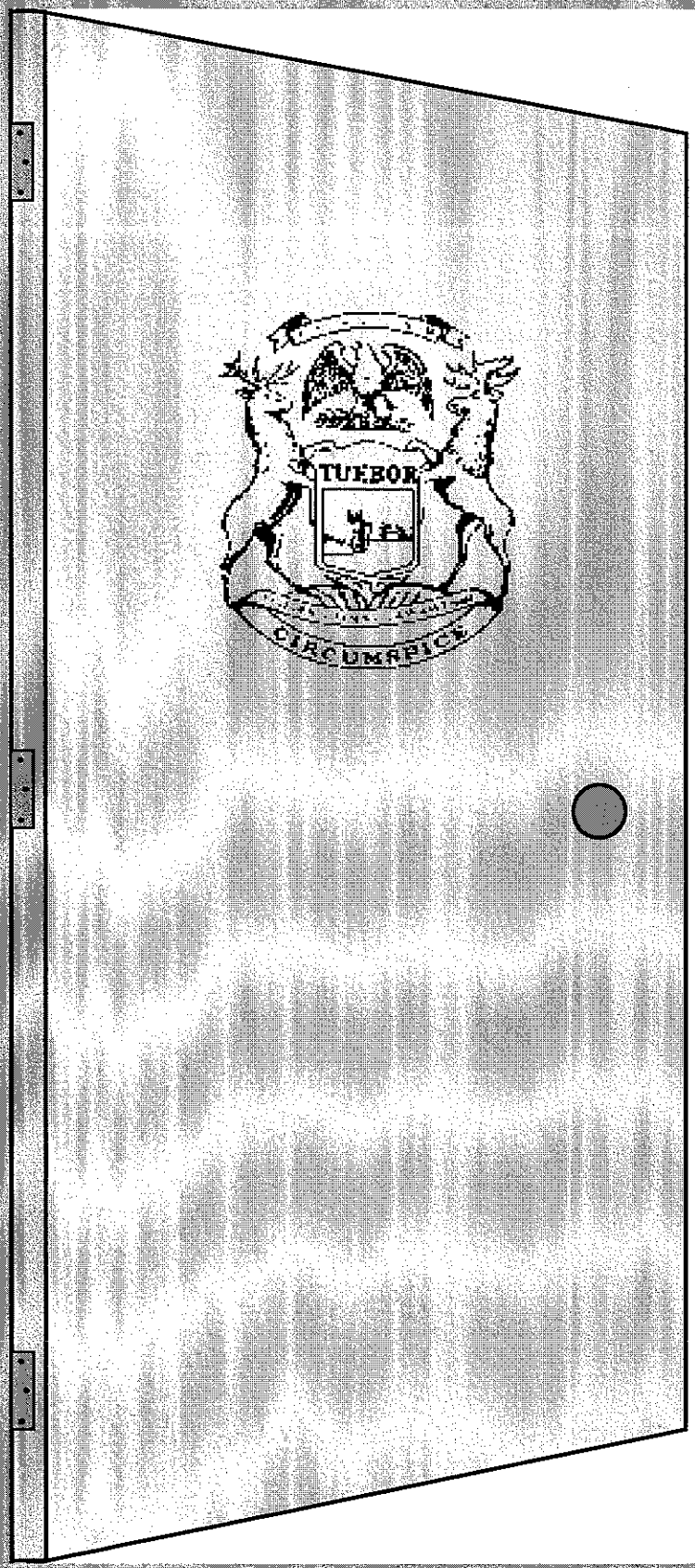

The Michigan Open Meetings Act

and

Freedom of Information Act

Dear Citizen,

The ideal of a democratic government is too often thwarted by bureaucratic secrecy and unresponsive officials. Citizens frequently find it difficult to discover what decisions are being made and what facts lie behind those decisions.

The Michigan Freedom of Information Act, Public Act No. 442 of 1976, establishes procedures to ensure every citizen's right of access to government documents. The Act establishes the right to inspect and receive copies of records of state and local government bodies.

The Open Meetings Act, Public Act No. 267 of 1976, protects your right to know what's going on in government by opening to full public view the processes by which elected and nonelected officials make decisions on your behalf.

This guide to the Freedom of Information Act and the Open Meetings Act is designed to make it easier for citizens to keep track of what their government is doing.

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Prepared by the Michigan Legislature

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(376 Rev. 1/16/01)

Michigan's Freedom of Information Act

Public Act No. 442 of 1976,
as amended

The following is a general outline of the Freedom of Information Act. When using the Freedom of Information Act, always rely on the specific provisions of the Act, which are republished immediately following this outline.

Basic Intent:

The Freedom of Information Act regulates and sets requirements for the disclosure of public records by all "public bodies" in the state.

Key Definitions:

"Public body" means:

- 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;
- 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; or
- any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

"Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. The term does not include computer software.

Coverage:

The Freedom of Information Act regulates and sets requirements for the disclosure of public records by all "public bodies" in the state. All state agencies, county and other local governments, school boards, other boards, departments, commissions, councils, and public colleges and universities are covered. The Act does not apply to the judicial branch and it does not apply to legislators. Any program primarily funded by the state or local authority is also covered.

Public Records Open to Disclosure:

In general, all records except those specifically cited as exceptions are covered by the Freedom of Information Act. The records covered include working papers and research material, minutes of open and closed meetings, officials' voting records, staff manuals, final orders or decisions in contested cases and the records on which they were made, and promulgated rules. Other written statements which implement or interpret laws, rules or policy, including, but not limited to, guidelines, manuals and forms with instructions, adopted or used by the agency in the discharge of its functions, are also included.

It does not matter what form the record is in. The act applies to any handwriting, typewriting, printing, photostating, photographing, photocopying and every other means of recording. It includes letters, words, pictures, sounds or symbols, or combinations thereof, as well as papers, maps, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content, but not computer software.

Public Records Exempt From Disclosure:

A public body may (but is not required to) withhold from public disclosure certain categories of public records under the Freedom of Information Act. Among the categories of information that may be withheld under section 13 of the Act are the following:

—Specific information about an individual's private affairs, if their right to have the information protected from public scrutiny is greater than the public's right to the information.

—Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

- interfere with law enforcement proceedings;
- deprive a person of the right to a fair trial or impartial administrative adjudication;
- constitute an unwarranted invasion of personal privacy;
- disclose the identity of a confidential source or, if the record is compiled by a criminal law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source;

- disclose law enforcement investigative techniques or procedures; or
- endanger the life or physical safety of law enforcement personnel.

—Public records which if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

—Records which if disclosed would violate the Federal (Buckley) Educational Rights and Privacy Act (primarily student records).

—An exempt public record or exempt information which is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the consideration originally giving rise to the exempt nature of the public record remains applicable.

—Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy.

—Information subject to attorney-client privilege.

—Information subject to other enunciated privileges such as counselor-client and those recognized by statute or court rule.

—Pending public bids to enter into contracts.

—Appraisals of real property to be acquired by a public body.

—Test questions and answers, scoring keys and other examination instruments.

—Medical counseling or psychological facts which would reveal an individual's identity.

—Internal communications and notes between and within public bodies of an advisory nature **to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action.** This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communications between officials and employees of public bodies clearly outweighs the public interest in disclosure. (Note that factual materials in such memoranda are open records and must be separated out and made available upon request even if the other material is not.)

—Law enforcement communication codes and deployment plans unless the public interest in disclosure outweighs the public interest in nondisclosure.

—Information that would reveal the location of archeological sites.

—Product testing data developed by agencies buying products where only one bidder meets the agency's specifications.

—A student's college academic transcript where the student is delinquent on university payments.

—Records of any campaign committee including any committee that receives moneys from a state campaign fund. (These records are open to the public under Public Act 388 of 1976.)

Records and information pertaining to an investigation or a compliance conference under Article 15 of the Public Health Code, before a complaint is issued. These provisions do not apply to any of the following:

—The fact that an allegation has been received and an investigation is being conducted and the date the allegation was received.

—The fact that the allegation was received by the Department of Consumer and Industry Services; the fact that the department did not issue a complaint for the allegation; and the fact that the allegation was dismissed.

Availability of Public Records:

Any person may ask to inspect, copy or receive a copy of a public record. There are no qualifications such as residency or age that must be met in order to make a request. The reference to "person" in the act does not include those persons incarcerated in state or local correctional facilities.

As soon as practical, but not more than five business days after receiving a request, the public body must respond to a request for a public record. The public agency can, under unusual circumstances, notify the requester in writing and extend the time limit by ten days.

A person also has the right to subscribe to future issuances of public records which are created, issued or disseminated on a regular basis. A subscription is valid for up to six months, at the request of the subscriber, and is renewable.

The public body or agency has a responsibility to provide reasonable facilities so that persons making a request may examine and take notes from public records. The facilities must be available during the normal business hours of the public body.

A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions.

Salary Records:

Salary records of employees or other officials of institutions of higher education, school districts, intermediate school districts or community college districts must be made available to the public upon request and under certain conditions.

Fees for Public Records:

A government agency can charge a fee, but it must be limited to actual duplication, mailing and clerical labor costs. The first $20 of work must be free for a person who is on welfare or presents facts showing inability to pay because of indigency. A public body may require a good faith deposit at the time of request. The deposit shall not exceed ½ of the total cost.

