



Freedom of Information Act Guide  
How to Submit a FOIA Request to the MDOC  
And  
Other Relevant FOIA Information

(Rev. November 10, 2015, Office of Legal Affairs)  
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**DISCLAIMER:** This Guide on “How to Submit a FOIA Request to the Michigan Department of Corrections” (MDOC) is intended to be a reference guide only for the MDOC. It is not to be construed as legal advice and it is not intended to resolve every situation that may be encountered. If you are an MDOC employee, legal questions should be addressed to the Administrator of the Office of Legal Affairs. If you are the general public, legal questions should be addressed by your attorney and cases cited should be reviewed for accuracy. (Rev. July 1, 2015) For additional information, also see the MDOC’s policy 01.06.110 “Freedom of Information Act – Access to Department Public Records” which can be reviewed at [http://www.michigan.gov/corrections/0,1607,7-119-1441\\_44369---,00.html](http://www.michigan.gov/corrections/0,1607,7-119-1441_44369---,00.html).

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## FREEDOM OF INFORMATION ACT

**1. The Freedom of Information Act**, also referred to as FOIA (the Act), effective April 13, 1997, is 1976 PA 442 and may be found at MCL 15.231 - 15.246. The current statute can be obtained in full from the Michigan Legislative website at: <http://www.legislature.mi.gov/>. It can be found under the link of "Often Requested Laws," and can be found by common word search or MCL search. See:

[http://www.legislature.mi.gov/\(S\(xihhqsegtkjvfudfmpqm2fcn\)\)/documents/mcl/pdf/mcl-act-442-of-1976.pdf](http://www.legislature.mi.gov/(S(xihhqsegtkjvfudfmpqm2fcn))/documents/mcl/pdf/mcl-act-442-of-1976.pdf).

### **2. What does FOIA provide?**

**General Provision** – it is an act to provide for public access to certain public records of public bodies in Michigan. The basic intent of the FOIA is 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.<sup>1</sup> The people shall be informed so that they may fully participate in the democratic process.<sup>2</sup>

The Supreme Court in *Herald Co*<sup>3</sup>, stated:

The FOIA starts from a basic premise—the disclosure of public documents is the cornerstone of responsible government. The FOIA provides, "It is the public policy of this state that all persons . . . 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." MCL 15.231(2) (emphasis added). The FOIA also recognizes that the public has a strong interest in ensuring that it receives information to make sure that those individuals in government who are entrusted with the operation of public institutions do so in a responsible manner. To this end, the FOIA provides, "The people shall be informed so that they may fully participate in the democratic process." *Id.* This Court has consistently held that the FOIA is intended primarily as a prodisclosure statute. *Swickard v Wayne Co Medical Examiner*, 438 Mich 536, 544; 475 NW2d 304 (1991); see also *State Employees Ass'n v Dep't of Mgt & Budget*, 428 Mich 104, 109; 404 NW2d 606 (1987); *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 231-232; 507 NW2d 422 (1993). Accordingly, under the FOIA, unless expressly exempt, a public body must disclose a public record if provided with a written request that sufficiently describes the record. MCL 15.233(1). A person has a right to inspect, copy, or receive a copy of the requested record. *Id.* If a public body denies access to a public record, the public body has the burden to prove that its denial comports with the law. MCL 15.240(4).

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<sup>1</sup> *Proctor v White Lake Twp Police*, 248 Mich App 457; 639 NW2d 332 (2001), MCL 15.231(2).

<sup>2</sup> MCL 15.231(2).

<sup>3</sup> *Herald Co, Inc v Eastern Michigan Univ Bd of Regents*, 475 Mich 463; 719 NW2d 19 (2006).

### **3. Who is not entitled to full and complete information under FOIA?**

Those persons incarcerated in state or local correctional facilities. MCL 15.231(2). 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.<sup>4</sup>

### **4. What is a Public record?**

Public record is defined in Section 2(e) and:

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.<sup>5</sup>

There are two classes of Public records:

1. Those that are exempt from disclosure under Section 13.
2. All public records that are not exempt from disclosure under Section 13 and which are subject to disclosure under FOIA.

### **5. What is not a Public record?**

Public record does not include computer software. "Software" is defined as "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 a field name if disclosure of that field name does not violate a software license."<sup>6</sup> Other information that is not considered a public record includes, but is not limited to, disclosing state legislators who applied for concealed weapons permits,<sup>7</sup> names and addresses of registered handgun owners,<sup>8</sup> attorney work product.<sup>9</sup>

### **6. What is a Public body?**

A "public body" is broadly defined in section 2(d):

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

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<sup>4</sup> *Proctor v White Lake Twp Police*, 248 Mich App 457; 639 NW2d 332 (2001).

<sup>5</sup> MCL 15.232(e); *The Detroit News, Inc v Detroit*, 204 Mich App 720; 516 NW2d 151 (1994).

<sup>6</sup> MCL 15.232(2)(f); see also *Howell Education Association MEA/NEA v Howell Board of Education*, published opinion of the Court of Appeals, issued January 26, 2010 (Docket No 288977); 2010 Mich App LEXIS 143; 30 IER Cas (BNA) 594; 188 LRRM 2054.

