A yellow outline map of the state of Michigan is centered in the background of the slide. The text is overlaid on the map.

Michigan's Freedom of Information Act

Jeff Baldwin

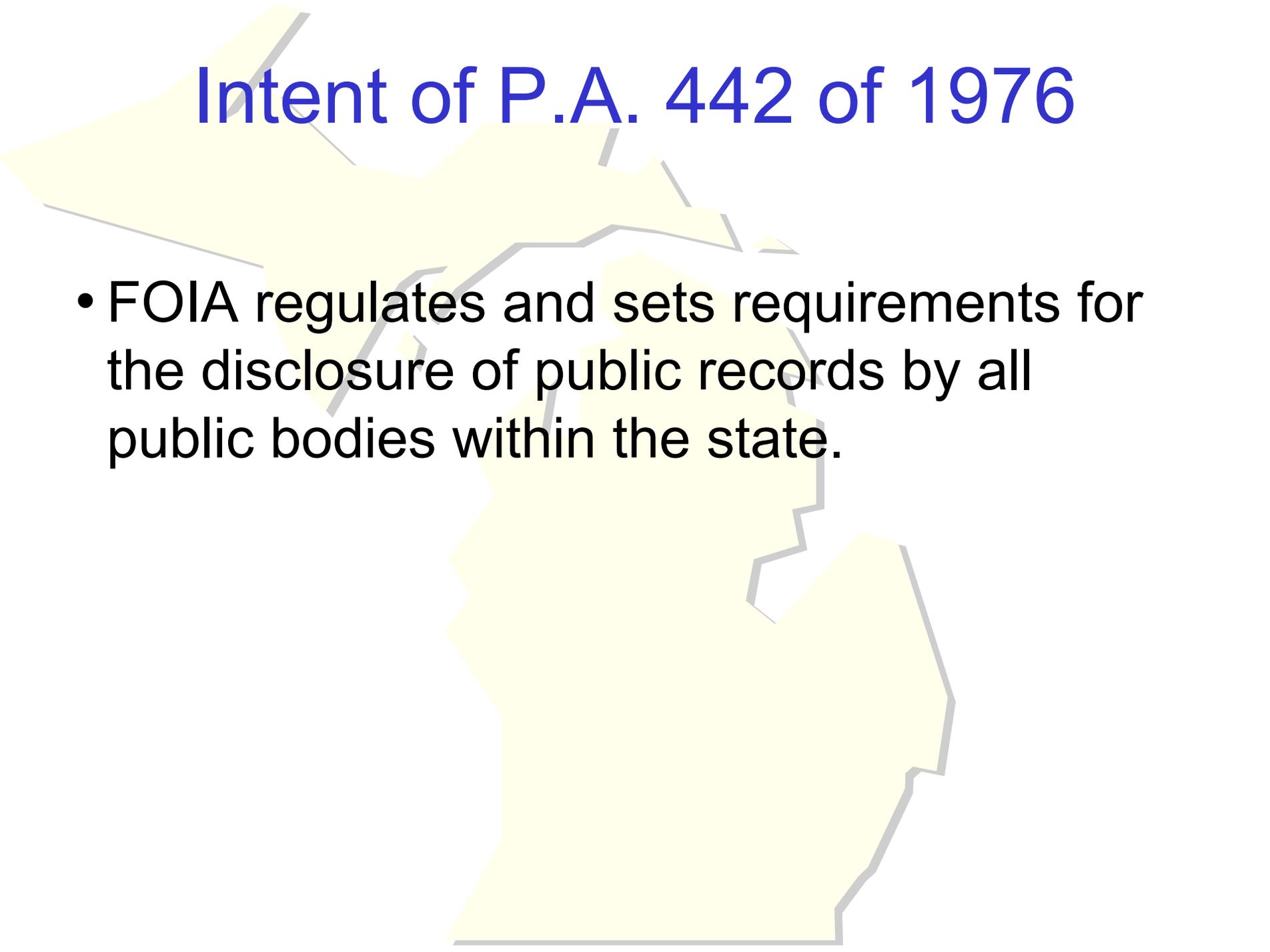
Department of History, Arts & Libraries

Records Management Services

Overview

- Intent of FOIA
- Definitions
- Requirements
- Exemptions
- Resources

Intent of P.A. 442 of 1976



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

What is a “Public Body”

- A “Public Body” means any state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government, but does not include the governor or lieutenant governor or employees thereof.

