

**SUBSTITUTE FOR
HOUSE BILL NO. 4001**

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending sections 4, 5, and 10 (MCL 15.234, 15.235, and 15.240),
as amended by 1996 PA 553, and by adding sections 10a and 10b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) A public body may charge a fee for a public record
2 search, the necessary copying of a public record for inspection, or
3 for providing a copy of a public record ~~. Subject to subsections~~
4 ~~(3) and (4), the fee shall be limited to actual mailing costs, and~~
5 ~~to the actual incremental cost of duplication or publication~~
6 ~~including labor, the cost of search, examination, review, and the~~
7 ~~deletion and separation of exempt from nonexempt information as~~
8 ~~provided in section 14. A search for public record may be conducted~~
9 ~~or copies of public records may be furnished without charge or at a~~
10 ~~reduced charge~~ **IF IT HAS ESTABLISHED, MAKES PUBLICLY AVAILABLE, AND**



1 FOLLOWS PROCEDURES AND GUIDELINES TO IMPLEMENT THIS SECTION AS
2 DESCRIBED IN SUBSECTION (4). EXCEPT AS OTHERWISE PROVIDED IN THIS
3 ACT, IF THE PUBLIC BODY ESTIMATES OR CHARGES A FEE IN ACCORDANCE
4 WITH THIS ACT, THE TOTAL FEE SHALL NOT EXCEED THE SUM OF THE
5 FOLLOWING:

6 (A) THAT PORTION OF LABOR COSTS DIRECTLY ASSOCIATED WITH
7 SEARCHING FOR, LOCATING, AND EXAMINING THE REQUESTED RECORDS. THE
8 PUBLIC BODY SHALL NOT CHARGE MORE THAN THE HOURLY WAGE, EXCLUDING
9 THE COST OF BENEFITS, OF ITS LOWEST-PAID EMPLOYEE CAPABLE OF
10 SEARCHING FOR, LOCATING, AND EXAMINING THE REQUESTED RECORDS
11 REGARDLESS OF WHETHER THAT PERSON IS AVAILABLE OR WHO ACTUALLY
12 PERFORMS THE LABOR. OVERTIME WAGES SHALL NOT BE INCLUDED IN THE
13 CALCULATION OF THE LABOR COSTS UNDER THIS SUBDIVISION UNLESS
14 OVERTIME IS SPECIFICALLY REQUESTED, STIPULATED TO, OR APPROVED BY
15 THE REQUESTOR. LABOR COSTS UNDER THIS SUBDIVISION SHALL BE
16 ESTIMATED AND CHARGED IN INCREMENTS OF 15 MINUTES OR MORE, WITH ALL
17 PARTIAL TIME INCREMENTS ROUNDED DOWN.

18 (B) THAT PORTION OF LABOR COSTS DIRECTLY ASSOCIATED WITH THE
19 NECESSARY SEPARATING AND DELETING OF EXEMPT INFORMATION FROM
20 NONEXEMPT INFORMATION AS PROVIDED IN SECTION 14. THE PUBLIC BODY
21 SHALL NOT CHARGE MORE THAN THE HOURLY WAGE, EXCLUDING THE COST OF
22 BENEFITS, OF ITS LOWEST-PAID EMPLOYEE CAPABLE OF SEPARATING AND
23 DELETING EXEMPT INFORMATION FROM NONEXEMPT INFORMATION AS PROVIDED
24 IN SECTION 14, REGARDLESS OF WHETHER THE PERSON IS AVAILABLE OR WHO
25 ACTUALLY PERFORMS THE LABOR. OVERTIME WAGES SHALL NOT BE INCLUDED
26 IN THE CALCULATION OF THE LABOR COSTS UNDER THIS SUBDIVISION UNLESS
27 OVERTIME IS SPECIFICALLY REQUESTED, STIPULATED TO, OR APPROVED BY



1 THE REQUESTOR. LABOR COSTS UNDER THIS SUBDIVISION SHALL BE
2 ESTIMATED AND CHARGED IN INCREMENTS OF 15 MINUTES OR MORE, WITH ALL
3 PARTIAL TIME INCREMENTS ROUNDED DOWN.

4 (C) FOR RECORDS PROVIDED TO THE REQUESTOR ON NONPAPER PHYSICAL
5 MEDIA, THE ACTUAL AND MOST REASONABLY ECONOMICAL COST OF THE
6 COMPUTER DISCS, COMPUTER TAPES, OR OTHER DIGITAL OR SIMILAR MEDIA.
7 THE PUBLIC BODY MAY CHOOSE TO ACCEPT NONPAPER PHYSICAL MEDIA
8 PROVIDED BY THE REQUESTOR TO BE USED IN CONJUNCTION WITH FULFILLING
9 A REQUEST IN LIEU OF CHARGING THE REQUESTOR FOR THAT MEDIA. THE
10 REQUESTOR MAY STIPULATE THAT THE REQUESTED RECORDS BE PROVIDED ON
11 DIGITAL MEDIA, ELECTRONICALLY MAILED, OR OTHERWISE ELECTRONICALLY
12 PROVIDED TO HIM OR HER IN LIEU OF PAPER COPIES.

