

HOUSE BILL NO. 4386

March 02, 2021, Introduced by Reps. Tyrone Carter, Berman, Borton, Posthumus, Bollin, Sneller, Cherry, Ellison, Hope, Scott, Paquette, Martin, Liberati, Steenland, Howell, Steckloff, Outman, Kuppa, Rabhi, O'Neal, Breen, Puri, Young, Camilleri, Pohutsky, Brabec, Aiyash, Morse, Manoogian, LaGrand, Garza, Weiss, Hood, Cambensy, Steven Johnson, Sabo, Peterson, Shannon, Sowerby, Haadsma, Brixie, Jones, Reilly, Brenda Carter, Lasinski, Stone, Calley, Yaroch, Witwer, Coleman and Glenn and referred to the Committee on Oversight.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending sections 1, 2, 3, 4, 5, 6, 10, 10a, and 10b (MCL
15.231, 15.232, 15.233, 15.234, 15.235, 15.236, 15.240, 15.240a,
and 15.240b), section 1 as amended by 1997 PA 6, section 2 as
amended by 2018 PA 68, section 3 as amended by 2018 PA 523, section
4 as amended by 2020 PA 38, section 5 as amended by 2020 PA 36,
section 6 as amended by 1996 PA 553, and section 10 as amended and
sections 10a and 10b as added by 2014 PA 563, and by designating

sections 1 to 16 as part 1.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 PART 1

2 Sec. 1. (1) This act **may be cited as the "freedom of**
3 information and legislative open records act", and this part shall
4 be known and may be cited as the "freedom of information act".

5 (2) It is the public policy of this state that all persons,
6 except those persons incarcerated in state or local correctional
7 facilities, are entitled to full and complete information regarding
8 the affairs of government and the official acts of those who
9 represent them as public officials and public employees, consistent
10 with this act. The people shall be informed so that they may fully
11 participate in the democratic process.

12 Sec. 2. As used in this ~~act:~~**part:**

13 (a) "Cybersecurity assessment" means an investigation
14 undertaken by a person, governmental body, or other entity to
15 identify vulnerabilities in cybersecurity plans.

16 (b) "Cybersecurity incident" includes, but is not limited to,
17 a computer network intrusion or attempted intrusion; a breach of
18 primary computer network controls; unauthorized access to programs,
19 data, or information contained in a computer system; or actions by
20 a third party that materially affect component performance or,
21 because of impact to component systems, prevent normal computer
22 system activities.

23 (c) "Cybersecurity plan" includes, but is not limited to,
24 information about a person's information systems, network security,
25 encryption, network mapping, access control, passwords,
26 authentication practices, computer hardware or software, or
27 response to cybersecurity incidents.

1 (d) "Cybersecurity vulnerability" means a deficiency within
 2 computer hardware or software, or within a computer network or
 3 information system, that could be exploited by unauthorized parties
 4 for use against an individual computer user or a computer network
 5 or information system.

6 (e) "Field name" means the label or identification of an
 7 element of a computer database that contains a specific item of
 8 information, and includes but is not limited to a subject heading
 9 such as a column header, data dictionary, or record layout.

10 (f) "FOIA coordinator" means either of the following:

11 (i) An individual who is a public body.

12 (ii) An individual designated by a public body in accordance
 13 with section 6 to accept and process requests for public records
 14 under this ~~act~~.**part.**

15 (g) "Person" means an individual, corporation, limited
 16 liability company, partnership, firm, organization, association,
 17 governmental entity, or other legal entity. Person does not include
 18 an individual serving a sentence of imprisonment in a state or
 19 county correctional facility in this state or any other state, or
 20 in a federal correctional facility.

21 (h) "Public body" means any of the following:

22 (i) A state officer, employee, agency, department, division,
 23 bureau, board, commission, council, authority, or other body in the
 24 executive branch of the state government. ~~, but does not include~~
 25 ~~the governor or lieutenant governor, the executive office of the~~
 26 ~~governor or lieutenant governor, or employees thereof.~~

27 ~~(ii) An agency, board, commission, or council in the~~
 28 ~~legislative branch of the state government.~~

29 (ii) ~~(iii)~~ A county, city, township, village, intercounty,

1 intercity, or regional governing body, council, school district,
 2 special district, or municipal corporation, or a board, department,
 3 commission, council, or agency thereof.