Denial of a Record:

If a request for a record is denied, written notice of the denial must be provided to the requester within five days, or within 15 days under unusual circumstances. A failure to respond within the time limits, or a failure to respond at all, also amounts to a denial.

When a request is denied, the public body must provide the requestor with a full explanation of the reasons for the denial and the requester's right to seek judicial review. Notification of the right to judicial review must include notification of the right to receive attorney's fees and collect damages.

Enforcement:

A person has the right to commence an action in circuit court to compel disclosure of public records which are denied. If the request by a person was made verbally, the person must confirm the request in writing not less than five days before commencing the action.

The action may be brought in the county where the requester lives, the county where the requester does business, the county where the public document is located, or a county where the agency has an office.

Penalties for Violation of the Act:

If the circuit court finds that the public body has arbitrarily and capriciously violated the Freedom of Information Act by refusal or delay in disclosing or providing copies of a public record, it may, in addition to any actual or compensatory damages, award punitive damages of $500 to the person seeking the right to inspect or receive a copy of a public record.

Requesting a Public Record Pursuant to the Freedom of Information Act

The following is a checklist* for Freedom of Information Act requests:

1) Make sure you are addressing the correspondence to the correct department.

2) Make sure the correspondence is addressed to the Freedom of Information Act Administrator of that department.

3) Describe the information requested in detail so that it can be located by the Freedom of Information Act Administrator.

4) Describe the subject matter of the documents requested and, if possible, the date the documents were created.

5) Advise the department that you are requesting documents pursuant to the Freedom of Information Act and refer to the Act as MCL 15.231 et seq.

**Use of the checklist is suggested, not mandated. For example, it is not necessary to cite the Freedom of Information Act statute when making a request. Requests and responses to requests are governed by the specific language of the Freedom of Information Act, not by the checklist or this booklet's general information summary of the act.*

FREEDOM OF INFORMATION ACT

Act 442, 1976; Eff. Apr. 13, 1977

AN ACT to provide for public access to certain public records of public bodies; to permit certain fees; to prescribe the powers and duties of certain public officers and public bodies; to provide remedies and penalties; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

15.231 Short title; public policy.

Sec. 1. (1) This act shall be known and may be cited as the "freedom of information act".

(2) It is the public policy of this state 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 this act. The people shall be informed so that they may fully participate in the democratic process.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1994, Act 131, Imd. Eff. May 19, 1994;—Am. 1996, Act 553, Eff. Mar. 31, 1997;—Am. 1997, Act 6, Imd. Eff. May 16, 1997.

15.232 Definitions.

Sec. 2. As used in this act:

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

(b) "FOIA coordinator" means either of the following:

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

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

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

(d) "Public body" means any of the following:

(*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.

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

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

(*ii*) All public records that are not exempt from disclosure under section 13 and which are subject to disclosure under this act.

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

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

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

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

(h) "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

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

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1994, Act 131, Imd. Eff. May 19, 1994;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

15.233 Public records; right to inspect, copy, or receive; subscriptions; forwarding requests; file; inspection and examination; memoranda or abstracts; rules; compilation, summary, or report of information; creation of new public record; certified copies.

Sec. 3. (1) Except as expressly provided in section 13, 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. A person has a right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to 6 months, at the request of the subscriber, and shall be renewable. An employee of a public body who receives a request for a public record shall promptly forward that request to the freedom of information act coordinator.

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

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

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

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

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

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

15.234 Fee; waiver or reduction; affidavit; deposit; calculation of costs; limitation; provisions inapplicable to certain public records.

Sec. 4. (1) A public body may charge a fee for a public record search, the necessary copying of a public record for inspection, or for providing a copy of a public record. Subject to subsections (3) and (4), the fee shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14. A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public. A public record search shall be made and a copy of a public record shall be furnished without charge for the first $20.00 of the fee for each request to an individual who is entitled to information under this act and who submits an affidavit stating that the individual is then receiving public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency.

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

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

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

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1988, Act 99, Imd. Eff. Apr. 11, 1988;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

Constitutionality: The disclosure of public records under the freedom of information act impartially to the general public for the incremental cost of creating the record is not a granting of credit by the state in aid of private persons and does not justify nondisclosure on the theory that the information is proprietary information belonging to a public body. Kestenbaum v. Michigan State University, 414 Mich. 510, 417 N.W.2d 1102 (1982).

15.235 Request to inspect or receive copy of public record; response to request; failure to respond; damages; contents of notice denying request; signing notice of denial; notice extending period of response; action by requesting person.

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

(2) 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.

(3) Failure to respond to a request pursuant to subsection (2) constitutes a public body's final determination to deny the request. In a circuit court action to compel a public body's disclosure of a public record under section 10, the circuit court shall assess damages against the public body pursuant to section 10(8) if the circuit court has done both of the following:

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

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

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

(a) An explanation of the basis under this act or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.

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

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

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

(*i*) 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 disclosure denial.

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

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

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

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

(a) Grant the request.

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

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

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

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

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

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1978, Act 329, Imd. Eff. July 11, 1978;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

15.236 FOIA coordinator.

Sec. 6. (1) A public body that is a city, village, township, county, or state department, or under the control of a city, village, township, county, or state department, shall designate an individual as the public body's FOIA coordinator. The FOIA coordinator shall be responsible for accepting and processing requests for the public body's public records under this act and shall be responsible for approving a denial under section 5(4) and (5). In a county not having an executive form of government, the chairperson of the county board of commissioners is designated the FOIA coordinator for that county.

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

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

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

15.240 Options by requesting person; appeal; orders; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.

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

(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.

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

(a) Reverse the disclosure denial.

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

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

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

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

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. The circuit court for the county in which the complainant resides or has his or her principal place of business, or the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

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

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

(7) If the circuit court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of $500.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1978, Act 329, Imd. Eff. July 11, 1978;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

15.241 Matters required to be published and made available by state agencies; form of publications; effect on person of matter not published and made available; exception; action to compel compliance by state agency; order; attorneys' fees, costs, and disbursements; jurisdiction; definitions.

Sec. 11. (1) A state agency shall publish and make available to the public all of the following:

(a) Final orders or decisions in contested cases and the records on which they were made.

(b) Promulgated rules.

(c) Other written statements which implement or interpret laws, rules, or policy, including but not limited to guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions.

(2) Publications may be in pamphlet, loose-leaf, or other appropriate form in printed, mimeographed, or other written matter.

(3) Except to the extent that a person has actual and timely notice of the terms thereof, a person shall not in any manner be required to resort to, or be adversely affected by, a matter required to be published and made available, if the matter is not so published and made available.

(4) This section does not apply to public records which are exempt from disclosure under section 13.

(5) A person may commence an action in the circuit court to compel a state agency to comply with this section. If the court determines that the state agency has failed to comply, the court shall order the state agency to comply and shall award reasonable attorneys' fees, costs, and disbursements to the person commencing the action. The circuit court for the county in which the state agency is located shall have jurisdiction to issue the order.

(6) As used in this section, "state agency", "contested case", and "rules" shall have the same meanings as ascribed to those terms in Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

History: 1976, Act 442, Eff. Apr. 13, 1977.

15.243 Exemptions from disclosure; withholding of information required by law or in possession of executive office.

Sec. 13. (1) A public body may exempt from disclosure as a public record under this act:

(a) Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.

(b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

(*i*) Interfere with law enforcement proceedings.

(*ii*) Deprive a person of the right to a fair trial or impartial administrative adjudication.

(*iii*) Constitute an unwarranted invasion of personal privacy.

(*iv*) Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.

(*v*) Disclose law enforcement investigative techniques or procedures.

(*vi*) Endanger the life or physical safety of law enforcement personnel.

(c) A public record that if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

(d) Records or information specifically described and exempted from disclosure by statute.

(e) Information the release of which would prevent the public body from complying with section 444 of subpart 4 of part C of the general education provisions act, title IV of Public Law 90-247, 20 U.S.C. 1232g, commonly referred to as the family educational rights and privacy act of 1974.

(f) A public record or information described in this section that is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable.

(g) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if:

(*i*) The information is submitted upon a promise of confidentiality by the public body.

(*ii*) The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.

(*iii*) A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision does not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.

(h) Information or records subject to the attorney-client privilege.

(i) Information or records subject to the physician-patient privilege, the psychologist-patient privilege, the minister, priest, or Christian Science practitioner privilege, or other privilege recognized by statute or court rule.

(j) A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the deadline for submission of bids or proposals has expired.

(k) Appraisals of real property to be acquired by the public body until (*i*) an agreement is entered into; or (*ii*) 3 years has elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.

(*l*) Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment, or academic examination, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

(m) Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation.

(n) Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in the particular instance the public interest in encouraging frank communications between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of section 8(h) of the open meetings act, Act No. 267 of the Public Acts of 1976, being section 15.268 of the Michigan Compiled Laws. As used in this subdivision, "determination of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under Act No. 336 of the Public Acts of 1947, being sections 423.201 to 423.217 of the Michigan Compiled Laws.

(o) Records of law enforcement communication codes, or plans for deployment of law enforcement personnel, that if disclosed would prejudice a public body's ability to protect the public safety unless the public interest in disclosure under this act outweighs the public interest in nondisclosure in the particular instance.

(p) Information that would reveal the exact location of archaeological sites. The secretary of state may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, to provide for the disclosure of the location of archaeological sites for purposes relating to the preservation or scientific examination of sites.