13 (D) FOR PAPER COPIES OF RECORDS PROVIDED TO THE REQUESTOR, THE
14 ACTUAL TOTAL INCREMENTAL COST OF DUPLICATION OR PUBLICATION, NOT
15 INCLUDING LABOR. THE FEE SHALL NOT EXCEED 10 CENTS PER PAGE FOR
16 COPIES OF RECORDS MADE ON 8-1/2- BY 11-INCH PAPER OR 8-1/2- BY 14-
17 INCH PAPER. THE STATE TREASURER SHALL ADJUST THE PER-PAGE CHARGE
18 FOR INFLATION BASED ON THE MOST COMPREHENSIVE INDEX OF CONSUMER
19 PRICES AVAILABLE FOR THE DETROIT AREA FROM THE UNITED STATES
20 DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS. THE ADJUSTMENT
21 SHALL BE MADE IN 2020 AND EVERY TENTH YEAR THEREAFTER. A PUBLIC
22 BODY SHALL UTILIZE THE MOST ECONOMICAL MEANS AVAILABLE FOR MAKING
23 COPIES OF PUBLIC RECORDS, INCLUDING USING DOUBLE-SIDED COPYING,
24 WHERE AVAILABLE.

25 (E) THE COST OF LABOR DIRECTLY ASSOCIATED WITH MAKING PAPER
26 COPIES, MAKING DIGITAL COPIES, OR TRANSFERRING DIGITAL RECORDS TO
27 BE GIVEN TO THE REQUESTOR ON NONPAPER MEDIA OR THROUGH THE INTERNET



1 OR OTHER ELECTRONIC MEANS AS REQUESTED, STIPULATED TO, OR APPROVED
2 BY THE REQUESTOR. THE PUBLIC BODY SHALL NOT CHARGE MORE THAN THE
3 HOURLY WAGE, EXCLUDING THE COST OF BENEFITS, OF ITS LOWEST-PAID
4 EMPLOYEE CAPABLE OF REPLICATING THE RECORDS NECESSARY TO COMPLY
5 WITH A REQUEST UNDER THIS ACT, REGARDLESS OF WHETHER THAT PERSON IS
6 AVAILABLE OR WHO ACTUALLY PERFORMS THE LABOR. HOWEVER, TOTAL LABOR
7 COSTS CALCULATED UNDER THIS SUBDIVISION SHALL NOT EXCEED AN AMOUNT
8 EQUAL TO 3 TIMES THE STATE MINIMUM HOURLY WAGE RATE DETERMINED
9 UNDER SECTION 4 OF THE MINIMUM WAGE LAW OF 1964, 1964 PA 154, MCL
10 408.384. OVERTIME WAGES SHALL NOT BE INCLUDED IN THE CALCULATION OF
11 LABOR COSTS UNLESS SPECIFICALLY REQUESTED, STIPULATED, OR APPROVED
12 BY THE REQUESTOR. LABOR COSTS UNDER THIS SUBDIVISION MAY BE
13 ESTIMATED AND CHARGED IN TIME INCREMENTS OF THE PUBLIC BODY'S
14 CHOOSING; HOWEVER, ALL PARTIAL TIME INCREMENTS SHALL BE ROUNDED
15 DOWN.

16 (F) THE ACTUAL COST OF POSTAGE FOR SENDING THE REQUESTED
17 RECORDS IN A REASONABLY ECONOMICAL AND JUSTIFIABLE MANNER. THE
18 PUBLIC BODY SHALL NOT USE OR CHARGE FOR EXPEDITED SHIPPING UNLESS
19 SPECIFICALLY REQUESTED, STIPULATED TO, OR APPROVED BY THE
20 REQUESTOR, BUT MAY CHARGE FOR CONFIRMATION OF RECEIPT OF DELIVERY.

21 (2) A PUBLIC BODY MAY PROVIDE RECORDS, FOR WHICH A FEE MAY
22 ORDINARILY BE CHARGED, WITHOUT CHARGE OR AT A REDUCED RATE if the
23 public body determines that a waiver or reduction of the fee is in
24 the public interest because searching for or furnishing copies of
25 the public record can be considered as primarily benefiting the
26 general public. A public record search shall be made and a copy of
27 a public record shall be furnished without charge for the first



1 ~~\$20.00-\$50.00~~ of the fee for each request ~~to an~~ BY EITHER OF THE
2 FOLLOWING:

3 (A) UP TO 2 TIMES IN ANY CALENDAR YEAR PER PUBLIC BODY, AN
4 individual who is entitled to information under this act and who
5 submits an affidavit stating that the individual is ~~then receiving~~
6 INDIGENT AND RECEIVING SPECIFIC public assistance or, if not
7 receiving public assistance, stating facts showing inability to pay
8 the cost because of indigency IF THE INDIVIDUAL REQUEST IS FOR
9 RECORDS PERTAINING TO THE INDIVIDUAL OR IS FOR OTHER PURPOSES THAT
10 ARE STATED IN THE AFFIDAVIT. AN INDIVIDUAL IS INELIGIBLE FOR THIS
11 CHARGE REDUCTION IF HE OR SHE REQUESTS THE RECORD IN CONJUNCTION
12 WITH OUTSIDE PARTIES WHO ARE OFFERING OR PROVIDING PAYMENT OR OTHER
13 REMUNERATION TO THE INDIVIDUAL TO MAKE THE REQUEST. IF THE
14 AFFIDAVIT DOES NOT CONTAIN A STATEMENT BY THE REQUESTOR THAT THE
15 REQUEST IS NOT BEING MADE IN CONJUNCTION WITH OUTSIDE PARTIES WHO
16 ARE OFFERING OR PROVIDING PAYMENT OR OTHER REMUNERATION TO THE
17 INDIVIDUAL FOR MAKING THE REQUEST, THE PUBLIC BODY MAY REDUCE THE
18 CHARGE CONTINGENT ON RECEIVING AN AFFIDAVIT CONTAINING THAT
19 STATEMENT.

20 (B) A NONPROFIT ORGANIZATION FORMALLY DESIGNATED BY THE STATE
21 TO CARRY OUT ACTIVITIES UNDER PART C OF THE DEVELOPMENTAL
22 DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT, PUBLIC LAW 106-402,
23 AND THE PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS
24 ACT, PUBLIC LAW 99-319, OR THEIR SUCCESSORS, FOR REQUESTS BEING
25 DONE DIRECTLY ON BEHALF OF THE ORGANIZATION OR ITS CLIENTS THAT ARE
26 ALL OF THE FOLLOWING:

27 (i) MADE FOR A REASON WHOLLY CONSISTENT WITH THE MISSION AND



1 PROVISIONS OF THOSE LAWS UNDER SECTION 931 OF THE MENTAL HEALTH
2 CODE, 1974 PA 258, MCL 330.1931.

3 (ii) REQUESTED FROM THE PUBLIC BODY IN A MANNER THAT REASONABLY
4 SEEKS TO LOWER THE PUBLIC BODY'S COSTS.

5 (iii) ACCOMPANIED BY DOCUMENTATION OF ITS DESIGNATION BY THE
6 STATE.

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

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



1 (4) A PUBLIC BODY SHALL ESTABLISH PROCEDURES AND GUIDELINES TO
2 IMPLEMENT THIS SECTION AND SECTIONS 5, 10, AND 10A. A PUBLIC BODY
3 SHALL MAKE THE PROCEDURES AND GUIDELINES PUBLICLY AVAILABLE,
4 PROVIDE A PAPER COPY AT THE PUBLIC BODY'S OFFICE WITHOUT CHARGE ON
5 REQUEST, AND INCLUDE A COPY OF THE PROCEDURES AND GUIDELINES WITH
6 ITS INITIAL RESPONSE TO A REQUEST FOR INFORMATION. IF THE PUBLIC
7 BODY DIRECTLY OR INDIRECTLY ADMINISTERS OR MAINTAINS AN OFFICIAL
8 INTERNET PRESENCE, IT SHALL ALSO PUBLISH THE PROCEDURES AND
9 GUIDELINES ON ITS WEBSITE. A PUBLIC BODY'S PROCEDURES AND
10 GUIDELINES SHALL INCLUDE THE USE OF A STANDARD FORM FOR DETAILED
11 ITEMIZATION OF ANY FEE AMOUNTS IN ITS RESPONSES TO REQUESTS UNDER
12 THIS ACT. THE DETAILED ITEMIZATION SHALL CLEARLY LIST AND EXPLAIN
13 THE ALLOWABLE CHARGES FOR EACH OF THE 6 FEE CATEGORIES LISTED UNDER
14 SUBSECTION (1) THAT COMPOSE THE TOTAL FEE USED FOR ESTIMATING OR
15 CHARGING PURPOSES. A PUBLIC BODY THAT HAS NOT ESTABLISHED
16 PROCEDURES AND GUIDELINES OR THAT DOES NOT MAKE THEM PUBLICLY
17 AVAILABLE WITHOUT CHARGE SHALL NOT CHARGE A FEE FOR A REQUEST IT
18 RECEIVES UNDER THIS ACT.