4 **(iii)** ~~(iv)~~ Any other body that is created by state or local
 5 authority or is primarily funded by or through state or local
 6 authority, except that **it does not include** the judiciary, including
 7 the office of the county clerk and its employees when acting in the
 8 capacity of clerk to the circuit court, ~~is not included in the~~
 9 ~~definition of public body.~~ **or an entity in the legislative branch of**
 10 **state government.**

11 (i) "Public record" means a writing prepared, owned, used, in
 12 the possession of, or retained by a public body in the performance
 13 of an official function, from the time it is created. Public record
 14 does not include computer software. This ~~act~~ **part** separates public
 15 records into the following 2 classes:

16 (i) Those that are exempt from disclosure under section 13.

17 (ii) All public records that are not exempt from disclosure
 18 under section 13 and that are subject to disclosure under this
 19 ~~act~~ **part.**

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

27 (k) "Unusual circumstances" means any 1 or a combination of
 28 the following, but only to the extent necessary for the proper
 29 processing of a request:

1 (i) The need to search for, collect, or appropriately examine
2 or review a voluminous amount of separate and distinct public
3 records pursuant to a single request.

4 (ii) The need to collect the requested public records from
5 numerous field offices, facilities, or other establishments ~~which~~
6 **that** are located apart from the particular office receiving or
7 processing the request.

8 (l) "Writing" means handwriting, typewriting, printing,
9 photostating, photographing, photocopying, and every other means of
10 recording, and includes letters, words, pictures, sounds, or
11 symbols, or combinations thereof, and papers, maps, magnetic or
12 paper tapes, photographic films or prints, microfilm, microfiche,
13 magnetic or punched cards, discs, drums, hard drives, solid state
14 storage components, or other means of recording or retaining
15 meaningful content.

16 (m) "Written request" means a writing that asks for
17 information, and includes a writing transmitted by facsimile,
18 electronic mail, or other electronic means.

19 Sec. 3. (1) Except as expressly provided in section 13, upon
20 providing a public body's FOIA coordinator with a written request
21 that describes a public record sufficiently to enable the public
22 body to find the public record, a person has a right to inspect,
23 copy, or receive copies of the requested public record of the
24 public body. A request from a person, other than an individual who
25 qualifies as indigent under section 4(2)(a), must include the
26 requesting person's complete name, address, and contact
27 information, and, if the request is made by a person other than an
28 individual, the complete name, address, and contact information of
29 the person's agent who is an individual. An address must be written

1 in compliance with United States Postal Service addressing
2 standards. Contact information must include a valid telephone
3 number or electronic mail address. ~~A~~**Except as to the executive**
4 **office of the governor or lieutenant governor,** a person has a right
5 to subscribe to future issuances of public records that are
6 created, issued, or disseminated on a regular basis. A subscription
7 is valid for up to 6 months, at the request of the subscriber, and
8 is renewable. An employee of a public body who receives a request
9 for a public record shall promptly forward that request to the
10 freedom of information act coordinator.

11 (2) A freedom of information act coordinator shall keep a copy
12 of all written requests for public records on file for no less than
13 1 year.

14 (3) A public body shall furnish a requesting person a
15 reasonable opportunity for inspection and examination of its public
16 records, and shall furnish reasonable facilities for making
17 memoranda or abstracts from its public records during the usual
18 business hours. A public body may make reasonable rules necessary
19 to protect its public records and to prevent excessive and
20 unreasonable interference with the discharge of its functions. A
21 public body shall protect public records from loss, unauthorized
22 alteration, mutilation, or destruction.

23 (4) This ~~act~~**part** does not require a public body to make a
24 compilation, summary, or report of information, except as required
25 in section 11.

26 (5) This ~~act~~**part** does not require a public body to create a
27 new public record, except as required in section 11, and to the
28 extent required by this ~~act~~**part** for the furnishing of copies, or
29 edited copies pursuant to section 14(1), of an already existing

1 public record.

2 (6) The custodian of a public record shall, upon written
3 request, furnish a requesting person a certified copy of a public
4 record.

5 Sec. 4. (1) A public body may charge a fee for a public record
6 search, for the necessary copying of a public record for
7 inspection, or for providing a copy of a public record if it has
8 established, makes publicly available, and follows procedures and
9 guidelines to implement this section as described in subsection
10 (4). Subject to subsections (2), (3), (4), (5), and (9), the fee
11 must be limited to actual mailing costs, and to the actual
12 incremental cost of duplication or publication including labor, the
13 cost of search, examination, review, and the deletion and
14 separation of exempt from nonexempt information as provided in
15 section 14. Except as otherwise provided in this ~~act, part,~~ if the
16 public body estimates or charges a fee in accordance with this ~~act,~~
17 **part,** the total fee must not exceed the sum of the following
18 components:

19 (a) That portion of labor costs directly associated with the
20 necessary searching for, locating, and examining of public records
21 in conjunction with receiving and fulfilling a granted written
22 request. The public body shall not charge more than the hourly wage
23 of its lowest-paid employee capable of searching for, locating, and
24 examining the public records in the particular instance regardless
25 of whether that person is available or who actually performs the
26 labor. Labor costs under this subdivision shall be estimated and
27 charged in increments of 15 minutes or more, with all partial time
28 increments rounded down.

