

A Sunshine Week guide to Michigan's Freedom of Information Act (FOIA)

Sunshine Week March 10-16, 2019

Step 1: Define a public Body:

- i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof.
- (ii) An agency, board, commission, or council in the legislative branch of the state government.
- (iii) 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.
- (iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority.
- (v) The judiciary, including the office of the county clerk and employees thereof when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.

Step 2:

Ask for the records:

Upon providing a public body's FOIA coordinator with a written request that describes a public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy or receive copies of the requested public record of the public body.

Step 3:

Wait for a response:

Unless otherwise agreed to in writing by the person making the request, a public body shall respond to a request for a public record within **5 business days** after the public body receives the request by doing 1 of the following:

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

Purpose:

"It is the public policy of this state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees consistent with this act. The people shall be informed so that they may fully participate in the democratic process. "

Step 4:

Appeal a refusal:

If a public body makes a final determination to deny all or a portion of a request, the requesting person may do one of the following options:

- a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.
- b) Commence an action in the circuit court to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

Step 5:

Report trouble

Call a local prosecutor or file a complaint with the MSP at www.michigan.gov/AG

Federal Freedom of Information Act

Federal law entitles anyone to request a copy of any record from any agency in the executive branch, except for presidential records and nine exempted types of information; how to make a Freedom of Information Act (FOIA) request:

Before beginning: Locate appropriate official and make an informal request for the record



Written request

1. Write letter to agency's FOI officer requesting record
2. "Reasonably describe" record; file or docket number not necessary
3. Record must exist; agency can not be forced to create records or answer questions

For more information online: <http://www.rcfp.org/foiact/index.html>

You can request

- Papers
- Reports
- Letters
- Films
- Computer tapes
- Photographs
- Sound recordings

Agency's response

- Agency has 20 working days to release records or they can delay or deny the release of records based on exemptions within the law
- May ask for 10 extra days for elaborate search
- May charge "reasonable" search fee, about \$11 to \$28 an hour; it may be reduced or waived



Exempted categories

- National security
- Personnel documents
- Records exempted by law
- Trade, commercial secrets
- Internal agency messages
- Officials' personal records
- Criminal investigations
- Federally regulated banks
- Oil and gas wells

For government help filing a request, call (202) 514-3642

If request is
GRANTED

If request is
DELAYED

If request is
DENIED

| | Agency sends you copies requested | ... if agency does not answer letter within 20 working days | ... if agency withholds some or all information |
|--|-----------------------------------|---|---|
| ▶ You may file appeal ... Agency's FOI appeals officer handles appeal | | YES | YES |
| ▶ You may file lawsuit in federal district court ... If you win, judge orders agency to supply information, may award you legal fees | | YES | YES If appeal is denied |

Source: Reporters Committee for Freedom of the Press

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