19 (5) IF THE PUBLIC BODY DIRECTLY OR INDIRECTLY ADMINISTERS OR
20 MAINTAINS AN OFFICIAL INTERNET PRESENCE, ANY RECORDS AVAILABLE TO
21 THE GENERAL PUBLIC ON THAT INTERNET SITE ARE NONEXEMPT RECORDS
22 UNDER SECTION 14 AND ARE EXEMPT FROM ANY FEE CHARGES UNDER
23 SUBSECTION (1)(B). WHEN PRACTICABLE, THE PUBLIC BODY SHALL, FREE OF
24 CHARGE, INCLUDE THE SPECIFIC WEBSITE ADDRESS FOR OBTAINING
25 REQUESTED RECORDS THAT ARE AVAILABLE ON ITS WEBSITE IN THE WRITTEN
26 RESPONSE TO THE REQUESTOR. IF A PORTION OF REQUESTED RECORDS IS
27 AVAILABLE ON THE PUBLIC BODY'S WEBSITE, THE PUBLIC BODY SHALL



1 SEPARATE THOSE RECORDS FROM RECORDS THAT ARE NOT AVAILABLE ON THE
2 WEBSITE ON THE DETAILED ITEMIZATION DESCRIBED IN SUBSECTION (4) SO
3 THAT THE REQUESTOR HAS THE OPTION TO NOT PAY A FEE UNDER SUBSECTION
4 (1)(C), (D), OR (E) FOR THOSE RECORDS AVAILABLE ON THE INTERNET.
5 THIS SUBSECTION DOES NOT PROHIBIT A REQUEST FOR A COPY OF A PUBLIC
6 RECORD THAT IS AVAILABLE ON THE INTERNET IN PAPER OR OTHER
7 SPECIFIED FORMAT. HOWEVER, IF THE PUBLIC BODY HAS INCLUDED THE
8 WEBSITE ADDRESS FOR A RECORD IN ITS WRITTEN RESPONSE TO THE
9 REQUESTOR AND THE REQUESTOR SPECIFICALLY REQUESTS A COPY IN A
10 DIFFERENT FORMAT, THE PUBLIC BODY MAY CHARGE FOR THE FULL AMOUNT OF
11 EMPLOYEE FRINGE BENEFITS ASSOCIATED WITH THE LABOR COST FEES
12 DESCRIBED IN SUBSECTION (1)(E).

13 (6) A PUBLIC BODY MAY RELEASE A PUBLIC RECORD TO A REQUESTING
14 PERSON WITHOUT RECEIPT OF A WRITTEN REQUEST. IF THE REQUESTED
15 RECORD IS PUBLICLY AVAILABLE ON THE PUBLIC BODY'S WEBSITE, THE
16 PUBLIC BODY SHALL, TO THE BEST OF ITS GENERAL ABILITY, ATTEMPT TO
17 HELP, AID, OR FACILITATE A REQUESTOR'S EFFORTS TO LOCATE THE RECORD
18 WITHOUT THE NEED FOR A WRITTEN REQUEST.

19 (7) IN EITHER THE PUBLIC BODY'S INITIAL RESPONSE OR SUBSEQUENT
20 RESPONSE AS DESCRIBED UNDER SECTION 5(2)(D), THE PUBLIC BODY MAY
21 REQUIRE A GOOD-FAITH DEPOSIT FROM THE PERSON REQUESTING PUBLIC
22 RECORDS BEFORE PROVIDING THE RECORDS TO THE REQUESTOR IF THE ENTIRE
23 FEE ESTIMATE OR CHARGE AUTHORIZED UNDER THIS SECTION EXCEEDS
24 \$50.00, BASED ON A GOOD-FAITH CALCULATION OF THE TOTAL FEES
25 DESCRIBED IN SUBSECTION (4). THE DEPOSIT SHALL NOT EXCEED 1/2 OF
26 THE TOTAL FEE, AND A PUBLIC BODY'S REQUEST FOR A DEPOSIT SHALL
27 INCLUDE A DETAILED ITEMIZATION AS REQUIRED UNDER SUBSECTION (4).



1 THE RESPONSE SHALL ALSO CONTAIN A BEST EFFORTS ESTIMATE BY THE
2 PUBLIC BODY REGARDING THE TIME FRAME IT WILL TAKE THE PUBLIC BODY
3 TO PROVIDE THE RECORDS TO THE REQUESTOR. THE TIME FRAME ESTIMATE IS
4 NONBINDING UPON THE PUBLIC BODY, BUT THE PUBLIC BODY SHALL PROVIDE
5 THE ESTIMATE IN GOOD FAITH AND STRIVE TO BE REASONABLY ACCURATE AND
6 TO PROVIDE THE RECORDS IN A REASONABLE LENGTH OF TIME BASED ON THE
7 NATURE OF THE REQUEST IN THE PARTICULAR INSTANCE. IF A PUBLIC BODY
8 DOES NOT RESPOND IN A TIMELY MANNER AS DESCRIBED UNDER SECTION
9 5(2), IT IS NOT RELIEVED FROM ITS REQUIREMENTS TO PROVIDE PROPER
10 FEE CALCULATIONS AND TIME FRAME ESTIMATES IN ANY TARDY RESPONSES.
11 PROVIDING AN ESTIMATED TIME FRAME DOES NOT RELIEVE A PUBLIC BODY
12 FROM ANY OF THE OTHER REQUIREMENTS OF THIS ACT.

