

Title Freedom of Information Act Summary	ID Number
Office Offices of the Superintendent/State Board of Education	Effective Date. Immediate
	Modification Date.
Purpose	

The Freedom of Information Act (Act 442 of the Public Acts of 1976) provides for public access to certain public records of public bodies; to permit certain fees; to prescribe the powers and duties of certain public officers and public bodies; to provide remedies and penalties; and to repeal certain acts and parts of acts. The Act assures 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 so that they may fully participate in the democratic process. This Act is an important step in an effort to make government open and available to the public it serves. The Department of Education should not only comply with its provisions, but should be a model for other state and local agencies to follow in implementing the Act.

Key Definitions:

FOIA Coordinator means either of the following:

- An individual who is a public body.
- An individual designated by a public body in accordance with section 6 to accept and process requests for public records under this act.

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

Public Body means any of the following:

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



- 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.
- Any other body which is created by state or local authority or which is primarily funded by or through state or local authority.
- The judiciary, including the office of the county clerk and employees thereof when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.

Public Record

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

- Those that are exempt from disclosure under section 13.
- All public records that are not exempt from disclosure under section 13 and which are subject to disclosure under this Act.

Software

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

Unusual
Circumstances

means any one or a combination of the following, but only to the extent necessary for the proper processing of a request:

- The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.
- The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

Writing	means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.
Written Request	means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.

Summary of the Act

Any person (except a individual serving a sentence of imprisonment in a state or county correctional facility in Michigan or any other state, or in a federal correctional facility) has the right to inspect, copy, or receive a copy of a public record. The request must be in writing, and must sufficiently describe the public record to allow the public body to identify and locate the public record.

A person may also subscribe to public records issued or created by a public body on a regular basis, and such subscriptions may be valid up to six months. However, if a request pertains to materials to which the Open Meetings Act refers (Act 267, PA 1976), the subscription is valid for one year.

A public body is required to provide reasonable facilities so that requesting persons may examine and take notes from public records. The facilities must be made available for use during the regular business hours of the public body.

Although a public body is required to provide existing public records, it is not required to make a compilation, summary, report of information, or create a new public record.

Costs

A public body has the right to charge for information provided under the Freedom of Information Act. Such a charge is limited to actual mailing costs and the actual costs of duplication or publication, including labor, and the costs to search, examine, review, and redact exempt information. A fee shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the public body. The MDE defines "unreasonable high costs" as greater than one hour of staff time.

When calculating labor costs, the public body must use the wage rate of the lowest paid public body employee capable of retrieving the information necessary to comply with the request. In addition, the public body must use the most economical means available for making copies of public records.

The FOIA Coordinator will provide a written response to each FOIA request that includes the cost for the MDE to provide the documents. Upon receipt by the MDE of the total amount due, the FOIA Coordinator will provide the requested documents.

A public body may request a deposit of not more than one-half of the total fee if it exceeds \$50, and must furnish a copy of a public record without charge for the first \$20 of the fee to a person on public assistance or who demonstrates by affidavit inability to pay because of indigence.

The provisions of the Freedom of Information Act do not apply to records which may be sold under another statute or act.

Time for Agency Response

The FOIA Coordinator will prepare the written response for all FOIA requests.

The public agency must respond to Freedom of Information requests within five (5) business days after the request is received, unless the five day period is waived by the requesting party.

A FOIA request made by facsimile, electronic mail, or other electronic transmission is not received until one business day after the electronic transmission is made.

In responding to the request, the public agency must do one of the following:

- a. Grant the request.
- b. Issue a written notice to the requesting person denying the request.
- c. Grant the request in part, and issue a written notice to the requesting person denying the request in part.
- d. Issue a notice extending for not more than ten (10) business days the period during which the public body shall respond to the request. A public body shall not issue more than one (1) notice of extension for a particular request.

A failure to respond constitutes a final decision to deny which may, among other things, form the basis for a Circuit Court suit to force disclosure.

Notices extending the time period must be in writing and set forth the reasons as well as indicate that the public body will either:

- a. Grant the request.
- b. Issue a notice denying the request in whole or in part.

Denials

The FOIA Coordinator is responsible for the denial of the request and shall sign the written notice of denial.

A written notice denying a request in whole or in part shall contain:

- a. An explanation of the reason for the determination that the public record, or portion of that public record, is exempt from disclosure.
- b. A statement that the public record does not exist under the name given by the requester or by another name reasonable known to the public body.
- c. A description of a public record or information on a public record that is separated or deleted pursuant to section 13, if separation or deletion is made.
- d. An explanation of the requesting person's right to do either of the following:
 - (1) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identified the reason(s) for reversal of the disclosure denial.
 - (2) Seek judicial review of the denial under section 10.
- e. Notice of the right to receive attorneys' fees and damages as provided in section 10 if, after judicial review, the Circuit Court determines that the public body has not complied with this section and orders disclosure of all or a portion of a public record.

Enforcement

Court-ordered disclosure may be commenced in the Circuit Court for the county in which the complainant resides or has his or her place of business or the Circuit Court for the county in which the record or office of the public agency is located. The burden is on the public agency to sustain its denial.

In addition to obtaining a Court Order requiring disclosure, a complainant who prevails in whole or part shall be awarded reasonable attorney's fees plus costs.

If the Court determines that the agency has been arbitrary and capricious in refusing or delaying disclosure of a record, the Court is required to award, in addition to compensatory or actual damages, punitive damages in the amount of \$500. These damages are not assessable against individuals but rather are applicable to the public agency.

Exemptions

Several types of records are exempt from disclosure. Many of those exemptions pertain to law enforcement investigations, custodial and penal institutions, and so forth.

Those exemptions that may be applicable to the Department of Education include the following:

- Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.
- Records or information specifically described and exempted from disclosure by statute.
- A public record or information that is furnished by the public body which originally compiled, prepared, or received 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. However, the considerations originally giving rise to the exempt nature of the public record must be applicable.
- Information or records subject to the attorney-client privilege.
- Information or records subject to the physician-patient, psychologist-patient, minister, priest, or Christian Science practitioner, or other privilege recognized by statute or court rule.
- A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or in a public opening is not to be conducted, until the time for the receipt of bids or proposals has expired.
- Appraisals of real property to be acquired by the public body until (a) an agreement is entered into; or (b) 3 years have elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.

- Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment or academic examination, unless the public interest in disclosure under this Act outweighs the public interest in nondisclosure.
- Medical, counseling, or psychological evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation.
- Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in a particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.
- Academic transcripts of an institution of higher education where the record pertains to a student who is delinquent in the payments of financial obligations to the institution.
- Information that, if released, would prevent the public body from complying with the Family Educational Rights and Privacy Act of 1974.

Publications

Under the Act, state agencies are required to "publish and make available to the public . . ." a number of documents. Some are readily identifiable. Among them are:

- Decisions and final orders in contested cases, as well as the records upon which they are based.
- Promulgated rules.
- Written statements which implement or interpret laws, rules, or policy including but not limited to guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions.

No person should in any manner be required to resort to or be adversely affected by a matter required to be published and made available, if the matter is not so published and made available.

Court enforcement may be commenced for failure to publish. The act contains no provision for damages either compensatory or punitive. However, costs plus attorney's fees may be recovered. Jurisdiction lies in the Circuit Court for the county in which the agency is located.