<sup>7</sup> *Detroit Free Press v Dep't of State Police*, 243 Mich App 218; 622 NW2d 313 (2000).

<sup>8</sup> *Mager v Dep't of State Police*, 460 Mich 134; 595 NW2d 142 (1999).

<sup>9</sup> *Messenger v Ingham County Prosecutor*, 232 Mich App 633; 591 NW2d 393 (1998).

- (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.<sup>10</sup>

Only "public bodies" must comply with FOIA. The MDOC is a public body.

## **7. What is not a Public Body**

Public Bodies do not include:

- The Governor, Lieutenant Governor, Executive Office staff and employees
- The Judiciary, including the office of the county clerk and employees thereof when acting in the capacity of clerk to the circuit court
- Individual Legislators<sup>11</sup>

The FOIA generally does not apply to private, voluntary unincorporated associations or private, nonprofit corporations.<sup>12</sup>

## **8. How many Public Bodies are there in Michigan?**

There are in excess of 10,000 Public Bodies in Michigan.

## **9. What records are subject to disclosure?**

All records except those specifically cited as exceptions are covered by FOIA.<sup>13</sup> The records covered include e-mail, minutes of open meetings, officials' voting records, final orders or decisions in contested cases and the records on which they were made, and promulgated rules. Other written documents that implement or interpret laws, rules, or policies, including, but not limited to, guidelines, some 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. FOIA applies to any handwriting, typewriting, printing, photostating, photographing, photocopying and every other means of recording. It

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<sup>10</sup> MCL 15.232(d). See also OAG, 2001 - 2002, No 7087, p 45 (August 21, 2001); OAG, 1999 - 2000, No 7066, p 156 (November 7, 2000); OAG, 1997-1998, No 6942, p 40 (July 3, 1997); *Detroit News, Inc. v Policemen and Firemen Retirement Sys of the City of Detroit*, 252 Mich App 59; 651 NW2d 127 (2002); *Sclafani v Domestic Violence Escape*, 255 Mich App 260; 660 NW2d 97 (2003); *State Defender Union Employees v Legal Aid & Defender Ass'n of Detroit*, 230 Mich App 426; 584 NW2d 359 (1998); *Jackson v Eastern Michigan University*, 215 Mich App 240; 544 NW2d 737 (1996).

<sup>11</sup> MCL 15.232(d), OAG, 1985 - 1986, No 6390, p 375 (September 26, 1986).

<sup>12</sup> OAG, 1997-1998, No 6942, p 40 (July 3, 1997); OAG, 1985-1986, No 6386, p 369 (September 16, 1986); OAG, 1997-1998, No 6942, p 40 (July 3, 1997); OAG, 1989 - 1990, No 6563, P 27 (January 26, 1989); *Breighner v Michigan High School Athletic Ass'n, Inc*, 471 Mich 217; 683 NW2d 639 (2004); *Thomas v State Board of Law Examiners*, 210 Mich App 279; 533 NW2d 3 (1995); *Kubick v Child & Family Services of Michigan*, 171 Mich App 304; 429 NW2d 881 (1988); *Perlongo v Iron River Cooperative TV*, 122 Mich App 433; 332 NW2d 502 (1983).

<sup>13</sup> *Booth Newspapers, Inc v Kent County Treasurer*, 175 Mich App 523; 438 NW2d 317 (1989); *Hagen v Dep't of Education*, 431 Mich 118; 427 NW2d 879 (1988).

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.

#### **10. How to make a FOIA request.**

To access public records, a request must be made in writing and provided to the FOIA Coordinator of the public body. A written request means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.<sup>14</sup> A written request must describe a public record sufficiently to enable the public body to find the public record.<sup>15</sup> In other words, it must clearly describe what is wanted, including identifying material such as names, places, the time period covered and other documents describing the subject of the inquiry.

A person may ask to inspect, copy, or receive a copy of a public record.<sup>16</sup> A FOIA Coordinator may designate another individual to act on his or her behalf to accept requests for processing.<sup>17</sup>

#### **11. Who do I contact in the MDOC to make a FOIA request?**

There is no single office in state government that handles all FOIA requests and there is no standard form to submit. Each FOIA request must be made to the particular agency that has the records that you seek. For example, if you want to know about an investigation of motor vehicle defects, write to the Michigan Department of State. If you want information about a work-related accident at a nearby manufacturing plant, write to the Michigan Department of Licensing & Regulatory Affairs. You may have to do a little research to find the proper agency office to handle your FOIA request, but you will save time in the long run if you send your request directly to the most appropriate office. A list of state agencies can be obtained at: <http://www.michigan.gov/>.

#### **To submit a request to the Michigan Department of Corrections, mail your request to:**

MDOC FOIA Coordinator,  
P.O. Box 30003  
Lansing, MI 48909

Or

E-mail it to: [MDOC-OLAFOIA@michigan.gov](mailto:MDOC-OLAFOIA@michigan.gov)

Or

Fax it to: (517) 373-2558

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<sup>14</sup> MCL 15.232(i).