13 (8) IF A PUBLIC BODY DOES NOT RESPOND TO A WRITTEN REQUEST IN
14 A TIMELY MANNER AS REQUIRED UNDER SECTION 5(2), THE PUBLIC BODY
15 SHALL REDUCE THE FEES FOR LABOR COSTS OTHERWISE PERMITTED UNDER
16 SECTION 4 BY 10% FOR EACH DAY THE PUBLIC BODY EXCEEDS THE TIME
17 PERMITTED UNDER SECTION 5(2) FOR A RESPONSE TO THE REQUEST, WITH A
18 MAXIMUM 50% REDUCTION, IF EITHER OF THE FOLLOWING APPLIES:

19 (A) THE LATE RESPONSE WAS WILLFUL AND INTENTIONAL.

20 (B) THE WRITTEN REQUEST INCLUDED LANGUAGE THAT CONVEYED A
21 REQUEST FOR RECORDS WITHIN THE FIRST 500 WORDS OF THE BODY OF A
22 LETTER, FACSIMILE, ELECTRONIC MAIL, OR ELECTRONIC MAIL ATTACHMENT,
23 OR SPECIFICALLY INCLUDED THE WORDS, CHARACTERS, OR ABBREVIATIONS
24 FOR "FREEDOM OF INFORMATION", "INFORMATION", "FOIA", "COPY", OR A
25 RECOGNIZABLE MISSPELLING OF SUCH, OR APPROPRIATE LEGAL CODE
26 REFERENCE FOR THIS ACT, ON THE FRONT OF AN ENVELOPE, OR IN THE
27 SUBJECT LINE OF AN ELECTRONIC MAIL, LETTER, OR FACSIMILE COVER



1 PAGE.

2 (9) ~~(4)~~ This section does not apply to public records prepared
3 under an act or statute specifically authorizing the sale of those
4 public records to the public, or if the amount of the fee for
5 providing a copy of the public record is otherwise specifically
6 provided by an act or statute.

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

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

18 (a) Granting the request.

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

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

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

27 (3) Failure to respond to a request pursuant to subsection (2)



1 constitutes a public body's final determination to deny the request
2 ~~IF EITHER OF THE FOLLOWING APPLIES:~~

3 (A) THE FAILURE WAS WILLFUL AND INTENTIONAL.

4 (B) THE WRITTEN REQUEST INCLUDED LANGUAGE THAT CONVEYED A
5 REQUEST FOR RECORDS WITHIN THE FIRST 500 WORDS OF THE BODY OF A
6 LETTER, FACSIMILE, ELECTRONIC MAIL, OR ELECTRONIC MAIL ATTACHMENT,
7 OR SPECIFICALLY INCLUDED THE WORDS, CHARACTERS, OR ABBREVIATIONS
8 FOR "FREEDOM OF INFORMATION", "INFORMATION", "FOIA", "COPY", OR A
9 RECOGNIZABLE MISPELLING OF SUCH, OR APPROPRIATE LEGAL CODE
10 REFERENCE TO THIS ACT, ON THE FRONT OF AN ENVELOPE OR IN THE
11 SUBJECT LINE OF AN ELECTRONIC MAIL, LETTER, OR FACSIMILE COVER
12 PAGE.

13 (4) In a circuit court action to compel a public body's
14 disclosure of a public record under section 10, the circuit court
15 shall assess damages against the public body pursuant to section
16 ~~10(8)~~ 10(7) if the circuit court has done both of the following:

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

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

21 (5) ~~(4)~~ A written notice denying a request for a public record
22 in whole or in part is a public body's final determination to deny
23 the request or portion of that request. The written notice shall
24 contain:

25 (a) An explanation of the basis under this act or other
26 statute for the determination that the public record, or portion of
27 that public record, is exempt from disclosure, if that is the



1 reason for denying all or a portion of the request.

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

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

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

11 (i) Submit to the head of the public body a written appeal that
12 specifically states the word "appeal" and identifies the reason or
13 reasons for reversal of the disclosure denial.

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

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

20 (6) ~~(5)~~—The individual designated in section 6 as responsible
21 for the denial of the request shall sign the written notice of
22 denial.

23 (7) ~~(6)~~—If a public body issues a notice extending the period
24 for a response to the request, the notice shall specify the reasons
25 for the extension and the date by which the public body will do 1
26 of the following:

27 (a) Grant the request.



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

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

5 (8) ~~(7)~~—If a public body makes a final determination to deny
6 in whole or in part a request to inspect or receive a copy of a
7 public record or portion of that public record, the requesting
8 person may do either of the following:

9 (a) Appeal the denial to the head of the public body pursuant
10 to section 10.