29 (b) That portion of labor costs, including necessary review,

1 if any, directly associated with the separating and deleting of
2 exempt information from nonexempt information as provided in
3 section 14. For services performed by an employee of the public
4 body, the public body shall not charge more than the hourly wage of
5 its lowest-paid employee capable of separating and deleting exempt
6 information from nonexempt information in the particular instance
7 as provided in section 14, regardless of whether that person is
8 available or who actually performs the labor. If a public body does
9 not employ a person capable of separating and deleting exempt
10 information from nonexempt information in the particular instance
11 as provided in section 14 as determined by the public body's FOIA
12 coordinator on a case-by-case basis, it may treat necessary
13 contracted labor costs used for the separating and deleting of
14 exempt information from nonexempt information in the same manner as
15 employee labor costs when calculating charges under this
16 subdivision if it clearly notes the name of the contracted person
17 or firm on the detailed itemization described under subsection (4).
18 Total labor costs calculated under this subdivision for contracted
19 labor costs must not exceed an amount equal to 6 times the state
20 minimum hourly wage rate determined under section 4 of the improved
21 workforce opportunity wage act, 2018 PA 337, MCL 408.934. Labor
22 costs under this subdivision shall be estimated and charged in
23 increments of 15 minutes or more, with all partial time increments
24 rounded down. A public body shall not charge for labor directly
25 associated with redaction under section 14 if it knows or has
26 reason to know that it previously redacted the public record in
27 question and the redacted version is still in the public body's
28 possession.

29 (c) For public records provided to the requestor on any form

1 of nonpaper physical media, the actual and most reasonably
2 economical cost of the nonpaper physical media. The requestor may
3 stipulate that the public records be provided on nonpaper physical
4 media, electronically mailed, or otherwise electronically provided
5 to him or her in lieu of paper copies. This subdivision does not
6 apply if a public body lacks the technological capability necessary
7 to provide records on the particular nonpaper physical media
8 stipulated in the particular instance.

9 (d) For paper copies of public records provided to the
10 requestor, the actual total incremental cost of necessary
11 duplication or publication, not including labor. The cost of paper
12 copies shall be calculated as a total cost per sheet of paper and
13 shall be itemized and noted in a manner that expresses both the
14 cost per sheet and the number of sheets provided. The fee must not
15 exceed 10 cents per sheet of paper for copies of public records
16 made on 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper. A
17 public body shall utilize the most economical means available for
18 making copies of public records, including using double-sided
19 printing, if cost saving and available.

20 (e) The cost of labor directly associated with duplication or
21 publication, including making paper copies, making digital copies,
22 or transferring digital public records to be given to the requestor
23 on nonpaper physical media or through the internet or other
24 electronic means as stipulated by the requestor. The public body
25 shall not charge more than the hourly wage of its lowest-paid
26 employee capable of necessary duplication or publication in the
27 particular instance, regardless of whether that person is available
28 or who actually performs the labor. Labor costs under this
29 subdivision may be estimated and charged in time increments of the

1 public body's choosing; however, all partial time increments shall
2 be rounded down.

3 (f) The actual cost of mailing, if any, for sending the public
4 records in a reasonably economical and justifiable manner. The
5 public body shall not charge more for expedited shipping or
6 insurance unless specifically stipulated by the requestor, but may
7 otherwise charge for the least expensive form of postal delivery
8 confirmation when mailing public records.

9 (2) When calculating labor costs under subsection (1)(a), (b),
10 or (e), fee components shall be itemized in a manner that expresses
11 both the hourly wage and the number of hours charged. The public
12 body may also add up to 50% to the applicable labor charge amount
13 to cover or partially cover the cost of fringe benefits if it
14 clearly notes the percentage multiplier used to account for
15 benefits in the detailed itemization described in subsection (4).
16 Subject to the 50% limitation, the public body shall not charge
17 more than the actual cost of fringe benefits, and overtime wages
18 shall not be used in calculating the cost of fringe benefits.
19 Overtime wages shall not be included in the calculation of labor
20 costs unless overtime is specifically stipulated by the requestor
21 and clearly noted on the detailed itemization described in
22 subsection (4). A search for a public record may be conducted or
23 copies of public records may be furnished without charge or at a
24 reduced charge if the public body determines that a waiver or
25 reduction of the fee is in the public interest because searching
26 for or furnishing copies of the public record can be considered as
27 primarily benefiting the general public. A public record search
28 shall be made and a copy of a public record shall be furnished
29 without charge for the first \$20.00 of the fee for each request by