Including

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

What is a “Public Record”

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

“Public Record” Formats

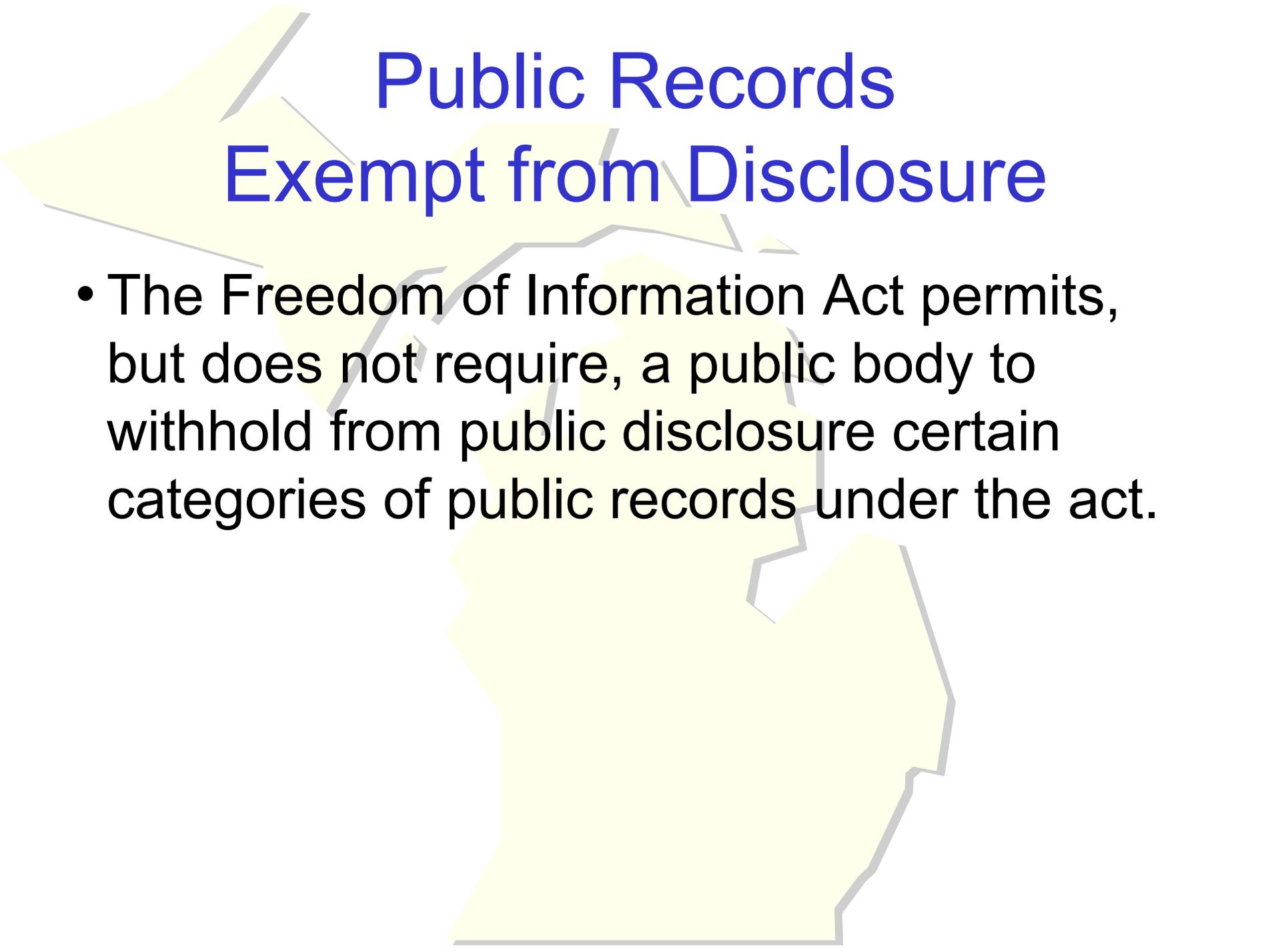
- It does not matter what the format of the record is.
- The act applies to any handwriting, typewriting, printing, photo-stating, photographic, photocopying and every other means of recording.

“Public Records” Include

- 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, disc, drums, or other means of recording or retaining meaningful content. It does not include computer software.

Public Records Open to Disclosure

- In general, all records, except those specifically cited by FOIA or other laws, are open. Examples include:
 - Minutes of open meetings
 - Officials' voting records
 - Staff manuals
 - Final orders or decisions
 - Guidelines, rules, policies, forms with instructions, etc.
 - Anything adopted or used by the agency to discharge its functions



Public Records Exempt from Disclosure

- The Freedom of Information Act permits, but does not require, a public body to withhold from public disclosure certain categories of public records under the act.