11 (b) Commence an action in circuit court, pursuant to section
12 10.

13 Sec. 10. (1) If a public body makes a final determination to
14 deny all or a portion of a request, the requesting person may do 1
15 of the following at his or her option:

16 (a) Submit to the head of the public body a written appeal
17 that specifically states the word "appeal" and identifies the
18 reason or reasons for reversal of the denial.

19 (b) Commence an action in the circuit court to compel the
20 public body's disclosure of the public records within 180 days
21 after a public body's final determination to deny a request.

22 (2) Within 10 days after receiving a written appeal pursuant
23 to subsection (1)(a), the head of a public body shall do 1 of the
24 following:

25 (a) Reverse the disclosure denial.

26 (b) Issue a written notice to the requesting person upholding
27 the disclosure denial.



1 (c) Reverse the disclosure denial in part and issue a written
2 notice to the requesting person upholding the disclosure denial in
3 part.

4 (d) Under unusual circumstances, issue a notice extending for
5 not more than 10 business days the period during which the head of
6 the public body shall respond to the written appeal. The head of a
7 public body shall not issue more than 1 notice of extension for a
8 particular written appeal.

9 (3) A board or commission that is the head of a public body is
10 not considered to have received a written appeal under subsection
11 (2) until the first regularly scheduled meeting of that board or
12 commission following submission of the written appeal under
13 subsection (1)(a). If the head of the public body fails to respond
14 to a written appeal pursuant to subsection (2), or if the head of
15 the public body upholds all or a portion of the disclosure denial
16 that is the subject of the written appeal, the requesting person
17 may seek judicial review of the nondisclosure by commencing an
18 action in circuit court under subsection (1)(b).

19 (4) In an action commenced under subsection (1)(b), a court
20 that determines a public record is not exempt from disclosure shall
21 order the public body to cease withholding or to produce all or a
22 portion of a public record wrongfully withheld, regardless of the
23 location of the public record. The circuit court for the county in
24 which the complainant resides or has his or her principal place of
25 business, or the circuit court for the county in which the public
26 record or an office of the public body is located has venue over
27 the action. **UNLESS IT CAN SHOW GOOD CAUSE AS TO WHY THE EXEMPTION**



1 WAS NOT PREVIOUSLY STATED, THE PUBLIC BODY SHALL NOT ASSERT AN
2 EXEMPTION UNDER SECTION 13 THAT IT DID NOT ASSERT IN EITHER A
3 WRITTEN DENIAL OF THE REQUEST UNDER SECTION 5 OR AN APPEAL UNDER
4 SUBSECTION (1)(A). IF THE COURT FINDS THAT THE LEGAL BASIS FOR AN
5 ASSERTED EXEMPTION IS CLEARLY ERRONEOUS, THE COURT SHALL REQUIRE
6 THE PUBLIC BODY TO REDUCE ANY FEE OTHERWISE PERMITTED UNDER SECTION
7 4 FOR PROVIDING THE RECORD BY 50%. The court shall determine the
8 matter de novo and the burden is on the public body to sustain its
9 denial. The court, on its own motion, may view the public record in
10 controversy in private before reaching a decision. Failure to
11 comply with an order of the court may be punished as contempt of
12 court.

13 (5) An action commenced under this section and an appeal from
14 an action commenced under this section shall be assigned for
15 hearing and trial or for argument at the earliest practicable date
16 and expedited in every way.

17 (6) If a person asserting the right to inspect, copy, or
18 receive a copy of all or a portion of a public record prevails in
19 an action commenced under this section, the court shall award
20 reasonable attorneys' fees, costs, and disbursements. If the person
21 or public body prevails in part, the court may, in its discretion,
22 award all or an appropriate portion of reasonable attorneys' fees,
23 costs, and disbursements. The award shall be assessed against the
24 public body liable for damages under subsection (7).

25 (7) If the circuit court determines in an action commenced
26 under this section that the public body has arbitrarily and
27 capriciously violated this act by refusal or delay in disclosing or



1 providing copies of a public record, the court shall award, in
2 addition to any actual or compensatory damages, punitive damages in
3 the amount of ~~\$500.00~~ **\$2,000.00** to the person seeking the right to
4 inspect or receive a copy of a public record. The damages shall not
5 be assessed against an individual, but shall be assessed against
6 the next succeeding public body that is not an individual and that
7 kept or maintained the public record as part of its public
8 function.