1 either of the following:

2 (a) An individual who is entitled to information under this
3 ~~act-part~~ and who submits an affidavit stating that the individual
4 is indigent and receiving specific public assistance or, if not
5 receiving public assistance, stating facts showing inability to pay
6 the cost because of indigency. If the requestor is eligible for a
7 requested discount, the public body shall fully note the discount
8 on the detailed itemization described under subsection (4). If a
9 requestor is ineligible for the discount, the public body shall
10 inform the requestor specifically of the reason for ineligibility
11 in the public body's written response. An individual is ineligible
12 for this fee reduction if any of the following apply:

13 (i) The individual has previously received discounted copies of
14 public records under this subsection from the same public body
15 twice during that calendar year.

16 (ii) The individual requests the information in conjunction
17 with outside parties who are offering or providing payment or other
18 remuneration to the individual to make the request. A public body
19 may require a statement by the requestor in the affidavit that the
20 request is not being made in conjunction with outside parties in
21 exchange for payment or other remuneration.

22 (b) A nonprofit organization formally designated by the state
23 to carry out activities under subtitle C of the developmental
24 disabilities assistance and bill of rights act of 2000, Public Law
25 106-402, and the protection and advocacy for individuals with
26 mental illness act, Public Law 99-319, or their successors, if the
27 request meets all of the following requirements:

28 (i) Is made directly on behalf of the organization or its
29 clients.

1 (ii) Is made for a reason wholly consistent with the mission
2 and provisions of those laws under section 931 of the mental health
3 code, 1974 PA 258, MCL 330.1931.

4 (iii) Is accompanied by documentation of its designation by the
5 state, if requested by the public body.

6 (3) A fee as described in subsection (1) shall not be charged
7 for the cost of search, examination, review, and the deletion and
8 separation of exempt from nonexempt information as provided in
9 section 14 unless failure to charge a fee would result in
10 unreasonably high costs to the public body because of the nature of
11 the request in the particular instance, and the public body
12 specifically identifies the nature of these unreasonably high
13 costs.

14 (4) A public body shall establish procedures and guidelines to
15 implement this ~~act~~**part** and shall create a written public summary
16 of the specific procedures and guidelines relevant to the general
17 public regarding how to submit written requests to the public body
18 and explaining how to understand a public body's written responses,
19 deposit requirements, fee calculations, and avenues for challenge
20 and appeal. The written public summary shall be written in a manner
21 so as to be easily understood by the general public. If the public
22 body directly or indirectly administers or maintains an official
23 internet presence, it shall post and maintain the procedures and
24 guidelines and its written public summary on its website. A public
25 body shall make the procedures and guidelines publicly available by
26 providing free copies of the procedures and guidelines and its
27 written public summary both in the public body's response to a
28 written request and upon request by visitors at the public body's
29 office. A public body that posts and maintains procedures and

1 guidelines and its written public summary on its website may
2 include the website link to the documents in lieu of providing
3 paper copies in its response to a written request. A public body's
4 procedures and guidelines must include the use of a standard form
5 for detailed itemization of any fee amount in its responses to
6 written requests under this ~~act-part~~. The detailed itemization
7 must clearly list and explain the allowable charges for each of the
8 6 fee components listed under subsection (1) that compose the total
9 fee used for estimating or charging purposes. Other public bodies
10 may use a form created by the department of technology, management,
11 and budget or create a form of their own that complies with this
12 subsection. A public body that has not established procedures and
13 guidelines, has not created a written public summary, or has not
14 made those items publicly available without charge as required in
15 this subsection is not relieved of its duty to comply with any
16 requirement of this ~~act-part~~ and shall not require deposits or
17 charge fees otherwise permitted under this ~~act-part~~ until it is in
18 compliance with this subsection. Notwithstanding this subsection
19 and despite any law to the contrary, a public body's procedures and
20 guidelines under this ~~act-part~~ are not exempt public records under
21 section 13.

22 (5) If the public body directly or indirectly administers or
23 maintains an official internet presence, any public records
24 available to the general public on that internet site at the time
25 the request is made are exempt from any charges under subsection
26 (1)(b). If the FOIA coordinator knows or has reason to know that
27 all or a portion of the requested information is available on its
28 website, the public body shall notify the requestor in its written
29 response that all or a portion of the requested information is

1 available on its website. The written response, to the degree
2 practicable in the specific instance, must include a specific
3 webpage address where the requested information is available. On
4 the detailed itemization described in subsection (4), the public
5 body shall separate the requested public records that are available
6 on its website from those that are not available on the website and
7 shall inform the requestor of the additional charge to receive
8 copies of the public records that are available on its website. If
9 the public body has included the website address for a record in
10 its written response to the requestor and the requestor thereafter
11 stipulates that the public record be provided to him or her in a
12 paper format or other form as described under subsection (1)(c),
13 the public body shall provide the public records in the specified
14 format but may use a fringe benefit multiplier greater than the 50%
15 limitation in subsection (2), not to exceed the actual costs of
16 providing the information in the specified format.