Specific Exemptions

- Specific personal information about an individual, if released, would constitute a clearly unwarranted invasion of that individual's privacy.

Specific Exemptions

- Investigating records compiled for law enforcement purposes, but only to the extent that disclosure would do any of the following:
 - Interfere with law enforcement proceedings
 - Deprive a person of the right to a fair trial or impartial administrative adjudication
 - Constitute an unwarranted invasion of personal privacy
 - Disclose the identity of a confidential source or, if the record is compiled by a criminal law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source
 - Disclose law enforcement investigative techniques or procedures
 - Endanger the life or physical safety of law enforcement personnel

Specific Exemptions

- Public records which, if disclosed, would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

Specific Exemptions

- Records that may be exempted from disclosure by another statute.
- Note: statutes which expressly prohibit public disclosure of records generally supersede FOIA.

Specific Exemptions

- A public record or information which is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the consideration originally giving rise to the exempt nature of the public record remains applicable.

Specific Exemptions

- Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy.

Specific Exemptions

- Information subject to attorney-client privilege.
- Information subject to such privileges as physician-patient, or other privilege recognized by statute or court rule.
- Pending public bids to enter into contracts.

Specific Exemptions

- Appraisals of real property to be acquired by a public body.
- Test questions and answers, scoring keys, and other examination instruments.
- Medical, counseling, or psychological facts which would reveal an individual's identity.

Specific Exemptions

- Communications and notes between and within public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

Specific Exemptions

- Law enforcement communication codes and employment plans unless the public interest in disclosure outweighs the public interest in nondisclosure.
- Information that would reveal the location of archeological sites.

Specific Exemptions

- Product testing data developed by agencies buying products where only one bidder meets the agency's specifications.
- A student's college academic transcript where the student is delinquent on university loans.

Specific Exemptions



- Records of any campaign committee, including any committee that receives moneys from a state campaign fund.
- These records are open to the public under the Michigan Campaign Finance Act.

Specific Exemptions

- Public records of a law enforcement agency where disclosure would identify an informer or undercover agent, reveal the home address or telephone number of an officer or agent, disclose personnel records of law enforcement agencies, reveal the contents of staff manuals, endanger the safety of law enforcement officers or their families, or identify residences that law enforcement officers are requested to check in the absence of their owners.

Specific Exemptions

- Records pertaining to an investigation of a health care professional conducted by the Department of Community Health pursuant to the Public Health Code before a complaint is issued.
- Records of a public body's security measures.

Specific Exemptions

- Records relating to a civil action in which the requesting person and the public body are parties.
- Records that would disclose the social security number of an individual.

Specific Exemptions

- Applications, including letters of recommendation and references, for president of an institution of higher learning if the records could be used to identify the candidate. However, records pertaining to persons identified as finalist, except letters of recommendation and references, are not exempt.

Specific Exemptions

- Records of measures designed to protect the security and safety of persons or property in the event of a terrorist threat.

Specific Exemptions

- Public records which if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

Availability of Public Records

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

Availability of Public Records

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

Availability of Public Records

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

Availability of Public Records

- A person also has a right to subscribe to future issuances of public records which are created, issued, or disseminated on a regular basis.
- A subscription is valid for up to 6 months, at the request of the subscriber, and is renewable.

Availability of Public Records

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

Fees for Public Records

- A public body may charge a fee for the necessary copying of a public record for inspection or providing a copy of a public record to a requester. A public body may also charge for search, examination, and review and the separation of exempt information in those instances where failure to charge a fee would result in unreasonably high costs to the public body. The fee must be limited to actual duplication, mailing, and labor cost. 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 indigence.

Denial of a Record

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

Denial of a Record

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

Enforcement

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

Enforcement

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

Enforcement

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

Penalties for Violation of the Act

- If the circuit court finds that the public body has arbitrarily and capriciously violated the FOIA by refusal or delay in disclosing or providing copies of a public record, it may, in addition to any actual or compensatory damages, award punitive damages of \$500 to the person seeking the right to inspect or receive a copy of a public record.

Attorney General Opinions

- There are numerous Opinions of the Attorney General that explain various applications of the Freedom of Information Act.
- While these opinions are binding on state agencies they are not binding in courts or on local units of government.