<sup>15</sup> MCL 15.233(1); *Herald Co v City of Bay City*, 463 Mich 111; 614 NW2d 873 (2000); *Kincaid v Dep't of Corrections*, 180 Mich App 176; 446 NW2d 604 (1989); *Capitol Information Ass'n v Ann Arbor Police Dep't*, 138 Mich App 655; 360 NW2d 262 (1984).

<sup>16</sup> MCL 15.233(1) and 15.235(1).

<sup>17</sup> MCL 15.236(3).

## **12. Who can make a FOIA Request?**

An individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity may make a FOIA request. 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 included among persons who may make requests.**<sup>18</sup>

## **13. What is a FOIA Coordinator?**

A FOIA Coordinator is either:

- (i) An individual who is a public body.
- (ii) An individual designated by a public body in accordance with section 6 of the Act to accept and process requests for public records under FOIA.<sup>19</sup>

## **14. What does a FOIA Coordinator do?**

A FOIA Coordinator is responsible for accepting and processing FOIA requests for the public body's public records under the Act and is responsible for approving a denial.<sup>20</sup>

## **15. Who can be a FOIA Coordinator?**

- 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.
- 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.
- For all other public bodies, the chief administrative officer of the respective public body is designated the public body's FOIA Coordinator.<sup>21</sup>

## **16. How does the MDOC process a FOIA request?**

The FOIA request must be immediately forwarded to the FOIA Coordinator. Not more than five business days after receiving a request, the public body must respond to a request for a public record by doing one of the following:

- Grant the request.
- Issue a written notice denying the request.
- Issue a written notice granting the request in part and denying the request in part.
- Issue a written notice extending the time, for not more than 10 business days, to answer.<sup>22</sup>

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<sup>18</sup> MCL 15.231(2) and 15.232(c).

<sup>19</sup> MCL 15.232(b).

<sup>20</sup> MCL 15.236(1).

<sup>21</sup> MCL 15.236.

<sup>22</sup> MCL 15.235(2); OAG, 1979 - 1980, No 5500, p 255 (July 23, 1979).

**17. How does the MDOC respond to a FOIA request?**

If a request for a record is granted or denied in full or in part, written notice must be provided to the requester not more than five business days after the public body receives the request or within 15 business days if an extension is taken. Failure to respond constitutes a denial.

If the MDOC does not respond to a written request in a timely manner, it shall reduce the charges for labor costs by 5% for each day the response is late with a maximum 50% reduction if the late response was willful and intentional or if the written request included language that conveyed a request for information within the first 250 words of the written document.

**18. Does the information have to be provided to the requestor within 5 business days?**

No, the information that is the subject of the request, if it exists, does not have to be provided to the requester within 5 business days. The public body must respond to the request for a public record within 5 business days after receiving the request, unless an extension is taken.<sup>23</sup>

**19. When is a FOIA request deemed received?**

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.<sup>24</sup> If a FOIA request is submitted via U.S. mail or is hand-delivered, it is considered received the day of receipt.

**20. What must the Response Notice from the MDOC contain?**

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 must contain:

- 1 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.
- 2 A certificate that the public record does not exist under the name given by the requestor 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.
- 3 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.

A full explanation of the requesting person's right to submit to the Director of the MDOC a written appeal and/or seek judicial review.<sup>25</sup> Sample notice language includes:

As to the denial of your FOIA request, the Department is obligated to inform you that under FOIA, MCL 15.240 and MCL 15.240a, you may do the following, as noted in #22 below:

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<sup>23</sup> MCL 15.235(2).

<sup>24</sup> MCL 15.235(1).

<sup>25</sup> MCL 15.235(5).

## 21. Appeals

1. **Appeal this decision** in writing to the Director of the MDOC and mail it to:

- Attention: Administrator, Office of Legal Affairs, MDOC – FOIA Appeals, P.O. Box 30003, Lansing, MI 48909.
- The writing must specifically state the word "appeal" and must identify the reason or reasons you believe the denial should be reversed. The Director or his/her designee must respond to your appeal within 10 business days of its receipt. Under unusual circumstances, the time for response to your appeal may be extended by no more than 10 business days.

1a. File a civil action in the Court of Claims within 180 days after the date of the final determination to deny the request.

2. A requestor may **appeal the FOIA fees** by submitting 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 policy/procedures to the Director.

2a. A requestor may commence a civil action in the Court of Claims for a fee reduction only after having gone through the Department's fee appeal process. The action must be filed within 45 days after receiving the final determination from the Director.

## 22. Fees for public records.

The MDOC may, but is not required to, charge a fee for the necessary copying of a public record for inspection for providing a copy of a public record to a requester.<sup>26</sup>

All FOIA requestors shall be charged 10 cents per page for each written document provided, plus, the actual cost of postage unless expedited shipping or insurance is stipulated by the requestor. The fee shall be limited to actual mailing costs and to the actual incremental cost of duplication or publication including labor, the cost of the search, examination, review, and the deletion and separation of exempt from non-exempt information. The actual cost of duplication shall be charged for copies of non-written documents, such as computer discs and non-paper physical media. If a portion of a document must be redacted and the document recopied prior to production, the requestor shall be charged only for the copy provided.