17 (6) A public body may provide requested information available
18 in public records without receipt of a written request.

19 (7) If a verbal request for information is for information
20 that a public body believes is available on the public body's
21 website, the public employee shall, where practicable and to the
22 best of the public employee's knowledge, inform the requestor about
23 the public body's pertinent website address.

24 (8) In either the public body's initial response or subsequent
25 response as described under section 5(2)(d), the public body may
26 require a good-faith deposit from the person requesting information
27 before providing the public records to the requestor if the entire
28 fee estimate or charge authorized under this section exceeds
29 \$50.00, based on a good-faith calculation of the total fee

1 described in subsection (4). Subject to subsection (10), the
2 deposit must not exceed 1/2 of the total estimated fee, and a
3 public body's request for a deposit must include a detailed
4 itemization as required under subsection (4). The response must
5 also contain a best efforts estimate by the public body regarding
6 the time frame it will take the public body to comply with the law
7 in providing the public records to the requestor. The time frame
8 estimate is nonbinding upon the public body, but the public body
9 shall provide the estimate in good faith and strive to be
10 reasonably accurate and to provide the public records in a manner
11 based on this state's public policy under section 1 and the nature
12 of the request in the particular instance. If a public body does
13 not respond in a timely manner as described under section 5(2), it
14 is not relieved from its requirements to provide proper fee
15 calculations and time frame estimates in any tardy responses.
16 Providing an estimated time frame does not relieve a public body
17 from any of the other requirements of this ~~act~~.part.

18 (9) If a public body does not respond to a written request in
19 a timely manner as required under section 5(2), the public body
20 shall do the following:

21 (a) Reduce the charges for labor costs otherwise permitted
22 under this section by 5% for each day the public body exceeds the
23 time permitted under section 5(2) for a response to the request,
24 with a maximum 50% reduction, if either of the following applies:

25 (i) The late response was willful and intentional.

26 (ii) The written request included language that conveyed a
27 request for information within the first 250 words of the body of a
28 letter, facsimile, electronic mail, or electronic mail attachment,
29 or specifically included the words, characters, or abbreviations

1 for "freedom of information", "information", "FOIA", "copy", or a
2 recognizable misspelling of such, or appropriate legal code
3 reference for this ~~act, part~~, on the front of an envelope, or in
4 the subject line of an electronic mail, letter, or facsimile cover
5 page.

6 (b) If a charge reduction is required under subdivision (a),
7 fully note the charge reduction on the detailed itemization
8 described under subsection (4).

9 (10) This section does not apply to public records prepared
10 under an act or statute specifically authorizing the sale of those
11 public records to the public, or if the amount of the fee for
12 providing a copy of the public record is otherwise specifically
13 provided by an act or statute.

14 (11) Subject to subsection (12), after a public body has
15 granted and fulfilled a written request from an individual under
16 this ~~act, part~~, if the public body has not been paid in full the
17 total amount under subsection (1) for the copies of public records
18 that the public body made available to the individual as a result
19 of that written request, the public body may require a deposit of
20 up to 100% of the estimated fee before it begins a full public
21 record search for any subsequent written request from that
22 individual if all of the following apply:

23 (a) The final fee for the prior written request was not more
24 than 105% of the estimated fee.

25 (b) The public records made available contained the
26 information being sought in the prior written request and are still
27 in the public body's possession.

28 (c) The public records were made available to the individual,
29 subject to payment, within the time frame estimate described under

1 subsection (8).

2 (d) Ninety days have passed since the public body notified the
3 individual in writing that the public records were available for
4 pickup or mailing.

5 (e) The individual is unable to show proof of prior payment to
6 the public body.

7 (f) The public body calculates a detailed itemization, as
8 required under subsection (4), that is the basis for the current
9 written request's increased estimated fee deposit.

10 (12) A public body shall no longer require an increased
11 estimated fee deposit from an individual as described under
12 subsection (11) if any of the following apply:

13 (a) The individual is able to show proof of prior payment in
14 full to the public body.

15 (b) The public body is subsequently paid in full for the
16 applicable prior written request.

17 (c) Three hundred sixty-five days have passed since the
18 individual made the written request for which full payment was not
19 remitted to the public body.

