

Legislative Analysis



FOIA REQUESTS BY INCARCERATED INDIVIDUALS

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<http://www.house.mi.gov/hfa>

House Bill 4427 (proposed substitute H-4)

Sponsor: Rep. Stephanie A. Young

Committee: Criminal Justice

Complete to 3-18-24

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4427 would amend the Freedom of Information Act (FOIA) to allow access by an incarcerated individual to certain public documents that relate to their own case, to an arrest or prosecution of their minor child for whom they have not been denied parenting time under the Child Custody Act, or to an arrest or prosecution for an offense the incarcerated individual or minor child was an alleged victim of.

Persons who can request FOIA records

Currently, FOIA says that it is the state's public policy 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 the act. The bill would delete the italicized text and provide that the remainder of the sentence is subject to the provisions described under "Records requests by incarcerated individuals," below.

The act currently defines *person* as an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. However, the definition now specifically excludes an individual serving a sentence of imprisonment in a federal correctional facility or in a state or county correctional facility in Michigan or any other state. The bill would eliminate this exclusion.

Records requests by incarcerated individuals

The bill would instead newly provide that the right to inspect, copy, or receive a copy of a public record under FOIA is available to an individual incarcerated in a county, state, or federal correctional facility in Michigan or any other state **only if** all of the following are met:

- In addition to the other requirements for properly requesting public records under the act, the request indicates that it is made under these particular provisions.
- The record requested contains one or more specific references to the incarcerated individual or to a minor child of the individual for whom the individual has not been denied parenting time under the Child Custody Act.
- The record is related to one or more of the following:
 - An arrest or prosecution of the incarcerated individual.
 - An arrest or prosecution of the incarcerated individual's minor child described above.
 - An arrest or prosecution that involves the incarcerated individual as an alleged victim.
 - An arrest or prosecution that involves the incarcerated individual's minor child described above as an alleged victim.
- The record is otherwise accessible to the incarcerated individual by law.

- The record is not exempt under section 13 of the act.¹
- If applicable, the request is accompanied by an affidavit of the incarcerated individual attesting to both of the following:
 - That the individual identified in the request as the individual’s minor child to whom a record relates is in fact the incarcerated individual’s minor child.
 - That the incarcerated individual has in fact not been denied parenting time of that minor child under the Child Custody Act.

An incarcerated individual making a request as described above would be exempt from a provision that requires the requestor’s contact information to include a valid phone number or email address.

The bill says that the right of incarcerated individuals described above is not intended to interfere with any properly adopted Department of Corrections rules regarding the content of mail that may be delivered to an individual incarcerated in a state correctional facility in Michigan.

Response to request from incarcerated individual

In general under FOIA, a public body is required to respond to a request for a public record within five business days after receiving the request by granting the request, issuing a written notice denying the request, granting the request in part and issuing a written notice denying the request in part, or *issuing a notice extending for not more than 10 business days the period during which the public body must respond to the request.*

Under the bill, the above response requirement would not apply to a request received by the Department of Corrections from an individual incarcerated in a state correctional facility in Michigan. In those cases, except as described under “Denial of a request,” below, the department would have 30 calendar days after receiving the request to grant the request, issue a written notice denying it, or grant it in part and issue a written notice denying it in part.

In addition, the language italicized above (notice of extension) also would not apply to a request received by the Department of Corrections from an individual incarcerated in a state correctional facility in Michigan.

Denial of a request

If a **public body** that receives a request from an incarcerated individual as described above does not possess any record that is related to an arrest or prosecution involving the incarcerated individual or the individual’s minor child as described above, the public body would have to deny the request in a response provided within 30 calendar days after receiving the request. (These provisions would not apply to requests for records related to an arrest or prosecution for an offense the incarcerated individual or minor child is an alleged victim of.) The response would have to certify that the public body does not possess any record that is related to an arrest or prosecution involving the incarcerated individual or the individual’s minor child as described above. A denial made under these provisions would not be subject to appeal under the act.

¹ The section describes records a public body may exempt from disclosure under FOIA, such as those involving security concerns, trade secrets, or invasion of privacy. <http://legislature.mi.gov/doc.aspx?mcl-15-243>

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, except for 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 created by state or local authority or primarily funded by or through state or local authority, except for the judiciary, including the office of the county clerk and its employees when acting in the capacity of clerk to the circuit court.

MCL 15.231 et seq.

BACKGROUND:

The bill is similar to House Bill 4617 of the 2021-22 legislative session, which was reported from the House Oversight committee.²

FISCAL IMPACT:

House Bill 4427 would have no fiscal impact on state or local government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

² <https://www.legislature.mi.gov/documents/2021-2022/billanalysis/House/pdf/2021-HLA-4617-5C0381C5.pdf>