(q) Testing data developed by a public body in determining whether bidders' products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only 1 bidder has met the specifications. This subdivision does not apply after 1 year has elapsed from the time the public body completes the testing.

(r) Academic transcripts of an institution of higher education established under section 5, 6, or 7 of article VIII of the state constitution of 1963, if the transcript pertains to a student who is delinquent in the payment of financial obligations to the institution.

(s) Records of any campaign committee including any committee that receives money from a state campaign fund.

(t) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would do any of the following:

(*i*) Identify or provide a means of identifying an informer.

(*ii*) Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.

(*iii*) Disclose the personal address or telephone number of law enforcement officers or agents or any special skills that they may have.

(*iv*) Disclose the name, address, or telephone numbers of family members, relatives, children, or parents of law enforcement officers or agents.

(*v*) Disclose operational instructions for law enforcement officers or agents.

(*vi*) Reveal the contents of staff manuals provided for law enforcement officers or agents.

(*vii*) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies.

(*viii*) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informer.

(*ix*) Disclose personnel records of law enforcement agencies.

(*x*) Identify or provide a means of identifying residences that law enforcement agencies are requested to check in the absence of their owners or tenants.

(u) Except as otherwise provided in this subdivision, records and information pertaining to an investigation or a compliance conference conducted by the department of consumer and industry services under article 15 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.16101 to 333.18838 of the Michigan Compiled Laws, before a complaint is issued. This subdivision does not apply to records and information pertaining to 1 or more of the following:

(*i*) The fact that an allegation has been received and an investigation is being conducted, and the date the allegation was received.

(*ii*) The fact that an allegation was received by the department of consumer and industry services; the fact that the department of consumer and industry services did not issue a complaint for the allegation; and the fact that the allegation was dismissed.

(v) Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body.

(w) Records or information relating to a civil action in which the requesting party and the public body are parties.

(x) Information or records that would disclose the social security number of any individual.

(y) Except as otherwise provided in this subdivision, an application for the position of president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, materials submitted with such an application, letters of recommendation or references concerning an applicant, and records or information relating to the process of searching for and selecting an individual for a position described in this subdivision, if the records or information could be used to identify a candidate for the position. However, after 1 or more individuals have been identified as finalists for a position described in this subdivision, this subdivision does not apply to a public record described in this subdivision, except a letter of recommendation or reference, to the extent that the public record relates to an individual identified as a finalist for the position.

(2) This act does not authorize the withholding of information otherwise required by law to be made available to the public or to a party in a contested case under Act No. 306 of the Public Acts of 1969.

(3) Except as otherwise exempt under subsection (1), this act does not authorize the withholding of a public record in the possession of the executive office of the governor or lieutenant governor, or an employee of either executive office, if the public record is transferred to the executive office of the governor or lieutenant governor, or an employee of either executive office, after a request for the public record has been received by a state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of government that is subject to this act.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1978, Act 329, Imd. Eff. July 11, 1978;—Am. 1993, Act 82, Eff. Apr. 1, 1994;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

15.243a Salary records of employee or other official of institution of higher education, school district, intermediate school district, or community college available to public on request.

Sec. 13a. Notwithstanding section 13, an institution of higher education established under section 5, 6, or 7 of article 8 of the state constitution of 1963; a school district as defined in section 6 of Act No. 451 of the Public Acts of 1976, being section 380.6 of the Michigan Compiled Laws; an intermediate school district as defined in section 4 of Act No. 451 of the Public Acts of 1976, being section 380.4 of the Michigan Compiled Laws; or a community college established under Act No. 331 of the Public Acts of 1966, as amended, being sections 389.1 to 389.195 of the Michigan Compiled Laws shall upon request make available to the public the salary records of an employee or other official of the institution of higher education, school district, intermediate school district, or community college.

History: Add. 1979, Act 130, Imd. Eff. Oct. 26, 1979.

15.244 Separation of exempt and nonexempt material; design of public record; description of material exempted.

Sec. 14. (1) If a public record contains material which is not exempt under section 13, as well as material which is exempt from disclosure under section 13, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

(2) When designing a public record, a public body shall, to the extent practicable, facilitate a separation of exempt from nonexempt information. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, the public body shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

History: 1976, Act 442, Eff. Apr. 13, 1977.

15.245 Repeal of §§ 24.221, 24.222, and 24.223.

Sec. 15. Sections 21, 22 and 23 of Act No. 306 of the Public Acts of 1969, as amended, being sections 24.221, 24.222 and 24.223 of the Michigan Compiled Laws, are repealed.

History: 1976, Act 442, Eff. Apr. 13, 1977.

15.246 Effective date.

Sec. 16. This act shall take effect 90 days after being signed by the governor.

History: 1976, Act 442, Eff. Apr. 13, 1977.

Court Decisions on the Freedom of Information Act

Michigan courts have rendered decisions which, when published, become precedent and are the law of the state until changed by a higher court or by the Legislature. The following list contains the principal published decisions of Michigan's appellate courts and is current through July 1997. Court decisions may be obtained in law libraries or from the courts of record for a fee.

Because the Legislature has amended the Freedom of Information Act from time to time after its enactment, the cases interpreting and applying the Act may not reflect the current law. For example, the cases listed below concerning prisoner requests for public records were decided under the Act before the amendment that excludes prisoners from the persons entitled to make requests for public records.

1. **Kestenbaum v Michigan State University,** 97 Mich App 5 (1980), aff'd 414 Mich 510 (1982), reh den

   An equally divided Supreme Court affirmed the lower court in holding that a list of names and addresses of students on a computer tape would appear to be a public record, but the nature of the information is within an enumerated exception, being personal, and public disclosure of such tape would constitute a clearly unwarranted invasion of a person's privacy.

2. **Tobin v Michigan Civil Service Commission,** 98 Mich App 604 (1980), aff'd 416 Mich 661 (1982)

   The Freedom of Information Act does not compel a public body to conceal information at the insistence of one who opposes its release.

3. **Evening News Association v City of Troy,** 417 Mich 481 (1983), reh den

   To claim exemption for investigative records used in law enforcement proceedings, the agency must show how disclosure of particular requested document would interfere with proceedings.

   To determine whether an agency has met its burden under the Freedom of Information Act, the following rules should apply:

   a. The burden of proof is on the party claiming exemption from disclosure.
   b. The exemptions must be interpreted narrowly.
   c. The agency shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.
   d. Detailed affidavits describing the material withheld must be supplied by the agency.
   e. The justification for withholding must not be conclusory, i.e., a repetition of the statutory language.
   f. The mere showing of a direct relationship between the records sought and an investigation is inadequate.

4. **UPGWA v State Police,** 422 Mich 432 (1985), remanded for determination of costs

   Request for a record need not be predicated on core purpose of the Freedom of Information Act, the disclosure of public records to permit the requesters to participate in the democratic process.

5. **MSEA v Department of Management and Budget,** 428 Mich 104 (1987)

   The State generally cannot exempt employee lists containing names and home addresses from disclosure under the Freedom of Information Act.

6. **Hagen v Department of Education,** 431 Mich 118 (1988)

   State Tenure Commission decisions may be withheld only during the administrative stage of a teacher's appeal.

7. **Michigan Tax Management Services v City of Warren,** 437 Mich 506 (1991)

   The trial court must make an independent determination as to what constitutes the reasonable fees and expenses of a requester who prevails in a Freedom of Information Act action.

8. **Swickard v Wayne County Medical Examiner,** 438 Mich 536 (1991)

   To determine whether a disclosure would constitute a clearly unwarranted invasion of privacy, privacy rights as they existed at common law, as well as the constitution and the customs and mores of the community must be considered. Release of autopsy test results by a medical examiner is not subject to physician-patient privilege and is not clearly an unwarranted invasion of privacy as the right to privacy ends with the deceased's death.

9. **Walen v Department of Corrections,** 443 Mich 240 (1993)

   The Freedom of Information Act applies to records of department of corrections disciplinary hearings.

10. **Hubka v Pennfield Township,** 197 Mich App 117 (1992), rev in part, 443 Mich 864 (1993)

    If the requester asks to inspect original records, supplying copies does not meet the Freedom of Information Act's requirements. The requester does not have to demonstrate that copies are inadequate to inspect the originals. Township attorney's letter to the township board containing opinions, conclusions, and recommendations is privileged.

11. **Booth Newspapers, Inc v University of Michigan Board of Regents,** 444 Mich 211 (1993)

    Travel records in connection with a search for a university president are public records subject to disclosure.

12. **Bradley v Saranac Community Schools Board of Education**

    Lansing Association of School Administrators v Lansing School District Board of Education, 216 Mich App 79 (1996), 455 Mich 285 (1997). (Consolidated Cases)

    Personnel records of public school teachers and administrators including performance evaluations, disciplinary records and complaints, must be disclosed because they are public records and are not within any exemption under the Freedom of Information Act.

13. **Alpena Title, Inc v Alpena County,** 84 Mich App 308 (1978)

    A county board of commissioners may charge a reasonable fee for access to, and the copying of, county tract index information, in accordance with the statute regarding fees for the inspection of such records.