9 **SEC. 10A. (1) IF THE REQUESTING PERSON HAS A GOOD-FAITH BELIEF**
10 **THAT THE FEE THE PUBLIC BODY REQUIRES FOR THE REQUESTED INFORMATION**
11 **IS AN UNREASONABLE FEE, THE REQUESTING PERSON MAY DO ANY OF THE**
12 **FOLLOWING:**

13 (A) IF THE PUBLIC BODY PROVIDES FOR FEE APPEALS TO THE HEAD OF
14 THE PUBLIC BODY IN ITS PUBLICLY AVAILABLE PROCEDURES AND
15 GUIDELINES, SUBMIT TO THE HEAD OF THE PUBLIC BODY A WRITTEN APPEAL
16 THAT SPECIFICALLY STATES THE WORD "APPEAL" AND IDENTIFIES THE
17 REASON OR REASONS THAT THE REQUIRED FEE IS AN UNREASONABLE FEE.

18 (B) COMMENCE AN ACTION IN THE CIRCUIT COURT FOR A FEE
19 REDUCTION NOT LATER THAN 180 DAYS AFTER RECEIVING THE NOTICE OF THE
20 REQUIRED FEE OR A DETERMINATION OF AN APPEAL TO THE PUBLIC BODY,
21 BUT ONLY IF 1 OF THE FOLLOWING APPLIES:

22 (i) THE PUBLIC BODY DOES NOT PROVIDE FOR APPEALS UNDER
23 SUBDIVISION (A).

24 (ii) THE HEAD OF THE PUBLIC BODY FAILED TO RESPOND TO A WRITTEN
25 APPEAL AS REQUIRED UNDER SUBSECTION (2).

26 (iii) AFTER PURSUING AN APPEAL UNDER SUBDIVISION (A), THE
27 REQUESTING PERSON HAS A GOOD-FAITH BELIEF THAT THE REQUIRED FEE



1 REMAINS AN UNREASONABLE FEE.

2 (2) WITHIN 10 DAYS AFTER RECEIVING A WRITTEN APPEAL UNDER
3 SUBSECTION (1)(A), THE HEAD OF A PUBLIC BODY SHALL DO 1 OF THE
4 FOLLOWING:

5 (A) WAIVE THE FEE.

6 (B) REDUCE THE FEE AND ISSUE A WRITTEN DETERMINATION TO THE
7 REQUESTING PERSON INDICATING THE SPECIFIC BASIS UNDER SECTION 4
8 THAT SUPPORTS THE REDUCED FEE. THE DETERMINATION SHALL INCLUDE A
9 CERTIFICATION FROM THE HEAD OF THE PUBLIC BODY THAT THE STATEMENTS
10 CONTAINED THEREIN ARE ACCURATE AND THAT THE REDUCED FEE AMOUNT IS
11 NOT AN UNREASONABLE FEE.

12 (C) UPHOLD THE FEE AND ISSUE A WRITTEN DETERMINATION TO THE
13 REQUESTING PERSON INDICATING THE SPECIFIC BASIS UNDER SECTION 4
14 THAT SUPPORTS THE REQUIRED FEE. THE DETERMINATION SHALL INCLUDE A
15 CERTIFICATION FROM THE HEAD OF THE PUBLIC BODY THAT THE STATEMENTS
16 CONTAINED THEREIN ARE ACCURATE AND THAT THE PERMITTED FEE IS NOT AN
17 UNREASONABLE FEE.

18 (D) UNDER UNUSUAL CIRCUMSTANCES, ISSUE A NOTICE EXTENDING FOR
19 NOT MORE THAN 10 BUSINESS DAYS THE PERIOD DURING WHICH THE HEAD OF
20 THE PUBLIC BODY SHALL RESPOND TO THE WRITTEN APPEAL. THE HEAD OF A
21 PUBLIC BODY SHALL NOT ISSUE MORE THAN 1 NOTICE OF EXTENSION FOR A
22 PARTICULAR WRITTEN APPEAL.

23 (3) A BOARD OR COMMISSION THAT IS THE HEAD OF A PUBLIC BODY IS
24 NOT CONSIDERED TO HAVE RECEIVED A WRITTEN APPEAL FOR PURPOSES OF
25 THE TIME LIMIT IN SUBSECTION (2) UNTIL THE FIRST REGULARLY
26 SCHEDULED MEETING OF THAT BOARD OR COMMISSION FOLLOWING SUBMISSION
27 OF THE WRITTEN APPEAL UNDER SUBSECTION (1)(A).



1 (4) IN AN ACTION COMMENCED UNDER SUBSECTION (1)(B), IF A COURT
2 DETERMINES THAT THE PUBLIC BODY REQUIRED AN UNREASONABLE FEE, IT
3 SHALL REDUCE THE FEE TO AN AMOUNT SUPPORTED UNDER SECTION 4. THE
4 CIRCUIT COURT FOR THE COUNTY IN WHICH THE COMPLAINANT RESIDES OR
5 HAS HIS OR HER PRINCIPAL PLACE OF BUSINESS, OR THE CIRCUIT COURT
6 FOR THE COUNTY IN WHICH THE PUBLIC RECORD OR AN OFFICE OF THE
7 PUBLIC BODY IS LOCATED, HAS VENUE OVER THE ACTION. THE COURT SHALL
8 DETERMINE THE MATTER DE NOVO, AND THE BURDEN IS ON THE PUBLIC BODY
9 TO ESTABLISH THAT THE REQUIRED FEE IS NOT AN UNREASONABLE FEE.
10 FAILURE TO COMPLY WITH AN ORDER OF THE COURT MAY BE PUNISHED AS
11 CONTEMPT OF COURT.