A fee may not be charged for the cost of search, review, examination, and the separation of exempt from non-exempt information unless failure to charge the fee would result in an unreasonably high cost to the Department. If assessed, the fee shall be charged at the hourly wage of the lowest-paid employee capable of searching for, locating and examining the public

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<sup>26</sup> MCL 15.234. See also OAG, 2001 - 2002, No 7083, p 32 (June 7, 2001); OAG, 1999 - 2000, No 7017, p 27 (May 13, 1999); OAG 1995 - 1996, No 6923, p 224 (October 23, 1996); OAG, 1979 - 1980, No 5500, p 255 (July 23, 1979); *Tallman v Cheboygan Area Schools*, 183 Mich App 123; 454 NW2d 171 (1990); *Kearney v Dep't of Mental Health*, 168 Mich App 406; 425 NW2d 161 (1988); *Alpena Title, Inc v Alpena County*, 84 Mich App 308; 269 NW2d 578 (1978).

records in the particular instance regardless of whether that person is available or who actually performs the labor. The hourly wage includes the cost of up to 50% of the base rate paid by the State to cover or partially the cost of fringe benefits. Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor. Labor costs are to be estimated and charged in increments of 15 minutes or more, with all partial time rounded down. Such fees are not to be charged without first contacting the Department's FOIA Coordinator or designee for approval and direction on how to proceed.

The Department may waive or reduce fees if the Department determines it is in the public interest to do so or if providing the requested documents primarily benefits the general public for reasons identified by the requestor. A fee that totals \$10.00 or less, including postage, shall be waived. Other fees shall be waived or reduced pursuant to this paragraph only with approval of the Department FOIA Coordinator or designee.

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.<sup>27</sup>

A requestor shall not be charged for the first \$20.00 of fees assessed per request, including any fees waived for either of the following:

(a) Upon submission of a current affidavit verifying that s/he is receiving public assistance or, if not receiving public assistance, sufficiently stating facts showing an inability to pay the cost due to indigency. If the requestor is eligible for a requested discount, the public body shall full note the discount on the detailed itemization. If the requestor is ineligible for the discount, the public body shall inform the requestor specifically of the reason for the ineligibility in the public body's written response. An individual is ineligible for this fee reduction if any of the following apply:

- The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. The MDOC may require a statement by the requestor in the affidavit that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.
- The requestor has previously received discounted copies of public records under this subsection from the MDOC twice during the calendar year.

(b) A nonprofit organization formally designated by the state to carry out activities and the protection and advocacy for individuals with mental illness if the requestor meets all of the following requirements:

- Is made directly on behalf of the organization or its clients.

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<sup>27</sup> MCL 15.234(1) through (3). See also OAG 1997 - 1998, 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. A public body may.

- Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, 1974 PA 258, MCL 330.1931.
- Is accompanied by documentation of its designation by the state, if requested by the public body.

A public body may require from the requester, at the time a request is made, a good faith deposit if the fee exceeds \$50.00. The deposit shall not exceed one-half of the total fee.<sup>28</sup>

### **23. What if the requester has already asked for and received the records?**

A public body may not deny a FOIA request simply because the requester has previously obtained the identical records under the FOIA.<sup>29</sup> 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.<sup>30</sup>

### **24. What is the form of the records that must be given to the requester?**

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.<sup>31</sup>

### **25. Common MDOC Exemptions.**

A public body may (but is not required to) withhold from public disclosure certain categories of public records under the FOIA. Certain types of records are exempted from disclosure by other laws, either federal or state.

The exemptions allowed under FOIA are expressed in general language which must be applied to the specific public record requested. It is impractical to list all information or documents that may be exempt from disclosure; therefore, local FOIA coordinators must be familiar with all FOIA exemptions. Often, more than one exemption may apply. FOIA responses must include all applicable exemptions.

#### General Exemptions

The following are some of the FOIA exemptions which are most frequently taken and examples of information to which the exemptions may apply:

1. Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy. Section 13 (1)(a). The purpose of exemptions is to balance the policy of full disclosure with any significant privacy interests favoring nondisclosure.

<sup>28</sup> MCL 15.234(2).

<sup>29</sup> OAG, 1993 - 1994, No 6766, p 52 (August 19, 1993).

<sup>30</sup> *Densmore v Dep't of Corrections*, 203 Mich App 363; 512 NW2d 72 (1994).

<sup>31</sup> *Oakland County Treasurer v Title Office, Inc*, 245 Mich App 196; 627 NW2d 317 (2001); *Grebner v Clinton Charter Twp*, 216 Mich App 736; 550 NW2d 265 (1996); *Farrell v Detroit*, 209 Mich App 7; 530 NW2d 105 (1995).

Examples: Home addresses and home telephone numbers; emergency contact information; driver license numbers; Social Security numbers; victims' requests to receive information pursuant to PD 01.06.120 "Victim Notification" and the Department's response unless the requestor is the victim; fingerprint cards; resumes of unsuccessful job applicants except for the resume of the requestor.

2. A public record that, if disclosed, would prejudice the ability to maintain the physical security of a correctional facility unless the public interest in disclosure outweighs the public interest in non-disclosure. Section 13(1)(c).

