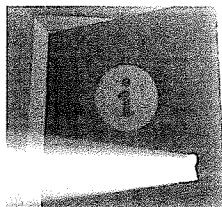


A how-to guide to Michigan's Freedom of Information Act

John Wisely, Michigan.com 9:23 a.m. EST January 25, 2015



(Photo: File)

Ever wonder how much your child's teacher earns?

Or how much the city spent to repave your street?

Or whether your neighbor has ever been cited for not keeping up his property?

The answers to these questions are found in records owned by the public, which are supposed to be there for the asking. But accessing those records is often more difficult than it needs to be.

The [Michigan Freedom of Information Act \(http://www.legislature.mi.gov/\(S\(3zl3ym2malup2byn1mxr0ous\)\)/mileg.aspx?page=getobject&objectname=mcl-15-232\)](http://www.legislature.mi.gov/(S(3zl3ym2malup2byn1mxr0ous))/mileg.aspx?page=getobject&objectname=mcl-15-232) was passed in 1976 as a way to ensure public access to government records. Many states and the federal government took up the cause of expanding transparency after the Watergate scandal.

Most government records in Michigan are considered public, unless specifically exempted by the law, which provides access to things like salaries and vendor payments, meeting minutes and agendas, mug shots and criminal records.

Earlier this month, Gov. Rick Snyder signed the most sweeping update to Michigan's law since it was passed nearly four decades ago, though people who follow it closely offer mixed reviews of the changes.

The update standardizes some fees and explicitly mentions electronic records, which weren't common when the original law passed.

From the beginning, the law confirmed a right to access public records, not just for journalists, but for everyone. Reporters use it frequently, but so do lawyers, political parties and interested citizens. Prisoners, however, are not allowed to make FOIA requests.

Here's a look at how anyone can use it to monitor government:

Filing a request

The first step in filing a request is determining who holds the records. Sometimes the answer is obvious: City clerks typically keep meeting minutes; treasurers typically keep copies of checks.

Other cases are less obvious. Records showing teacher salaries are kept by the local school district, but records showing teacher pension payments are kept by the state's Office of Retirement Services.

Every city, village, township, county and state department is required to name a Freedom of Information Act, or FOIA, coordinator. That person is responsible for processing FOIA requests.

When in doubt about who holds the records you want, before submitting a request, call the public body and ask for the FOIA coordinator. Explain what information you are seeking and he or she should help direct your request to the appropriate place.

Specify what you need

Requests are typically made in writing, including via e-mail. Those making requests can improve their chances of success by being clear on what they seek.

Instead of asking for pay records for an employee, be specific. Ask for annual earnings as listed on their W-2 form.

To learn about the repairs on your street, ask for any payments made to the paving contractor for work related to your street.

To learn whether your neighbor has been cited for not keeping up a property, ask for any code violations issued for your neighbor's address.

Ambiguous requests are often rejected, with public bodies claiming to not possess records matching your request. If you don't know the formal name of the record you are requesting, seek help from the FOIA officer.

The formal legal citation for the law is Michigan Compiled Law 15.231, or Public Act 442 of 1976. But record-seekers aren't required to cite it. If your request includes the words Freedom of Information Act, public bodies must honor it.

Response times

Once a request is made, Michigan law requires a government agency to respond within five business days.

The agency can grant the request, deny it or ask for an additional 10 business days. No response is considered a denial and can be appealed as such.

If a request is granted, the public body is expected to provide the records in the format in which they were requested. For example, if the records are kept in spreadsheet format, you can ask for a copy of the spreadsheet rather than a printout of the spreadsheet. Maps, photographs, diagrams and drawings all are covered by FOIA and can be requested.

The law doesn't require a government agency to create a record that does not exist.

If certain records would include information that would be exempt for disclosure, the public body is required to separate the exempt material and turn over the nonexempt material.

For example, a public employee's W-2 tax statement includes his or her annual compensation, which a public body must disclose. But it also includes the employee's Social Security number, which a public body is required to withhold.

In those cases, the public body is required to redact the Social Security number and disclose the rest.

Assessing fees

The subject of fees has long been a controversial part of the FOIA. Government bodies are allowed to charge fees for copying records and for other things under certain circumstances.

The updated law caps copying fees at 10 cents per page, but that rate doesn't apply to records sold under other laws.

For example, local governments are allowed to charge higher fees for copies of birth and death certificates, and counties can set higher fees for copies of property deeds and other land records.

Labor fees for requests are often contentious.

If a public body charges a labor fee, it is supposed to limit the charge to the hourly rate of the lowest paid employee capable of doing the work. So, for example, a public body isn't allowed to charge a lawyer's hourly rate for copying work that can be done by a clerk at a lower rate.

Fees also must be uniform for everyone. They can be waived if the requester can demonstrate poverty or if the request can be considered primarily benefiting the public interest.

But aside from copying costs, fees are supposed to be the exception rather than the rule.

"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," the law reads.

Once a fee is determined, public bodies can require a good-faith deposit, which generally can't exceed 50% of the total bill.

Appealing a denial

If a public body denies a request for records, the person making the request can appeal to the head of the public body, such as the mayor or a superintendent of a school district.

That person has 10 days to respond and can take an additional 10 days in certain cases. If the head of the public body denies the request, the requester can sue and ask a judge to order the public body to turn over the records.

If the requester prevails in court, the court can order the public body to pay the requester's attorney fees.

Successful requests

Here are some of the things the Free Press has exposed in recent years using the Freedom of Information Act:

- ▣ Records showing insider dealings among charter-school founders and operators.
- ▣ Settlement records from a whistle-blower lawsuit filed against former Detroit Mayor Kwame Kilpatrick, sparking a scandal that sent him to prison.
- ▣ Records showing a \$200,000 severance paid to Wayne County's former development chief Turkia Awada Mullin, prompting a scandal that brought her down, and helped end the career of her boss, then-County Executive Robert Ficano.
- ▣ Records showing that employees of prison contractor Aramark were fired for having sex with inmates.

FOIA pitfalls

Potential problems encountered in Freedom of Information request include:

- ▣ Request denied because the description of the records isn't specific enough.
- ▣ High fees to complete the request.
- ▣ Denying a request claiming a record isn't public.

Record-seekers can reword requests that are denied as not specific. They also can appeal denials and fees they consider excessive.

FOIA 101

What: Learn to use Michigan's Freedom of Information Act from Free Press investigative reporters

When: Thursday March, 19, 6 p.m.

Where: Detroit Free Press, 160 W. Fort Street.

RSVP: Space is limited. RSVPs are required. Email rsvp@freepress.com Include your name, city, phone number and the kinds of records you would like to access. Use the subject line FOIA. You can also RSVP by phone at 313-222-6583. The Free Press will e-mail more details to participants closer to the event.

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