20 (13) A deposit required by a public body under this ~~act~~**part**
21 is a fee.

22 (14) If a deposit that is required under subsection (8) or
23 (11) is not received by the public body within 45 days from receipt
24 by the requesting person of the notice that a deposit is required,
25 and if the requesting person has not filed an appeal of the deposit
26 amount pursuant to section 10a, the request shall be considered
27 abandoned by the requesting person and the public body is no longer
28 required to fulfill the request. Notice of a deposit requirement
29 under subsection (8) or (11) is considered received 3 days after it

1 is sent, regardless of the means of transmission. Notice of a
2 deposit requirement under subsection (8) or (11) must include
3 notice of the date by which the deposit must be received, which
4 date is 48 days after the date the notice is sent.

5 Sec. 5. (1) Except as provided in section 3, a person desiring
6 to inspect or receive a copy of a public record shall make a
7 written request for the public record to the FOIA coordinator of a
8 public body. A written request made by facsimile, electronic mail,
9 or other electronic transmission is not received by a public body's
10 FOIA coordinator until 1 business day after the electronic
11 transmission is made. However, if a written request is sent by
12 electronic mail and delivered to the public body's spam or junk-
13 mail folder, the request is not received until 1 day after the
14 public body first becomes aware of the written request. The public
15 body shall note in its records both the time a written request is
16 delivered to its spam or junk-mail folder and the time the public
17 body first becomes aware of that request.

18 (2) Unless otherwise agreed to in writing by the person making
19 the request, a public body shall, subject to subsection (10),
20 respond to a request for a public record within 5 business days
21 after the public body receives the request by doing 1 of the
22 following:

23 (a) Granting the request.

24 (b) Issuing a written notice to the requesting person denying
25 the request.

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

28 (d) Issuing a notice extending for not more than 10 business
29 days the period during which the public body shall respond to the

1 request. A public body shall not issue more than 1 notice of
2 extension for a particular request.

3 (3) Failure to respond to a request under subsection (2)
4 constitutes a public body's final determination to deny the request
5 if either of the following applies:

6 (a) The failure was willful and intentional.

7 (b) The written request included language that conveyed a
8 request for information within the first 250 words of the body of a
9 letter, facsimile, electronic mail, or electronic mail attachment,
10 or specifically included the words, characters, or abbreviations
11 for "freedom of information", "information", "FOIA", "copy", or a
12 recognizable misspelling of such, or appropriate legal code
13 reference to this ~~act~~, **part**, on the front of an envelope or in the
14 subject line of an electronic mail, letter, or facsimile cover
15 page.

16 (4) In a civil action to compel a public body's disclosure of
17 a public record under section 10, the court shall assess damages
18 against the public body under section 10(7) if the court has done
19 both of the following:

20 (a) Determined that the public body has not complied with
21 subsection (2).

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

24 (5) A written notice denying a request for a public record in
25 whole or in part is a public body's final determination to deny the
26 request or portion of that request. The written notice must
27 contain:

28 (a) An explanation of the basis under this ~~act~~, **part** or other
29 statute for the determination that the public record, or portion of

1 that public record, is exempt from disclosure, if that is the
2 reason for denying all or a portion of the request.

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

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

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

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

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

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

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

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

26 (a) Grant the request.

27 (b) Issue a written notice to the requesting person denying
28 the request.

29 (c) Grant the request in part and issue a written notice to

1 the requesting person denying the request in part.

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

6 (a) Appeal the denial to the head of the public body under
7 section 10.

8 (b) Commence a civil action, under section 10.

9 (9) Notwithstanding any other provision of this ~~act~~**part** to
10 the contrary, a public body that maintains a law enforcement
11 records management system and stores public records for another
12 public body that subscribes to the law enforcement records
13 management system is not in possession of, retaining, or the
14 custodian of, a public record stored on behalf of the subscribing
15 public body. If the public body that maintains a law enforcement
16 records management system receives a written request for a public
17 record that is stored on behalf of a subscribing public body, the
18 public body that maintains the law enforcement records management
19 system shall, within 10 business days after receipt of the request,
20 give written notice to the requesting person identifying the
21 subscribing public body and stating that the requesting person
22 shall submit the request to the subscribing public body. As used in
23 this subsection, "law enforcement records management system" means
24 a data storage system that may be used voluntarily by subscribers,
25 including any subscribing public bodies, to share information and
26 facilitate intergovernmental collaboration in the provision of law
27 enforcement services.

28 (10) A person making a request under subsection (1) may
29 stipulate that the public body's response under subsection (2) be

1 electronically mailed, delivered by facsimile, or delivered by
 2 first-class mail. This subsection does not apply if the public body
 3 lacks the technological capability to provide an electronically
 4 mailed response.