Examples: Blueprints or maps of facility grounds; names of informants; mobilization scenarios and critiques; Special Problem Offender Notice; movement plans; Security Threat Group designations and related documentation; exempt policy directives and operating procedures; post orders for security sensitive assignment (e.g., sallyport); descriptions of security fencing; description of operation of personal protection devices; videos that would disclose capability of any monitoring device; document determined to be confidential by a hearing officer at a hearing conducted pursuant to MCL 791.252.

3. Information or records subject to the physician-patient privilege, the psychologist-patient privilege, or other privilege recognized by statute or court rule. Section 13(1)(h).

Examples: Psychiatric and psychological information unless a release is provided; medical records; however, the request shall be forwarded to the Health Unit Manager for processing under the Medical Records Access Act if a release is provided.

4. Communications and notes of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency decision of policy or action. This exemption only applies if the public interest of encouraging frank communications between officials and employees clearly outweighs the public interest in disclosure. Section 13(1)(m).

Examples: A Joint Evaluation Committee (JEC) recommendation before the Department of Technology, Management and Budget award is made.

5. 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. Section 13(1)(u).

Examples: Movement plans; exempt policy directives and operating procedures; post orders for security sensitive assignment (e.g., sallyport); descriptions of security fencing; description of operation of personal protection devices; videos that would disclose capability of any monitoring device.

6. Records or information relating to a civil action in which the requesting party and the Department are parties. Section 13(1)(v). This includes civil court actions in which the Department is representing an employee being sued.

7. Information or records that would disclose the Social Security number of an individual. Sections 13(1)(d), specifically MCL 445.85 and MCL 13(1)(w). This information shall not be disclosed even if a release is provided.

### Statutory Exemptions

Section 13(1)(d) of FOIA also permits exemption of documents or information specifically exempted from disclosure by another statute. When using this exemption, it is necessary to identify the specific statute authorizing the exemption. The following are examples of information exempt under Section 13(1)(d) and the applicable statute:

1. Records and reports of investigations made by a probation agent, including presentence investigation reports. (MCL 791.229).
2. The address and telephone number of a victim who has requested to receive information pursuant to PD 01.06.120 "Victim Notification". (MCL 780.769).
3. Victim statements submitted for consideration by the Parole Board pursuant to MCL 780.771.
4. Any information of the disposition of criminal charges and assignment as a youthful trainee unless youthful trainee status is revoked and the offender is subsequently convicted of the offense. (MCL 762.14).
5. Any information received through the Law Enforcement Information Network (LEIN), including records of criminal charges which did not result in a conviction. (MCL 28.214).
6. Quality assurance reviews (e.g., "peer reviews") conducted by BHCS. (MCL 331.533).
7. A report prepared and recommendations made by the Office of the Legislative Corrections Ombudsman and submitted to the Legislative Council pursuant to an investigation. (MCL 4.359).
8. A record ordered to be set aside ("expunged") if the Department has received notice of the set aside. (MCL 780.623).
9. Documents and information pertaining to an offender's registration and change of address notification pursuant to the Sex Offenders Registration Act. (MCL 28.730).

10. Information regarding the diagnosis, prognosis, or treatment of an offender involved in a substance abuse education or treatment program, unless a release is provided by the offender which specifically authorizes release of this information. (48 USC 290dd-3).

**26. What if I just want to inspect the records?**

When inspection of public records is requested in writing under FOIA, a reasonable opportunity for inspection of the non-exempt records must be allowed during normal business hours. The local FOIA coordinator must ensure that any exempt information is redacted prior to the inspection.

A fee shall be charged a requestor to inspect public records only as set forth below:

1. For the search, review, examination, and the separation of exempt from non-exempt information.
2. With approval of the Department FOIA Coordinator or designee, for the time spent by staff monitoring an inspection that is necessary to protect the original record and to prevent excessive and unreasonable interference with the discharge of Department functions. The fee shall be charged at the hourly rate of the lowest-paid employee capable of monitoring the inspection. The hourly wage includes the cost of up to 50% of the base rate paid by the State to cover or partially cover the cost of fringe benefits.
3. With approval of the Department FOIA Coordinator or designee, for copies necessary to protect the original record as provided for under Section 3(3) of FOIA, MCL 15.233.
4. For a copy made in order to redact a portion of the original that is exempt.

**27. Can I request a subscription?**

A person also has the right to subscribe to future issuances of public records that 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.<sup>32</sup>

**28. How does the MDOC respond to an appeal?**

The Director of the MDOC, whose power can be delegated, must do one of the following within 10 business days after receiving a written appeal:

- Reverse the disclosure denial.
- Issue a written notice to the requesting person upholding the disclosure denial.
- Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

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<sup>32</sup> MCL 15.233(1).

- Under unusual circumstances, 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. The head of a public body must not issue more than one notice of extension for a particular written appeal.<sup>33</sup>

### **29. What are the penalties for violation of the FOIA?**

If the requesting person prevails in an action commenced under Section 10a 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. The award shall be assessed against the public body liable for damages under subsection. 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. The fine and any 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. MCL 15.240a(7).