12 (5) AN ACTION COMMENCED UNDER THIS SECTION AND AN APPEAL FROM
13 AN ACTION COMMENCED UNDER THIS SECTION SHALL BE ASSIGNED FOR
14 HEARING AND TRIAL OR FOR ARGUMENT AT THE EARLIEST PRACTICABLE DATE
15 AND EXPEDITED IN EVERY WAY.

16 (6) IF A PERSON ASSERTING THE RIGHT TO A REDUCTION IN FEES
17 PREVAILS IN AN ACTION COMMENCED UNDER SUBSECTION (1)(B)(i), THE
18 COURT MAY, IN ITS DISCRETION, AWARD ALL OR AN APPROPRIATE PORTION
19 OF REASONABLE ATTORNEY FEES, COSTS, AND DISBURSEMENTS. IF THE
20 PERSON ASSERTING THE RIGHT TO A REDUCTION IN FEES PREVAILS IN AN
21 ACTION COMMENCED UNDER SUBSECTION (1)(B)(ii), THE COURT SHALL AWARD
22 REASONABLE ATTORNEY FEES, COSTS, AND DISBURSEMENTS. IF THE PERSON
23 ASSERTING THE RIGHT TO A REDUCTION IN FEES PREVAILS IN AN ACTION
24 COMMENCED UNDER SUBSECTION (1)(B)(iii) AND THE COURT FINDS THAT THE
25 HEAD OF THE PUBLIC BODY'S BASIS FOR IMPOSING THE FEE CONTAINED IN
26 THE WRITTEN NOTICE WAS UNSUPPORTED OR WAS CLEARLY ERRONEOUS, THE
27 COURT SHALL AWARD REASONABLE ATTORNEY FEES, COSTS, AND



1 DISBURSEMENTS. AN AWARD UNDER THIS SUBSECTION SHALL BE ASSESSED
2 AGAINST THE PUBLIC BODY LIABLE FOR DAMAGES UNDER SUBSECTION (7).

3 (7) IF THE CIRCUIT COURT DETERMINES IN AN ACTION COMMENCED
4 UNDER THIS SECTION THAT THE PUBLIC BODY HAS ARBITRARILY AND
5 CAPRICIOUSLY VIOLATED THIS ACT BY CHARGING AN UNREASONABLE FEE, THE
6 COURT SHALL AWARD, IN ADDITION TO ANY ACTUAL OR COMPENSATORY
7 DAMAGES, PUNITIVE DAMAGES IN THE AMOUNT OF \$1,000.00 TO THE PERSON
8 SEEKING THE RIGHT TO INSPECT OR RECEIVE A COPY OF A PUBLIC RECORD.
9 THE DAMAGES SHALL NOT BE ASSESSED AGAINST AN INDIVIDUAL, BUT SHALL
10 BE ASSESSED AGAINST THE NEXT SUCCEEDING PUBLIC BODY THAT IS NOT AN
11 INDIVIDUAL AND THAT KEPT OR MAINTAINED THE PUBLIC RECORD AS PART OF
12 ITS PUBLIC FUNCTION.

13 (8) AS USED IN THIS SECTION, "UNREASONABLE FEE" MEANS A FEE
14 THAT UNREASONABLY EXCEEDS THE FEE PERMITTED UNDER SECTION 4.

15 SEC. 10B. IF THE COURT DETERMINES, IN AN ACTION COMMENCED
16 UNDER THIS ACT, THAT A PUBLIC BODY WILLFULLY AND INTENTIONALLY
17 FAILED TO COMPLY WITH THIS ACT OR OTHERWISE ACTED IN BAD FAITH, THE
18 COURT SHALL IMPOSE UPON THE PUBLIC BODY, IN ADDITION TO ANY OTHER
19 AWARD OR SANCTION, A CIVIL FINE OF NOT LESS THAN \$2,500.00 OR MORE
20 THAN \$7,500.00 FOR EACH OCCURRENCE. IN DETERMINING THE AMOUNT OF
21 THE CIVIL FINE, THE COURT SHALL CONSIDER THE BUDGET OF THE PUBLIC
22 BODY AND WHETHER THE PUBLIC BODY HAS PREVIOUSLY BEEN ASSESSED
23 PENALTIES FOR VIOLATIONS OF THIS ACT. THE CIVIL FINE SHALL BE
24 DEPOSITED IN THE GENERAL FUND OF THE STATE TREASURY.