5 Sec. 6. (1) A public body that is a city, village, township,
 6 county, or state department, or under the control of a city,
 7 village, township, county, or state department, shall designate an
 8 individual as the public body's FOIA coordinator. The FOIA
 9 coordinator shall ~~be responsible for accepting and processing~~
 10 **accept and process** requests for the public body's public records
 11 under this act ~~part~~ and shall ~~be responsible for approving a~~
 12 **approve any** denial under section ~~5(4) and (5).~~ **5(5) and (6)**. In a
 13 county not having an executive form of government, the chairperson
 14 of the county board of commissioners is designated the FOIA
 15 coordinator for that county.

16 (2) For all other public bodies, the chief administrative
 17 officer of the respective public body is designated the public
 18 body's FOIA coordinator.

19 (3) ~~An~~ **A** FOIA coordinator may designate another individual to
 20 act on his or her behalf in accepting and processing requests for
 21 the public body's public records, and in approving a denial under
 22 section ~~5(4) and (5).~~ **5(5) and (6)**.

23 Sec. 10. (1) If a public body makes a final determination to
 24 deny all or a portion of a request, the requesting person may do ~~±~~
 25 **either** of the following: ~~at his or her option:~~

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

29 (b) Commence a civil action in the circuit court, or if the

1 decision of a state public body is at issue, the court of claims,
2 to compel the public body's disclosure of the public records within
3 180 days after ~~a~~**the** public body's final determination to deny a
4 request.

5 (2) Within 10 business days after receiving a written appeal
6 pursuant to subsection (1)(a), the head of a public body shall do 1
7 of the following:

8 (a) Reverse the disclosure denial.

9 (b) Issue a written notice to the requesting person upholding
10 the disclosure denial.

11 (c) Reverse the disclosure denial in part and issue a written
12 notice to the requesting person upholding the disclosure denial in
13 part.

14 (d) Under unusual circumstances, issue a notice extending for
15 not more than 10 business days the period during which the head of
16 the public body shall respond to the written appeal. The head of a
17 public body shall not issue more than 1 notice of extension for a
18 particular written appeal.

19 (3) A board or commission that is the head of a public body is
20 not considered to have received a written appeal under subsection
21 (2) until the first regularly scheduled meeting of that board or
22 commission following submission of the written appeal under
23 subsection (1)(a). If the head of the public body fails to respond
24 to a written appeal pursuant to subsection (2), or if the head of
25 the public body upholds all or a portion of the disclosure denial
26 that is the subject of the written appeal, the requesting person
27 may seek judicial review of the nondisclosure by commencing a civil
28 action under subsection (1)(b).

29 (4) In an action commenced under subsection (1)(b), a court

1 that determines a public record is not exempt from disclosure shall
2 order the public body to cease withholding or to produce all or a
3 portion of a public record wrongfully withheld, regardless of the
4 location of the public record. Venue for an action against a local
5 public body is proper in the circuit court for the county in which
6 the public record or an office of the public body is located has
7 venue over the action. The court shall determine the matter de novo
8 and the burden is on the public body to sustain its denial. The
9 court, on its own motion, may view the public record in controversy
10 in private before reaching a decision. Failure to comply with an
11 order of the court may be punished as 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 inspect, copy, or
17 receive a copy of all or a portion of a public record prevails in
18 an action commenced under this section, the court shall award
19 reasonable attorneys' fees, costs, and disbursements. If the person
20 or public body prevails in part, the court may, in its discretion,
21 award all or an appropriate portion of reasonable attorneys' fees,
22 costs, and disbursements. The award shall be assessed against the
23 public body liable for damages under subsection (7).

24 (7) If the court determines in an action commenced under this
25 section that the public body has arbitrarily and capriciously
26 violated this ~~act~~**part** by refusal or delay in disclosing or
27 providing copies of a public record, the court shall order the
28 public body to pay a civil fine of \$1,000.00, which shall be
29 deposited into the general fund of the state treasury. The court

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

8 Sec. 10a. (1) If a public body requires a fee that exceeds the
9 amount permitted under its publicly available procedures and
10 guidelines or section 4, the requesting person may do any of the
11 following:

12 (a) If the public body provides for fee appeals to the head of
13 the public body in its publicly available procedures and
14 guidelines, submit to the head of the public body a written appeal
15 for a fee reduction that specifically states the word "appeal" and
16 identifies how the required fee exceeds the amount permitted under
17 the public body's available procedures and guidelines or section 4.