If the court determines, in an action commenced under the Act, that the public body willfully and intentionally failed to comply with the Act or otherwise acted in bad faith, the court shall order the public body to pay, in addition to any other award or sanction, a civil fine of not less than \$2,500.00 or more than \$7,500.00 for each occurrence. In determining the amount of the civil fine, the court shall consider the budget of the public body and whether the public body has been previously assessed penalties for violating the FOIA. The civil fine shall be deposited in the general fund of the state treasury. MCL 15.240b.

### **30. Federal FOIA.**

To submit a FOIA request to federal agencies under 5 USC § 552 (2006), submit the request to the specific agency. For additional information, you may access the federal FOIA at: [http://www.justice.gov/oip/right\\_to\\_federal\\_records09.htm#foia](http://www.justice.gov/oip/right_to_federal_records09.htm#foia). The federal FOIA and Michigan FOIA are different.

### **31. Attorney General Opinions (not an exhaustive list).**

Some opinions of the Attorney General (OAG) which explain various applications of the FOIA, are noted below. While these opinions are binding on state agencies, they are not binding on the courts or on local units of government. Attorney General opinions may be searched at: <http://www.michigan.gov/ag>.

1. Unless exempt from disclosure by law, records of the Brown-McNeeley insurance fund are public records. OAG, 1977–1978, No 5156, p 66 (March 24, 1977).

2. The FOIA's definition of public body includes single member bodies. OAG, 1977–1978, No 5183-A, p 97 (April 18, 1977).

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<sup>33</sup> MCL 15.240(2).

3. Records subject to the confidentiality provisions of the Child Protection Law, MCL 722.621 *et seq.*; are exempt from disclosure under the FOIA, §§ 13(1)(a) and 13(1)(d). OAG, 1977–1978, No 5297, p 430 (April 28, 1978).
4. The office of county sheriff is subject to the provisions of the Freedom of Information Act. OAG, 1977–1978, No 5419, p 758 (December 29, 1978).
5. Certain records protected from disclosure by the Social Welfare Act, are exempt from disclosure under section 13(1)(d) of the Freedom of Information Act, which exempts records that are exempt from disclosure by statute. OAG, 1979–1980, No 5436, p 31 (February 1, 1979).
6. The Insurance Commissioner is required to charge a rate for making copies of public records requested in accordance with the FOIA. OAG, 1979–1980, No 5465, p 104 (March 26, 1979).
7. The following responses to specific inquiries are found in OAG, 1979–1980, No 5500 (July 23, 1979):
  - 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 Act, p. 261.
  - c. The Civil Service Commission is subject to the provisions of the Freedom of Information Act, 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 Freedom of Information Act, 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.
  - 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 for that reason. 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.
8. 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 person's photograph is clearly unwarranted invasion of personal privacy, a public body may refuse to permit a person to inspect or make copies of the photograph. OAG, 1979–1980, No 5593, p 468 (November 14, 1979).
9. The exemption contained in section 13(1)(n) 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. OAG, 1979–1980, No 5608, p 496 (December 17, 1979).

10. 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. OAG, 1979–1980, No 5632, p 563 (January 24, 1980).

11. 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. OAG, 1979–1980, No 5725, p 842 (June 23, 1980).

12. Rules promulgated by the State Ethics Board require that records and files concerning dismissed complaints or terminated investigations be suppressed or expunged. This rule is consistent with the FOIA's privacy exemption since records would be suppressed only if a determination was made that the complaints were unfounded. OAG, 1979–1980, No 5760, p 935 (August 26, 1980).

13. Since the Law Enforcement Information Network Policy Council does not receive and maintain records in the LIEN system, it does not possess copies of records and as a result has no material to furnish persons seeking such records under the FOIA. OAG, 1979–1980, No 5797, p 1038 (October 14, 1980).

14. 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. OAG, 1979–1980, No 5832, p 1125 (December 18, 1980).

15. Employment records disclosing salary history and employment dates are subject to disclosure under the FOIA. OAG, 1981–1982, No 6019, p 507 (December 29, 1981).

16. 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 1966 PA 134, section 11b, and are exempt from disclosure under the FOIA. OAG, 1981–1982, No 6023, p 518 (January 8, 1982).

17. A township is not required to enact its own Freedom of Information Act in order to comply with the state FOIA. OAG, 1981–1982, No 6042, p 584 (February 25, 1982).

18. A school district must furnish the records of a student upon request of another school district in which the student is enrolled as incidental to the operation of free public elementary and secondary schools required by the Michigan Constitution 1963, art 8, § 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. OAG, 1981–1982, No 6064, p 641 (April 30, 1982).

19. 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. OAG, 1981–1982, No 6087, p 698 (July 28, 1982).

20. 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. OAG, 1985–1986, No 6389, p 374 (September 24, 1986).

21. State legislators are exempt from the FOIA. OAG, 1985–1986, No 6390, p 375 (September 26, 1986).

22. 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. OAG, 1987–1988, No 6504, p 295 (March 4, 1988).

23. The FOIA does not apply to a private nonprofit corporation. OAG, 1989–1990, No 6563, p 27 (January 26, 1989).

24. 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. OAG, 1989–1990, No 6613, p 299 (March 14, 1990).