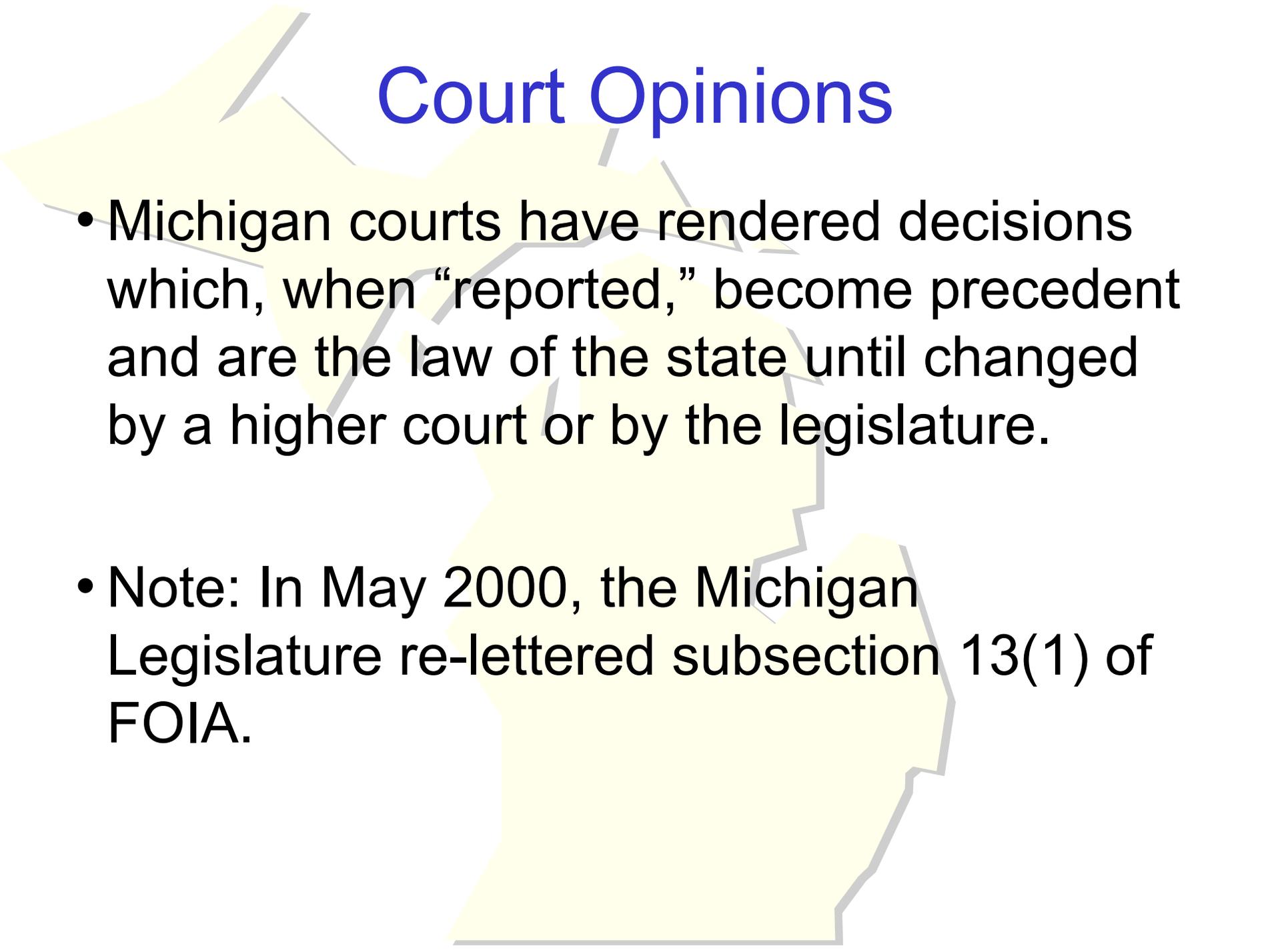
Attorney General Opinions

- Copies can be obtained by writing to
Attorney General Mike Cox
G. Mennen Williams Bldg. 7th Floor
525 West Ottawa St.
P.O. Box 30212
Lansing, MI 48909

-or-

<http://www.michigan.gov/ag>

Court Opinions



- Michigan courts have rendered decisions which, when “reported,” become precedent and are the law of the state until changed by a higher court or by the legislature.
- Note: In May 2000, the Michigan Legislature re-lettered subsection 13(1) of FOIA.

Court Opinions

- Court opinions may be obtained from law libraries or from the courts of record at a nominal fee.

-or-

- <http://www.courts.michigan.gov/>

When in Doubt

- Seek guidance from your own legal counsel.
- Don't hesitate...time is critical.

In Closing

- Be proactive not reactive.
- Have the mindset that “everything” is a public record.
- Don't forget about electronic records including e-mail.
- Follow Retention and Disposal Schedules.

Questions???

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