14. **Williams v Martimucci,** 88 Mich App 198 (1979)

    Action of manager of general office services at state prison in denying inmate's request for copies of certain documents in inmate's file because inmate did not pay the $3 fee for the cost of processing the request was not arbitrary and capricious, since manager of general office services checked institutional indigency list for the month and found that inmate's name was not on it.

15. **Booth Newspapers, Inc v Regents of University of Michigan,** 93 Mich App 100 (1979)

    Board's contention that the disclosure of audit reports would produce an unwarranted invasion of personal privacy is an affirmative defense. The burden of proving that defense is on defendant. Board not entitled to summary judgment on pleadings alone.

16. **Penokie v Michigan Technological University,** 93 Mich App 650 (1979)

    Disclosure of the names and salaries of employees of the defendant university is not a "clearly unwarranted" invasion of personal privacy under the Freedom of Information Act.

17. **Bredemeier v Kentwood Board of Education,** 95 Mich App 767 (1980)

    The Freedom of Information Act does not require that information be recorded by a public body, but if it is, it must be disclosed. Attorney fees, costs, and disbursements are awarded to prevailing party under the Act. However, to prevail, party must show, at a minimum, that prosecution of action could reasonably have been regarded as necessary, and action had causative effect on delivery of information. Lack of court-ordered disclosure precludes award of punitive damages under the Act.

18. **Nabkey v Kent Community Action Program,** 99 Mich App 480 (1980)

    Under the Freedom of Information Act, plaintiff, as prevailing party, is entitled to reasonable attorneys' fees, costs, and disbursements. Since plaintiff was not represented by an attorney, no award of attorneys' fees was possible.

19. **Jordan v Martimucci,** 101 Mich App 212 (1980)

    For plaintiff to prevail in action for punitive damages under the Freedom of Information Act, the plaintiff must demonstrate that disclosure of information was result of court order and that defendant acted arbitrarily and capriciously in failing to timely comply with the disclosure request.

20. **Blue Cross/Blue Shield v Insurance Bureau,** 104 Mich App 113 (1981), lv den

    Information may be revealed under the Freedom of Information Act despite claim of exemption. Decision to deny disclosure of exempt records is committed to discretion of agency and should not be disturbed unless abuse of discretion is found. Trade secret exemption does not apply to information required by law or as a condition of receiving a government contract, license, or benefit.

21. **Schinzel v Wilkerson,** 110 Mich App 600 (1981), lv den

    A plaintiff appearing in propria persona who prevails in an action commenced pursuant to the Freedom of Information Act is entitled to an award of his or her actual expenditures, but is not entitled to an award of attorney fees.

22. **Local 79 v Lapeer County Hospital,** 111 Mich App 441 (1981)

    The circuit court is the proper forum to seek relief from a violation of the Freedom of Information Act.

23. **Ridenour v Dearborn Board of Education,** 111 Mich App 798 (1981)

    Public disclosure of performance evaluation of school administrators is not an invasion of privacy as defined by the Freedom of Information Act because people have a strong interest in public education and because taxpayers are increasingly holding administrators accountable for expenditures of tax money.

24. **Palladium v River Valley School District,** 115 Mich App 490 (1982), lv den

    The Freedom of Information Act does not prevent the disclosure of the names of students suspended by school board action.

25. **Cashel v Smith,** 117 Mich App 405 (1982), lv den

    Depositions may sometimes be appropriate in Freedom of Information Act cases, but they must be justified. The Legislature intended that the flow of information from public bodies and persons should not be impeded by long court process.

26. **Ballard v Department of Corrections,** 122 Mich App 123 (1982), lv den

    A film made by the Department of Corrections showing a prisoner being forcibly removed from his prison cell is a public record and must be disclosed.

27. **Perlongo v Iron River TV,** 122 Mich App 433 (1983)

    The Freedom of Information Act does not apply to a nonstock, nonprofit corporation that was not created by state or local authority.

28. **Pennington v Washtenaw County Sheriff,** 125 Mich App 556 (1983)

    Once a request is made under the Freedom of Information Act, the public body has a duty to either provide access to or release copies of the records sought unless they are exempt from disclosure.

29. **Bechtel v Treasury Department,** 128 Mich App 324 (1983), lv den

    The Freedom of Information Act applies to the State Tax Tribunal. Also, where the requested information contains exempt and nonexempt material, the exempt material should be deleted in order to allow for the release of the nonexempt sections.

30. **Dawkins v Civil Service Department,** 130 Mich App 669 (1983), lv den

    By prevailing on part of a claim under the Freedom of Information Act, the plaintiff was entitled to an award of all attorney fees, costs, and disbursements incurred during the trial and the appeal.

31. **Mullin v Detroit Police Department,** 133 Mich App 46 (1984)

    The court found that the Detroit Police Department was justified in withholding their traffic accident computer tape because: (a) the tape contained private and potentially embarrassing private facts; and, (b) the nonprivate information was available in other forms.

32. **Hoffman v Bay City School District,** 137 Mich App 333 (1984), lv den

    An attorney hired to undertake an investigation for a public body is not a public body and, thus, is not required to turn over a personal investigatory file under the Freedom of Information Act. Also, a public body has no duty to create a record.

33. **Capitol Info Assn v Ann Arbor Police Dept,** 138 Mich App 655 (1984)

    A request for a copy of "all correspondence with all federal law enforcement/ investigative agencies . . . pertaining to persons living in Ann Arbor, Michigan" was found "absurdly overbroad". The public body was not required to comply.

34. **Soave v Department of Education,** 139 Mich App 99 (1984)

    Under the Federal Rehabilitation Act regulations, records that may be harmful to a former participant in the vocational rehabilitation program can be withheld. This is sufficient to withhold those same records under the "exempted from disclosure by statute" exemption (section 13(1)(d) of the Freedom of Information Act).

35. **Cashel v University of Michigan Regents,** 141 Mich App 541 (1985)

    The Freedom of Information Act requires that a public body furnish "a reasonable opportunity for inspection and examination of its public records." A request to access extremely large quantities of documents was found to be an excessive and unreasonable interference with the public body's function and, therefore, access could be limited to a reasonable length of time.

36. **Paprocki v Jackson Clerk,** 142 Mich App 785 (1985), reconsideration den

    The county in which a prisoner is incarcerated is not the county in which a suit may be brought under the Freedom of Information Act. Jurisdiction for such a suit, where the prisoner "resides", refers to the place where the prisoner last lived before being sent to prison. (See the **Curry** case below.)

37. **Milford v Gilb,** 148 Mich App 778 (1985)

    Documents pertaining to the city's urban renewal projects must be disclosed because the city failed to show that the documents were: (a) other than purely factual material; and (b) preliminary to a final determination of policy or action. Even if these two requirements had been met, the public body's interest in frank communication must outweigh the public interest in disclosure.

38. **Curry v Jackson Circuit Court,** 151 Mich App 754 (1986)

The term "resides", as used in section 10(1) of the Freedom of Information Act, means a person's legal residence or domicile. A prisoner may establish the county in which the prison is located as his or her legal residence or domicile.

39. **Health Central v Commissioner of Insurance,** 152 Mich App 336 (1986)

Nondisclosure of public records is at the discretion of the public body applying the Freedom of Information Act's enumerated exceptions. The Act does not confer the right to prevent disclosure and, therefore, a third party must have a basis independent of the Act in order to prohibit the public body from disclosing a public record.

40. **DeMaria v Department of Management and Budget,** 159 Mich App 729 (1987)

Communications of independent consultants to a public body are not "communications and notes within a public body," and are, therefore, not exempt under section 13(1)(n) of the Freedom of Information Act.

41. **Laracey v Financial Inst Bureau,** 163 Mich App 437 (1987), lv den

An attorney representing himself or herself in a Freedom of Information Act claim is not entitled to attorney fees.

42. **Walloon Water v Melrose Township,** 163 Mich App 726 (1987)

The defendant-township violated the Freedom of Information Act when it disposed of a letter after the plaintiff made a request for it. The court awards plaintiff costs, fees, and punitive damages.

43. **Mithrandir v Department of Corrections,** 164 Mich App 143 (1987), lv den

Prison can set reasonable restrictions on a prisoner's right to inspect its public records.

44. **Free Press v Oakland Sheriff,** 164 Mich App 656 (1987)

Release of "mug shots" is not a clearly unwarranted invasion of an individual's privacy. Therefore, the "mug shots" may be disclosed.

45. **Jones v Wayne Prosecutor,** 165 Mich App 62 (1987), lv den

Information available through county clerk covered by court rule need not be released by another agency under a request made under the Freedom of Information Act.

46. **Kearney v Mental Health Department,** 168 Mich App 406 (1988)

Release of mental health records not sufficiently in public interest so as to require copies to be provided without cost.

47. **Ratepayer Consortium v PSC #2,** 168 Mich App 476 (1987)

Agency is not precluded from raising defenses in court for nondisclosure under the Freedom of Information Act, if defenses not raised at administrative level.

48. **Oakland Press v Pontiac Stadium Building Authority,** 173 Mich App 41 (1988)

Whichever balancing test suggested by MSEA v Department of Management and Budget is used, the authority must give the names and addresses of the lessees of stadium suites, if claim is made that the release would be a violation of the privacy protections of the Act.

49. **Booth Newspapers v Kent County Treasurer,** 175 Mich App 523 (1989)

Corporations have no right of privacy in corporate tax records.