25. 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. OAG, 1989-1990, No 6668, p 409 (November 28, 1990).

26. A public body may not deny a FOIA request simply because the requester has previously obtained the identical records under that statute. 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. OAG, 1993–1994, No 6766, p 52 (August 19, 1993).

27. 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, section 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. OAG, 1993–1994, No 6820, p 196 (October 11, 1994).

28. 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. OAG, 1995–1996, No 6923, p 224 (October 23, 1996).

29. 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., is a public body subject to the provisions of the FOIA. OAG, 1997–1998, No 6942, p 40 (July 3, 1997).

30. The state Insurance Bureau, in response to a request made under the FOIA, 1976 PA 442, 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. OAG, 1997–1998, No 6965, p 91 (January 16, 1998).

31. 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. OAG, 1997–1998, No 6970, p 106 (January 28, 1998).

32. 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 requester failed to pay fees charged for a prior FOIA request.

A public body may refuse to process a FOIA request if the requester 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. OAG, 1997 – 1998, No 6977, p 131 (April 1, 1998).

33. When establishing fees chargeable under the FOIA, a public body may include in the calculation of labor costs and fringe benefits paid to employees. OAG 1999 - 2000, No 7017, p 27 (May 13, 1999).

34. An urban redevelopment corporation organized under the Urban Redevelopment Corporations Law is a public body subject to the Open Meetings Act and FOIA. OAG, 1999 – 2000, No 7066, p 156 (November 7, 2000).

35. 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. OAG, 2001–2002, No 7083, p 32 (June 7, 2001).

36. 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. OAG 2001 – 2002, No 7087, p 45 (August 21, 2001).

37. 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. OAG, 2001–2002, No 7095, p 64 (December 6, 2001).

38. Under section 5 of the FOIA, the five business days within which a public body must respond to a request for public records means five consecutive weekdays, other than Saturdays, Sundays, or legal holidays, regardless of when the particular public body is open for public business. OAG, 2005–2006, No 7172, p 20 (March 17, 2005).

39. In complying with its obligations under the OMA to provide the public access to meeting minutes, the public body must also discharge its other public functions and duties. To that end, a rule of reasonableness is applicable in providing a public body an adequate opportunity to meet the request to inspect minutes. A public body must make at least a copy of its minutes available for inspection as provided in MCL 15.269(1) of OMA. A public body must also avoid undue delay in meeting a request, and is obligated to comply with the response periods of the FOIA, and the specific provisions of the OMA, such as section 9(3) for the proposed and approved minutes. But to protect the integrity of its official records, and to allow sufficient time to retrieve such records, if necessary, it may be reasonable for a public body to require advance notice of, and supervision of, the inspection of a record copy of meeting minutes. OAG, 2010, p (March 3, 2010).

40. Photographs or video recordings of students participating in school activities will qualify as education records for purposes of the Family Educational Rights and Privacy Act, 20 USC 1232g, and that Act's prohibition on the release of such records, if they contain information directly related to a student, and are maintained by the school district.

A school or district may designate photographs and video recordings of students engaged in school activities as a category of "directory information" that may be disclosed without written consent under the Family Educational Rights and Privacy Act, 20 USC 1232g, as long as the school or district provides the required notice to parents that such media will be considered directory information, and further provides parents with a reasonable opportunity to opt out or deny consent to the release of such information.

A school or district has no legal responsibility under the Family Educational Rights and Privacy Act, 20 USC 1232g, with respect to photographs or video recordings of students participating in school activities taken by a person not acting on behalf of the school or district, unless the

photographs and video recordings are "maintained" by the school or district under 20 USC 1232g(a)(4)(A)(ii). OAG, 2010, No 7245, p (March 29, 2010).

### **32. Court Cases (this is not an exhaustive list)**

*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. However, the Insurance commissioner is required to charge a rate for making copies of public records requested in accordance with the FOIA.

*Baker, PC v City of Westland*, 425 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 constitute 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.

*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.

*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.

*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.

*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.

*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.

*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.

*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.

*Bradley v Saranac Community Schools Board of Education, Lansing Ass'n of School Admr's 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 FIOA, 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.

*Bredemeier v Kentwood Board of Education*, 95 Mich App 767; 291 NW2d 199 (1980). The FOIA does not require the 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.

*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 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.

*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 overbroad" and failed to sufficiently identify specific records as required by the FOIA, 3(1).

*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.

*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.

*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.

*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.

*CMU Supervisory-Technical Ass'n MEA/NEA v CMU Board of Trustees*, A party to a lawsuit does not lose his 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.]

*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 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 the 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.

*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).

*Curry v Jackson Circuit Court*, 151 Mich App 854; 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 states intention relative to domicile.

*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.

*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.

*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 individual's privacy. Other information in the complaints should, however, be disclosed of how the agency is complying with its statutory function.

*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 requestor can demonstrate why the copy already provided was not sufficient.

*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.

*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.

*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.

*Detroit Free Press, Inc v Dept's 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 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.

*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.

*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.

*Detroit News, Inc v Policeman 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."

*Eastly 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.

*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.

*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.

