement deployment.
- (s) Other law enforcement records.
- (y) Records related to the ongoing security measures for responding to a violation of the Michigan Anti-Terrorism Act.

Section 14, MCL 15.244 - A public body shall separate exempt and nonexempt material.

“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.” MCL 15.244(1).

“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.” MCL 15.244(2).