50. **Payne v Grand Rapids Police,** 178 Mich App 193 (1989), lv den

To find exemption from disclosure information that would interfere with law enforcement proceedings, it is insufficient for summary disposition purposes to find the information could interfere with law enforcement proceedings.

51. **Easley v University of Michigan,** 178 Mich App 723 (1989), lv den

Court will not order an award or impose sanctions for an agency's failure to produce a record it cannot locate even if the agency agrees that the record once existed.

52. **Post-Newsweek Stations, Michigan, Inc v Detroit,** 179 Mich App 331 (1989)

The trial court must do one of the following in analyzing a claim that records are exempt from disclosure:

1) Receive complete and particularized justification for nondisclosure; or

2) Conduct an in camera, de novo review to determine whether complete, particularized justification for nondisclosure exists; or

3) Make the records available to the requesting party's attorney to inspect in camera under special agreement.

53. **Kincaid v Department of Corrections,** 180 Mich App 176 (1989)

Department's denial of a request for a record on the basis that the record did not exist was arbitrary and capricious when department's own files acknowledged existence of record.

54. **Booth Newspapers, Inc v Kalamazoo School Dist,** 181 Mich App 752 (1989), lv den

Following the settlement of a tenure action, the disclosure of a tenure proceeding report from which the name of the teacher involved was deleted is not a clearly unwarranted invasion of privacy.

55. **Tallman v Cheboygan Schools,** 183 Mich App 123 (1990)

A board's adoption of a policy is not an act or statute permitting the board to charge more for a copy of a record than the actual cost of copying.

56. **Hartzell v Mayville School District,** 183 Mich App 782 (1990)

If a requested record does not exist, the public body must so inform the requester.

57. **Traverse City Record Eagle v Traverse City Area Public Schools,** 184 Mich App 609 (1990), lv den

A tentative bargaining agreement between a school and a union is exempt from compelled disclosure under the exemption for advisory communications preliminary to a final decision of a public body.

58. **Wayne Prosecutor v Detroit,** 185 Mich App 265 (1990), lv den

A public person is as entitled to the release of public information under the Freedom of Information Act as is a private person.

59. **Clerical-Technical Union of Michigan State University v Michigan State University,** 190 Mich App 300 (1991), lv den

The names and addresses of anonymous, and the addresses of non-anonymous, donors to a public university are exempt from disclosure under the privacy exemption of the Freedom of Information Act because the release of that information would constitute a clearly unwarranted invasion of the donors' privacy and disclosure would serve no public interest.

60. **Lepp v Cheboygan Area Schools,** 190 Mich App 726 (1991)

The privacy exemption of the Freedom of Information Act is inapplicable when the requested information pertains to the party making the request.

61. **Favors v Department of Corrections,** 192 Mich App 131 (1991), lv den

A worksheet used in determining whether a prisoner should be awarded disciplinary credits is exempt from disclosure because it: (a) contains material that is not purely factual; (b) is only recommendatory, and (c) is preliminary to a final determination. Further, the public interest in keeping this communication private encourages frank discussions within the department of corrections that clearly outweighs the public interest in the worksheet's disclosure.

62. **Wilson v Eaton Rapids,** 196 Mich App 671 (1992)

A plaintiff in a Freedom of Information Act action may not recover attorney fees or costs when judicial action is not necessary to force the disclosure of the requested documents.

63. **Yarbrough v Department of Corrections,** 199 Mich App 180 (1993)

Documents compiled during an internal sexual harassment claim investigation are for the purpose of law enforcement and exempt from disclosure while the investigation is ongoing. The plaintiff prevails for the purpose of awarding costs and fees if the action is reasonably necessary to compel disclosure and it had a substantial causative effect on the delivery of the information.

64. **Patterson v Allegan County Sheriff,** 199 Mich App 638 (1993).

A jail inmate's booking photograph is a public record subject to disclosure.

65. **Densmore, Jr v Department of Corrections,** 203 Mich App 363 (1994)

The department need not release a record that a prisoner has already received without a showing that the first copy was not adequate.

66. **Newark Morning Ledge Co v Saginaw County Sheriff,** 204 Mich App 215 (1994)

The location of the requested records in personnel files does not determine the application of the exemption for personnel records.

67. **Curley v Cheboygan Area Schools**

Quatrine v Mackinaw City Public Schools, 204 Mich App 342 (1994) (Consolidated cases)

The Freedom of Information Act does not require school districts to disclose pupil records if they have not received a parental release.

68. **Detroit News, Inc v City of Detroit,** 204 Mich App 720 (1994)

Expense records of public officials and employees in performance of official functions are public records subject to the Freedom of Information Act. A record created by a nonpublic body can become a public record.

69. **Mackey v Department of Corrections,** 205 Mich App 330 (1994)

A record about a prison inmate falls under the exemption for records that would jeopardize prison security if the record is requested by another inmate.

70. **Hyson v Department of Corrections,** 205 Mich App 422 (1994)
If documents would reveal an informer's identity or jeopardize prison security, disclosure is not required.

71. ***In re* Subpoena Duces Tecum to Wayne County Prosecutor,** 205 Mich App 700 (1994), lv den
The qualified privilege from disclosure for agency evaluative and deliberative documents does not extend to information in those documents of a purely factual nature. The privilege can be overcome by a showing that the requester's need outweighs the public interest promoted by the privilege.

72. **Local 312 of American Federation of State, County, and Municipal Employees, AFL-CIO v City of Detroit,** 207 Mich App 472 (1994), lv den
The Freedom of Information Act does not include an exemption from disclosure for documents that are sought for purposes of litigation.

73. **Farrell v City of Detroit,** 209 Mich App 7 (1995)
Computer records are public records that are disclosable under the Freedom of Information Act. If a person requests computer records in the form of a computer backup tape, supplying a computer printout of the information does not meet the requirements for disclosure under the Act.

74. **Thomas v Board of Law Examiners,** 210 Mich App 279 (1995)
The judiciary and judicial agencies are excluded from the definition of public body under the Freedom of Information Act.

75. **Michigan Council of Trout Unlimited v Department of Military Affairs,** 213 Mich App 203 (1995)
The circuit court has jurisdiction over a complaint against the department under the Freedom of Information Act concerning a Michigan Army National Guard matter.

76. **Jackson v Eastern Michigan University Foundation,** 215 Mich App 240 (1996)
A foundation funded primarily by a state university is a public body subject to the Freedom of Information Act.

77. **Grebner v Clinton Charter Twp,** 216 Mich App 736 (1996)
A statute must specifically authorize sale of government information to collect a fee that is greater than the incremental costs of complying with a Freedom of Information Act request under the Act.

78. **Nicita v City of Detroit,** 194 Mich App 657 (1992); on rem, 216 Mich App 746 (1996), lv den
The exemption for bids only applies to solicited bids and does not exempt any bid from disclosure after a bid has been selected. Business records do not quality for the exemption for records that invade personal privacy. A defendant must give more than general allegations to support the claim that records qualify for an exemption from disclosure.

79. **Grebner v Oakland County Clerk,** 220 Mich App 513 (1996)
The county in which the plaintiff resides is proper venue for an action under the Freedom of Information Act.

80. **Schroeder v City of Detroit,** 221 Mich App 364 (1997)
A police officer preemployment psychological exam is exempt from disclosure under the Freedom of Information Act's exemption for examination instruments used for public employment.

81. **Oakland Prosecutor v Department of Corrections,** 222 Mich App 654 (1997)
Department of corrections records of a prisoner's psychological examination are not privileged or exempt from disclosure under the Freedom of Information Act, if sought by the prosecutor for use in proceedings relating to parole of the prisoner.

82. **Central Michigan University Supervisory-Technical Ass'n v Board of Trustees of Central Michigan University,** 223 Mich App 727 (1997)
Court rules governing discovery in litigation do not conflict with the Freedom of Information Act so as to exempt a public body from complying with a plaintiff's request for public records. (Partially overruling Jones v Wayne Prosecutor, above).

83. **The Herald Co v Ann Arbor Public Schools,** 224 Mich App 266 (1997)
A memorandum containing personal information was disclosable because it addressed a legitimate public concern and the public interest in disclosing observations regarding a teacher convicted of carrying a concealed weapon outweighed privacy interests. The physician-patient privilege applies to attendance and medical records only as to statements made for the purpose of obtaining medical treatment. Records of a discussion with an attorney are disclosable since the interview was adversarial and not for the purpose of obtaining legal advice.

Opinions of the Attorney General Relating to the Freedom of Information Act

The Attorney General has issued numerous Opinions of the Attorney General (OAG) which explain various applications of the Freedom of Information Act. This list of the principal opinions issued is current through July of 1997. Copies of OAGs may be obtained by writing to:

Attorney General Frank Kelley
525 West Ottawa
Law Building, 7th Floor
Lansing, Michigan 48913

Because the Legislature has amended the Freedom of Information Act from time to time after its enactment, the Opinions of the Attorney General interpreting and applying the Act may not pertain to its current provisions. For example, the opinions listed below concerning prisoner requests for public records were rendered under the Act before the amendment that excludes prisoners from the persons entitled to make requests for public records.