*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 the inmate's action where the Doc clearly reached the correct result.

*Grebner v Clinton Charter Twp*, 216 Mich App 736; 550 NW2d 265 (1996). Section 522(1) of the Michigan Election Law, 1954 PA 116, MCL 168.1 *et seq.*, 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 listening 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.

*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.

*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.

*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.

*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 disclosures under the narrowly drawn statutory exemptions designed to protect the identity of confidential informants.

*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.

*Herald Co v Ann Arbor Public Schools*, 224 Mich App 266; 568 NW2d 411 (1997). Once documentation that is the subject of a FOIA lawsuit has been disclosed, the subject of the controversy disappears. 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 not 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 or 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.

*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.

*Herald Co, Inc v Eastern Michigan Univ Bd of Regents*, 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.

*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.

*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.

*Howell Education Association MEA/NEA v Howell Board of Education*, published opinion of the Court of Appeals, issued January 26, 2010 (Docket No 288977); 2010 Mich App LEXIS 143; 30 IER Cas (BNA) 594; 188 LRRM 2054. This matter has been appealed to the Supreme Court of Michigan, SC 140929, lv den 2011.

*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.

*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 witnesses deleted, would reveal their identities and jeopardize their personal safety within the prison. In addition, the release would preclude the public body's ability to maintain the physical security of the penal institution.

*In re Buchanan*, 152 Mich App 706; 394 NW2d 78 (1986). The common-law right of access to court records is not without limitation.

*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.

*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.

*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.

*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 court-ordered disclosure and that the defendant acted arbitrarily and capriciously in failing to comply with the disclosure request in a timely manner.

*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.

*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.

*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.

*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.

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

*Kincaid v Dep't of Corrections*, 180 Mich app 176; 446 NW2d 604 (1989). A public body bears the burden of proof on 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.

*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.

*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.

*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.

*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 "personal 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.

*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.

*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.

*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.

*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 the 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.

*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.

*Local 312 of the AFSCME, AFL-CIO v Detroit*, 207 Mich App 472; 525 NW2d 487 (1994). The Public Employment Relations Act (PERA), 1947 PA 336, MCL 423.201 *et seq.*, 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.

*MacKenzie v Wales Twp*, 247 Mich App 124; 635 NW2d 335 (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.

*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.

*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.

*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.

*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.

*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 exempted from disclosure by section 13(1)(m) of the FOIA to the extent that they are preliminary, nonfactual, and part of the deliberative process.

*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.

*Michigan Federation of Teachers and School Related Personnel, AFT, AFL-CIO v University of Michigan*, 481 Mich 657; 753 NW2d 28 (2008). The Court held that employees' home addresses and telephone numbers meet both prongs of FOIA's privacy exemption because that information is "of a personal nature" and its disclosure would constitute a "clearly unwarranted invasion of an individual's privacy." The Court reexamined the definition of "information of a personal nature" set forth in *Bradley v Saranac Community Schools Bd of Ed*, 455 Mich 285; 565 NW2d 650 (1997), and conclude that it unnecessarily limited the intended scope of that phrase. The Court cured the deficiency and revised the definition to encompass information of an embarrassing,

intimate, *private*, or *confidential* nature. Accordingly, the University of Michigan employees' home addresses and telephone numbers are exempt from disclosure.

*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.

*Milford v Gilb*, 148 Mich App 778; 384 NW2d 786 (1985). Under the FOIA, a public body may be 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 matters. The public body bears the burden of proof that a statutory exception applies to the item requested.

*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.

*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.

*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.

*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 "personal record" under the FOIA, the court looked to the definition of that term in the Bullard-Plawecki Employee Right to Know Act (ERKA), 1978 PA 397, MCL 423.501 *et seq.* 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.

*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.

*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.

*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.

*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 the FOIA so that the prosecutor may determine whether the board's decision to grant parole should be appealed.

*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.

*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.

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

*Patterson v Allegan County Sheriff*, 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).

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

*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.

*Penokie v Michigan Technological University*, 93 Mich App 650; 287 NW2d 304 (1979). Disclosures of the names and salaries of employees of the defendant university is not a "clearly unwarranted" invasion of personal privacy under the FOIA.

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

*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.

*Practical Political Consulting, Inc v Terry Lynn Land*, published opinion of the Court of Appeals, issued March 9, 2010 (Docket No 291176). The issue is whether the disclosure, or concealment, of public records (a copy of all vote history of the January 15, 2008 presidential primary including which ballots each voter selected) will lead to, or detract from, the public's ability to hold its elected and appointed public officials accountable for carrying out the law.

*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 court do not support a right to inspect police department records.

*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.

*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.

*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.

*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.

*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.

*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.

*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.

*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.

*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 FOIA, 13(1)(d), if that record is exempt from disclosure under a federal agency regulation.

*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.

*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.

*Stone Street Capital, Inc v Michigan bureau of State Lottery*, 236 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.

*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.

*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.

*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.

*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.

*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.

*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."

*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.

*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 FIOA, 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.

*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.

*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.

*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.

*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.

*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.

*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 \$3.00 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.

*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 the FOIA does not constitute arbitrary and capricious behavior.

*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.