18 (b) Commence a civil action in the circuit court, or if the
19 decision of a state public body is at issue, in the court of
20 claims, for a fee reduction. The action must be filed within 45
21 days after receiving the notice of the required fee or a
22 determination of an appeal to the head of a public body. If a civil
23 action is commenced against the public body under this subdivision,
24 the public body is not obligated to complete the processing of the
25 written request for the public record at issue until the court
26 resolves the fee dispute. An action shall not be filed under this
27 subdivision unless 1 of the following applies:

28 (i) The public body does not provide for appeals under
29 subdivision (a).

1 (ii) The head of the public body failed to respond to a written
2 appeal as required under subsection (2).

3 (iii) The head of the public body issued a determination to a
4 written appeal as required under subsection (2).

5 (2) Within 10 business days after receiving a written appeal
6 under subsection (1)(a), the head of a public body shall do 1 of
7 the following:

8 (a) Waive the fee.

9 (b) Reduce the fee and issue a written determination to the
10 requesting person indicating the specific basis under section 4
11 that supports the remaining fee. The determination ~~shall~~**must**
12 include a certification from the head of the public body that the
13 statements in the determination are accurate and that the reduced
14 fee amount complies with its publicly available procedures and
15 guidelines and section 4.

16 (c) Uphold the fee and issue a written determination to the
17 requesting person indicating the specific basis under section 4
18 that supports the required fee. The determination ~~shall~~**must**
19 include a certification from the head of the public body that the
20 statements in the determination are accurate and that the fee
21 amount complies with the public body's publicly available
22 procedures and guidelines and section 4.

23 (d) Issue a notice extending for not more than 10 business
24 days the period during which the head of the public body must
25 respond to the written appeal. The notice of extension ~~shall~~**must**
26 include a detailed reason or reasons why the extension is
27 necessary. The head of a public body shall not issue more than 1
28 notice of extension for a particular written appeal.

29 (3) A board or commission that is the head of a public body is

1 not considered to have received a written appeal under subsection
2 (2) until the first regularly scheduled meeting of that board or
3 commission following submission of the written appeal under
4 subsection (1)(a).

5 (4) In an action commenced under subsection (1)(b), a court
6 that determines the public body required a fee that exceeds the
7 amount permitted under its publicly available procedures and
8 guidelines or section 4 shall reduce the fee to a permissible
9 amount. Venue for an action against a local public body is proper
10 in the circuit court for the county in which the public record or
11 an office of the public body is located. The court shall determine
12 the matter de novo, and the burden is on the public body to
13 establish that the required fee complies with its publicly
14 available procedures and guidelines and section 4. Failure to
15 comply with an order of the court may be punished as contempt of
16 court.

17 (5) An action commenced under this section and an appeal from
18 an action commenced under this section shall be assigned for
19 hearing and trial or for argument at the earliest practicable date
20 and expedited in every way.

21 (6) If the requesting person prevails in an action commenced
22 under this section by receiving a reduction of 50% or more of the
23 total fee, the court may, in its discretion, award all or an
24 appropriate portion of reasonable attorneys' fees, costs, and
25 disbursements. The award shall be assessed against the public body
26 liable for damages under subsection (7).

27 (7) If the court determines in an action commenced under this
28 section that the public body has arbitrarily and capriciously
29 violated this ~~act~~**part** by charging an excessive fee, the court

1 shall order the public body to pay a civil fine of \$500.00, which
 2 shall be deposited in the general fund of the state treasury. The
 3 court may also award, in addition to any actual or compensatory
 4 damages, punitive damages in the amount of \$500.00 to the person
 5 seeking the fee reduction. The fine and any damages shall not be
 6 assessed against an individual, but shall be assessed against the
 7 next succeeding public body that is not an individual and that kept
 8 or maintained the public record as part of its public function.

9 (8) As used in this section, "fee" means the total fee or any
 10 component of the total fee calculated under section 4, including
 11 any deposit.

12 Sec. 10b. If the court determines, in an action commenced
 13 under this ~~act~~, **part**, that a public body willfully and
 14 intentionally failed to comply with this ~~act~~ **part** or otherwise
 15 acted in bad faith, the court shall order the public body to pay,
 16 in addition to any other award or sanction, a civil fine of not
 17 less than \$2,500.00 or more than \$7,500.00 for each occurrence. In
 18 determining the amount of the civil fine, the court shall consider
 19 the budget of the public body and whether the public body has
 20 previously been assessed penalties for violations of this ~~act~~.
 21 **part**. The civil fine shall be deposited in the general fund of the
 22 state treasury.

23 Enacting section 1. This amendatory act takes effect January
 24 1, 2022.

25 Enacting section 2. This amendatory act does not take effect
 26 unless Senate Bill No. ____ or House Bill No. 4383 (request no.
 27 00260'21 *) of the 101st Legislature is enacted into law.