1. Unless exempt from disclosure by law, records of the Brown-McNeely insurance fund are public records. Attorney General Opinion No. 5156, p. 66, March 24, 1977.
2. The office of county sheriff is subject to the provisions of the Freedom of Information Act. Attorney General Opinion No. 5419, p. 758, December 29, 1978.
3. Since certain records are protected from disclosure by the Social Welfare Act, they are exempt from disclosure under section 13(1)(d) of the Freedom of Information Act, which section exempts records that are exempted from disclosure by another statute. Attorney General Opinion No. 5436, p. 31, February 1, 1979.
4. The Insurance Commissioner is required to charge a rate for making copies of public records requested in accordance with the Freedom of Information Act. Attorney General Opinion No. 5465, p. 104, March 26, 1979.
5. The following responses to specific inquiries are found in Attorney General Opinion No. 5500, published on July 23, 1979:
   a. A government agency does not fall within the meaning of "person" for purposes of obtaining information under the Act. p. 261
   b. The Civil Service Commission is subject to the provisions of the Freedom of Information Act. p. 261
   c. Since the President's Council of State Colleges and Universities is wholly funded by state universities and colleges, it is a public body as defined by the Freedom of Information Act. p. 262
   d. A board of trustees of a county hospital may refuse to make available records of its proceedings or reports received and records compiled, if disclosure would constitute a clearly unwarranted invasion of an individual's privacy under section 13(1)(a) of the Act; or if the records disclose medical, counseling, or psychological facts or evaluations concerning a named individual under section 13(m) of the Act; or if disclosure would violate the physician-patient or psychologist-patient privilege under section 13(1)(i) of the Act. p. 263
   e. Transcripts of depositions taken in the course of an administrative hearing are subject to disclosure to a person who was not a party to the proceeding, as there is no specific exemption in section 13(1) of the Act or any other statute that exempts a deposition or a document referring to the deposition from disclosure. These documents may, however, contain statements that are exempt from disclosure and, therefore, pursuant to section 14 of the Act, where a person who is not a party to the proceeding requests a copy, it will be necessary to separate the exempt material and make only the nonexempt records available. p. 263
   f. Stenographer's notes or the tape recordings or dictaphone records of a municipal meeting used to prepare minutes are public records under the Act and must be made available to the public. p. 264
   g. Computer software developed by and in the possession of a public body is not a public record. p. 264
   h. Although a state university must release a report of the performance of its official functions in its files, regardless of who prepared it, if a report prepared by an outside agency is retained only by the private agency, it is not subject to public disclosure. p. 265
   i. Copyrighted materials are not subject to the Act. p. 266
   j. If a public body maintains a file of the names of employees it has fired or suspended over a certain designated period of time, it must disclose the list if requested. p. 268
   k. A public body may charge a fee for providing a copy of a public record. p. 268
   l. A request for data that refers to an extensive period of time and contains no other reference by which the public record may be found does not comply with the requirement of section 3 of the Act that the request describe the public record sufficiently to enable the public body to find it. p. 268

m. The five-day response provision begins the day after the public body has received the request sufficiently describing the public record. If the request does not contain sufficient information describing the public record, it may be denied on that ground. If, subsequently, additional information is provided that sufficiently describes the public record, the period within which the response must be made dates from the time that the additional information is received. p. 269

n. A school board may meet in closed session pursuant to the Open Meetings Act to consider matters which are exempt from disclosure under the Freedom of Information Act. p. 270

o. The names and addresses of students may be released unless the parent of the student or the student has informed the institution in writing that such information should not be released. p. 281

p. A law enforcement agency may refuse to release the name of a person who has been arrested, but not charged in a complaint or information, with the commission of a crime. p. 282

q. Since motor vehicle registration lists have not been declared to be confidential, they are required to be open to public inspection. p. 300

6. File photographs routinely taken of criminal suspects by law enforcement agencies are public records as defined by the Freedom of Information Act. To the extent that the release of a photograph of a person would constitute a clearly unwarranted invasion of personal privacy, a public body may refuse to permit a person to inspect or make copies of the photograph. Attorney General Opinion No. 5593, p. 468, November 14, 1979.

7. The exemption contained in section 13(1)(n) of the Freedom of Information Act for communications and notes within a public body or between public bodies of an advisory nature does not constitute an exemption for the purposes of the Open Meetings Act in view of a specific statutory provision which states that this exemption does not constitute an exemption for the purposes of section 8(h) of the Open Meetings Act. Attorney General Opinion No. 5608, p. 496, December 17, 1979.

8. The meetings of a board of education expelling a student from school must list a student's name. Unedited minutes must be furnished to the public on request in accordance with law. Attorney General Opinion No. 5632, p. 563, January 24, 1980.

9. The confidentiality mandated by the Banking Code of 1969 is not limited to facts and information furnished by state chartered banks, but applies to all facts and information received by the Financial Institutions Bureau. Such facts and information are not subject to disclosure pursuant to the Freedom of Information Act. Attorney General Opinion No. 5725, p. 842, June 23, 1980.

10. Since the Law Enforcement Information Network (LEIN) Policy Council does not receive and maintain records in the LEIN system, it does not possess copies of records and as a result has no material to furnish persons seeking such records under the Freedom of Information Act. Attorney General Opinion No. 5797, p. 1038, October 14, 1980.

11. A public body is not required to disclose both the questions and answers of a sheriff's promotional test unless the public body finds it in the public interest to disclose both the test questions and answers. Attorney General Opinion No. 5832, p. 1125, December 18, 1980.

12. Employment records disclosing salary history and employment dates are subject to disclosure under the Freedom of Information Act. Attorney General Opinion No. 6019, p. 507, December 29, 1981.

13. Copies of receipts maintained by a register of deeds for amounts paid as real estate transfer taxes fall within the mandatory exemption from disclosure established by section 11b of 1966 P.A. 134 and are exempt from disclosure under the Freedom of Information Act. Attorney General Opinion No. 6023, p. 518, January 8, 1982.

14. A township is not required to enact its own freedom of information act in order to comply with the state Freedom of Information Act. Attorney General Opinion No. 6042, p. 584, February 25, 1982.

15. A school district must furnish the records of a student upon request of another school district in which the student is enrolled as an incident to the operation of free public elementary and secondary schools required by section 2 of article VIII of the Michigan Constitution of 1963 and is precluded from withholding the records because the student or his or her parents is indebted to the school district possessing the records for fees or other charges. Attorney General Opinion No. 6064, p. 641, April 30, 1982.

16. Records of a public body showing the number of days a public employee is absent from work are not exempt from disclosure under the Freedom of Information Act. Attorney General Opinion No. 6087, p. 698, July 28, 1982.

17. A county sheriff may exempt from disclosure "jail booking records" where disclosure would constitute a clearly unwarranted invasion of privacy of a person booked into the county jail. Attorney General Opinion No. 6389, p. 374, September 24, 1986.

18. State legislators are exempt from the provisions of the Freedom of Information Act. Attorney General Opinion No. 6390, p. 375, September 26, 1986.

19. The specific exemption of information evaluating worker's compensation magistrates from disclosure under the Freedom of Information Act does not exempt the information from disclosure under any other law that may require disclosure. Attorney General Opinion No. 6504, p. 295, March 4, 1988.

20. The Freedom of Information Act does not apply to private bodies, whether or not primarily funded by or through state or local authority, because the title of the Act refers only to public bodies. Attorney General Opinion No. 6563, p. 27, January 26, 1989.
21. The personal records of the Auditor General are excluded from the Freedom of Information Act's disclosure requirements, but the general records of that office are subject to disclosure. Attorney General Opinion No. 6613, p. 299, March 14, 1990.
22. The provision of the Open Meetings Act permitting a public body to meet in closed session for a personnel evaluation is not a statute that specifically describes and exempts the evaluation from disclosure under the Freedom of Information Act so as to exempt the personnel evaluation from disclosure. Evaluations prepared by individual members of a board are subject to disclosure, if there is no intervening deliberative process between the creation of the individual evaluations and the adoption of a final evaluation by the board. Attorney General Opinion No. 6668, p. 409, November 28, 1990.
23. A public body that provides information to an indigent person and waives the fee cannot refuse to provide additional copies of identical records, but need not again waive the fee. Attorney General Opinion No. 6766, p. 52, August 19, 1993.
24. Only the department of state police must search for and disclose records on the STATUS system upon a request under the Freedom of Information Act. A participating law enforcement agency need only respond to a request under the Act for STATUS system information if it downloads the information or provides the information to the system. Attorney General Opinion No. 6820, p. 196, October 11, 1994.
25. A public body may establish a fee in advance of providing a requested record if the fee is calculated based on actual costs as specified in the Freedom of Information Act. Attorney General Opinion No. 6923, p. 224, October 23, 1996.
26. A private, voluntary, unincorporated association of lake property owners is not subject to the Freedom of Information Act. A resort owners association incorporated under 1929 PA 137 must comply with the Act. Attorney General Opinion No. 6942, p. ____, July 3, 1997.

Special Note on the Federal Freedom of Information Act

Michigan's Freedom of Information Act is a law which guarantees public access to vital public information held at the state level. There is also a federal Freedom of Information Act which opens files of the United States government to all citizens. For information on the federal Freedom of Information Act, contact the Member of Congress from your community or write to:

The Honorable Carl Levin
United States Senator
459 Russell Senate Office Building
Washington, D.C. 20510

or

The Honorable Debbie Stabenow
United States Senator
Washington, D.C. 20510

You should also know that an excellent publication entitled *Using the Freedom of Information Act: A Step by Step Guide* is made available by the American Civil Liberties Union. A copy of that guide may be obtained by sending $4.00 (check or money order) to ACLU Publications, 122 Maryland Ave., N.E., Washington, D.C. 20002; (202) 544-5380.

Michigan's Open Meetings Act

Public Act No. 267 of 1976,
as amended

The following is a general outline and digest of the Open Meetings Act. When asserting any rights under the Open Meetings Act, always refer to the specific provisions of the Act, which are republished immediately following this outline.

Basic Intent:

The basic intent of the Open Meetings Act is to strengthen the right of all Michigan citizens to know what goes on in government by requiring public bodies to conduct nearly all business at open meetings.

Key Definitions:

"Public body" means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, which is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function, or a lessee thereof performing an essential public purpose and function pursuant to the lease agreement.

"Meeting" means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy.

"Closed session" means a meeting or part of a meeting of a public body which is closed to the public.

"Decision" means a determination, action, vote or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.

Coverage:

The coverage of the new law is very broad, including the state Legislature as well as the legislative or governing bodies of all cities, villages, townships, charter townships and all county units of government.

The law also applies to:

- local and intermediate school districts;
- government boards of community colleges, state colleges and universities; and
- special boards and commissions created by law (i.e., public hospital authorities, road commissions, health boards and zoning boards, etc.).

Several public bodies are exempted from the requirements of the act when they are deliberating the merits of a case. They are the Worker's Compensation Appeal Board, the Employment Security Appeals Board, the Michigan Veterans' Trust Fund Board (or a county or district committee when the board of trustees or county or district committee is deliberating the merits of an emergent need), the Teacher Tenure Commission (when acting as a board of review), the Michigan Public Service Commission, and arbitration panels selected by the Employment Relations Commission or under other laws.

The act also does not apply to a meeting of a public body which is a social or chance gathering not designed to avoid the law.

Notification of Meetings:

The law states that within 10 days of the first meeting of a public body in each calendar or fiscal year, the body must publicly post a list stating the dates, times and places of all its regular meetings at its principal office.

If a public body does not have a principal office, the notice would be posted in the office of the county clerk for a local public body or the office of the Secretary of State for a state public body.

If there is a change in schedule, within three days of the meeting in which the change is made, the public body must post a notice stating the new dates, times and places of regular meetings.

Special and Irregular Meetings:

For special and irregular meetings, public bodies must post a notice indicating the date, time and place at least 18 hours before the meetings.

NOTE: A regular meeting of a public body, which is recessed for more than 36 hours, can only be reconvened if a notice is posted 18 hours in advance.

Emergency Meetings:

Public bodies may hold emergency sessions without a written notice or time constraints if the public health, safety or welfare is severely threatened and if two-thirds of the body's members vote to hold the emergency meeting.

Individual Notification of Meetings by Mail:

Any citizen can request that public bodies put them on a mailing list so that they are notified in advance of all meetings. Section 6 of the new law states that:

> "Upon the written request of an individual, organization, firm or corporation, and upon the requesting party's payment of a yearly fee of not more than the reasonable estimated cost for printing and postage of such notices, a public body shall send to the requesting party by first-class mail, a copy of any notice required to be posted . . .".

In addition, upon written request, public bodies are required to send free notices of meetings to newspapers, radio and television stations at the same time that they are required to post those notices.

Closed Meetings:

The law provides for closed meetings in a few specified circumstances. In order for a public body to hold a closed meeting, two-thirds of its members must vote affirmatively in a roll call. Also, the purpose for which the closed meeting is being called has to be stated in the meeting when the roll call is taken.

Closed meetings may be called without a two-thirds vote for the following reasons:

(1) considering the dismissal, suspension or disciplining of, or to hear complaints or charges brought against a public officer, employee, staff member or individual when the person requests a closed hearing;

(2) considering the dismissal, suspension or disciplining of a student of a public school when the student or guardian requests a closed hearing;

(3) strategy and negotiation sessions necessary in reaching a collective bargaining agreement when either party requests a closed hearing; and

(4) partisan caucuses of the State Legislature.

(5) for a compliance conference the department of commerce conducts under MCL §333.16231, concerning an investigation of certain licensed medical professionals.

(6) to conduct searches for a university president, until the board has narrowed the search to 5 candidates.

Other reasons a public body may hold a closed meeting are:

(1) to consider the purchase or lease of real property;

(2) to consult with its attorney about trial or settlement strategy in pending litigation, but only when an open meeting would have detrimental financial effect on the public body's position;

(3) to review the contents of an application for employment or appointment to a public office when the candidate requests the application to remain confidential. However, all interviews by a public body for employment or appointment to a public office have to be conducted in an open meeting; and

(4) to consider material exempt from discussion or disclosure by state or federal statute.

Minutes of a Meeting:

Minutes must be kept for all meetings and are required to contain:

(1) a statement of the time, date and place of the meeting;

(2) the members present as well as absent;

(3) a record of any decisions made at the meeting and a record of all roll call votes; and

(4) an explanation for the purpose(s) if the meeting is a closed session.

Except for minutes taken during a closed session, all minutes are considered public records, open for public inspection, and must be available for review as well as copying at the address designated on the public notice for the meeting.

Proposed minutes must be available for public inspection within 8 business days after a meeting. Approved minutes must be available within 5 business days after the meeting at which they were approved.

Corrections in the minutes must be made no later than the next meeting after the meeting to which the minutes refer. Corrected minutes must be available no later than the next meeting after the correction and must show both the original entry and the correction.

Explanation of Minutes of Closed Meeting:

Minutes of closed meetings must also be recorded although they are not available for public inspection and would only be disclosed if required by a civil action. These minutes may be destroyed one year and one day after approval of the minutes of the regular meeting at which the closed session was approved.

Enforcement of the Act:

Under the law, the attorney general, prosecutor or any citizen can challenge in circuit court the validity of a decision of a public body made in violation of its provisions. If a decision is made by the body in violation of the law, that decision can be invalidated by the court.

In any case where an action has been initiated to invalidate a decision of a public body, the public body may reenact the disputed decision in conformity with the act. A decision reenacted in this manner shall be effective from the date of reenactment and will not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

Penalties Under the Act:

The first time a public official intentionally breaks the law, he or she can be punished by a maximum fine of $1,000. For a second offense within the same term of office, he or she can be fined up to $2,000, jailed for a maximum of one year or both. A public official who intentionally violates the act is also personally liable for actual and exemplary damages up to $500, plus court costs and attorney fees.

OPEN MEETINGS ACT

Act 267 of 1976; Eff. Mar. 31, 1977

AN ACT to require certain meetings of certain public bodies to be open to the public; to require notice and the keeping of minutes of meetings; to provide for enforcement; to provide for invalidation of governmental decisions under certain circumstances; to provide penalties; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

15.261 Short title; effect of act on certain charter provisions, ordinances, or resolutions.

Sec. 1. (1) This act shall be known and may be cited as the "Open meetings act".

(2) This act shall supersede all local charter provisions, ordinances, or resolutions which relate to requirements for meetings of local public bodies to be open to the public.

(3) After the effective date of this act, nothing in this act shall prohibit a public body from adopting an ordinance, resolution, rule, or charter provision which would require a greater degree of openness relative to meetings of public bodies than the standards provided for in this act.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.262 Definitions.

Sec. 2. As used in this act:

(a) "Public body" means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, which is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function, or a lessee thereof performing an essential public purpose and function pursuant to the lease agreement.

(b) "Meeting" means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy.

(c) "Closed session" means a meeting or part of a meeting of a public body which is closed to the public.

(d) "Decision" means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.263 Meetings, decisions, and deliberations of public body; requirements; attending or addressing meeting of public body; tape-recording, videotaping, broadcasting, and telecasting proceedings; rules and regulations; exclusion from meeting; exemptions.

Sec. 3. (1) All meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided in this act. The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right shall not be dependent upon the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.

(2) All decisions of a public body shall be made at a meeting open to the public.

(3) All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public except as provided in this section and sections 7 and 8.

(4) A person shall not be required as a condition of attendance at a meeting of a public body to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance.

(5) A person shall be permitted to address a meeting of a public body under rules established and recorded by the public body. The legislature or a house of the legislature may provide by rule that the right to address may be limited to prescribed times at hearings and committee meetings only.

(6) A person shall not be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.

(7) This act does not apply to the following public bodies only when deliberating the merits of a case:

(a) The worker's compensation appeal board created under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being sections 418.101 to 418.941 of the Michigan Compiled Laws.

(b) The employment security board of review created under the Michigan employment security act, Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being sections 421.1 to 421.73 of the Michigan Compiled Laws.

(c) The state tenure commission created under Act No. 4 of the Public Acts of the Extra Session of 1937, as amended, being sections 38.71 to 38.191 of the Michigan Compiled Laws, when acting as a board of review from the decision of a controlling board.

(d) An arbitrator or arbitration panel appointed by the employment relations commission under the authority given the commission by Act No. 176 of the Public Acts of 1939, as amended, being sections 423.1 to 423.30 of the Michigan Compiled Laws.

(e) An arbitration panel selected under chapter 50A of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.5040 to 600.5065 of the Michigan Compiled Laws.

(f) The Michigan public service commission created under Act No. 3 of the Public Acts of 1939, being sections 460.1 to 460.8 of the Michigan Compiled Laws.

(8) This act does not apply to an association of insurers created under the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, or other association or facility formed under Act No. 218 of the Public Acts of 1956 as a nonprofit organization of insurer members.

(9) This act does not apply to a committee of a public body which adopts a nonpolicymaking resolution of tribute or memorial which resolution is not adopted at a meeting.

(10) This act does not apply to a meeting which is a social or chance gathering or conference not designed to avoid this act.

(11) This act shall not apply to the Michigan veterans' trust fund board of trustees or a county or district committee created under Act No. 9 of the Public Acts of the first extra session of 1946, being sections 35.601 to 35.610 of the Michigan Compiled Laws, when the board of trustees or county or district committee is deliberating the merits of an emergent need. A decision of the board of trustees or county or district committee made under this subsection shall be reconsidered by the board or committee at its next regular or special meeting consistent with the requirements of this act. "Emergent need" means a situation which the board of trustees, by rules promulgated under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, determines requires immediate action.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1981, Act 161, Imd. Eff. Nov. 30, 1981;—Am. 1986, Act 269, Imd. Eff. Dec. 19, 1986;—Am. 1988, Act 158, Imd. Eff. June 14, 1988;—Am. 1988, Act 278, Imd. Eff. July 27, 1988.

Administrative rules: R 35.621 of the Michigan Administrative Code.

15.264 Public notice of meetings generally; contents; places of posting.

Sec. 4. The following provisions shall apply with respect to public notice of meetings:

(a) A public notice shall always contain the name of the public body to which the notice applies, its telephone number if one exists, and its address.

(b) A public notice for a public body shall always be posted at its principal office and any other locations considered appropriate by the public body. Cable television may also be utilized for purposes of posting public notice.

(c) If a public body is a part of a state department, part of the legislative or judicial branch of state government, part of an institution of higher education, or part of a political subdivision or school district, a public notice shall also be posted in the respective principal office of the state department, the institution of higher education, clerk of the house of representatives, secretary of the state senate, clerk of the supreme court, or political subdivision or school district.

(d) If a public body does not have a principal office, the required public notice for a local public body shall be posted in the office of the county clerk in which the public body serves and the required public notice for a state public body shall be posted in the office of the secretary of state.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1984, Act 87, Imd. Eff. Apr. 19, 1984.

15.265 Public notice of regular meetings, change in schedule of regular meetings, rescheduled regular meetings, or special meetings; time for posting; statement of date, time, and place; applicability of subsection (4); recess or adjournment; emergency sessions; meeting in residential dwelling; notice.

Sec. 5. (1) A meeting of a public body shall not be held unless public notice is given as provided in this section by a person designated by the public body.

(2) For regular meetings of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar or fiscal year a public notice stating the dates, times, and places of its regular meetings.

(3) If there is a change in the schedule of regular meetings of a public body, there shall be posted within 3 days after the meeting at which the change is made, a public notice stating the new dates, times, and places of its regular meetings.

(4) Except as provided in this subsection or in subsection (6), for a rescheduled regular or a special meeting of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting. The requirement of 18-hour notice shall not apply to special meetings of subcommittees of a public body or conference committees of the state legislature. A conference committee shall give a 6-hour notice. A second conference committee shall give a 1-hour notice. Notice of a conference committee meeting shall include written notice to each member of the conference committee and the majority and minority leader of each house indicating time and place of the meeting. This subsection does not apply to

a public meeting held pursuant to section 4(2) to (5) of Act No. 239 of the Public Acts of 1955, as amended, being section 200.304 of the Michigan Compiled Laws.

(5) A meeting of a public body which is recessed for more than 36 hours shall be reconvened only after public notice, which is equivalent to that required under subsection (4), has been posted. If either house of the state legislature is adjourned or recessed for less than 18 hours, the notice provisions of subsection (4) are not applicable. Nothing in this section shall bar a public body from meeting in emergency session in the event of a severe and imminent threat to the health, safety, or welfare of the public when 2/3 of the members serving on the body decide that delay would be detrimental to efforts to lessen or respond to the threat.

(6) A meeting of a public body may only take place in a residential dwelling if a nonresidential building within the boundary of the local governmental unit or school system is not available without cost to the public body. For a meeting of a public body which is held in a residential dwelling, notice of the meeting shall be published as a display advertisement in a newspaper of general circulation in the city or township in which the meeting is to be held. The notice shall be published not less than 2 days before the day on which the meeting is held, and shall state the date, time, and place of the meeting. The notice, which shall be at the bottom of the display advertisement and which shall be set off in a conspicuous manner, shall include the following language: "This meeting is open to all members of the public under Michigan's open meetings act".

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1978, Act 256, Imd. Eff. June 21, 1978;—Am. 1982, Act 134, Imd. Eff. Apr. 22, 1982;—Am. 1984, Act 167, Imd. Eff. June 29, 1984.

15.266 Providing copies of public notice on written request; fee.

Sec. 6. (1) Upon the written request of an individual, organization, firm, or corporation, and upon the requesting party's payment of a yearly fee of not more than the reasonable estimated cost for printing and postage of such notices, a public body shall send to the requesting party by first class mail a copy of any notice required to be posted pursuant to section 5(2) to (5).

(2) Upon written request, a public body, at the same time a public notice of a meeting is posted pursuant to section 5, shall provide a copy of the public notice of that meeting to any newspaper published in the state and to any radio and television station located in the state, free of charge.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.267 Closed sessions; roll call vote; separate set of minutes.

Sec. 7. (1) A 2/3 roll call vote of members elected or appointed and serving is required to call a closed session, except for the closed sessions permitted under section 8(a), (b), (c), (g), (i), and (j). The roll call vote and the purpose or purposes for calling the closed session shall be entered into the minutes of the meeting at which the vote is taken.

(2) A separate set of minutes shall be taken by the clerk or the designated secretary of the public body at the closed session. These minutes shall be retained by the clerk of the public body, are not available to the public, and shall only be disclosed if required by a civil action filed under section 10, 11, or 13. These minutes may be destroyed 1 year and 1 day after approval of the minutes of the regular meeting at which the closed session was approved.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1993, Act 81, Eff. Apr. 1, 1994;—Am. 1996, Act 464, Imd. Eff. Dec. 26, 1996.

15.268 Closed sessions; permissible purposes.

Sec. 8. A public body may meet in a closed session only for the following purposes:

(a) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named person requests a closed hearing. A person requesting a closed hearing may rescind the request at any time, in which case the matter at issue shall be considered after the rescission only in open sessions.

(b) To consider the dismissal, suspension, or disciplining of a student if the public body is part of the school district, intermediate school district, or institution of higher education that the student is attending, and if the student or the student's parent or guardian requests a closed hearing.

(c) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.

(d) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.

(e) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.

(f) To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, except as otherwise provided in this subdivision, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act. This subdivision does not apply to a public office described in subdivision (j).

(g) Partisan caucuses of members of the state legislature.

(h) To consider material exempt from discussion or disclosure by state or federal statute.

(i) For a compliance conference conducted by the department of commerce under section 16231 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.16231 of the Michigan Compiled Laws, before a complaint is issued.

(j) In the process of searching for and selecting a president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, to review the specific contents of an application, to conduct an interview with a candidate, or to discuss the specific qualifications of a candidate if the particular process of searching for and selecting a president of an institution of higher education meets all of the following requirements:

(*i*) The search committee in the process, appointed by the governing board, consists of at least 1 student of the institution, 1 faculty member of the institution, 1 administrator of the institution, 1 alumnus of the institution, and 1 representative of the general public. The search committee also may include 1 or more members of the governing board of the institution, but the number shall not constitute a quorum of the governing board. However, the search committee shall not be constituted in such a way that any 1 of the groups described in this subparagraph constitutes a majority of the search committee.

(*ii*) After the search committee recommends the 5 final candidates, the governing board does not take a vote on a final selection for the president until at least 30 days after the 5 final candidates have been publicly identified by the search committee.

(*iii*) The deliberations and vote of the governing board of the institution on selecting the president take place in an open session of the governing board.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1984, Act 202, Imd. Eff. July 3, 1984;—Am. 1993, Act 81, Eff. Apr. 1, 1994;—Am. 1996, Act 464, Imd. Eff. Dec. 26, 1996.

15.269 Minutes generally.

Sec. 9. (1) Each public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes shall include all roll call votes taken at the meeting. Corrections in the minutes shall be made not later than the next meeting after the meeting to which the minutes refer. Corrected minutes shall be available no later than the next subsequent meeting after correction. The corrected minutes shall show both the original entry and the correction.

(2) Minutes shall be public records open to public inspection and shall be available at the address designated on posted public notices pursuant to section 4. Copies of the minutes shall be available to the public at the reasonable estimated cost for printing and copying.

(3) Proposed minutes shall be available for public inspection not more than 8 business days after the meeting to which the minutes refer. Approved minutes shall be available for public inspection not later than 5 business days after the meeting at which the minutes are approved by the public body.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1982, Act 130, Imd. Eff. Apr. 20, 1982.

15.270 Decisions of public body; presumption; civil action to invalidate; jurisdiction; venue; reenactment of disputed decision.

Sec. 10. (1) Decisions of a public body shall be presumed to have been adopted in compliance with the requirements of this act. The attorney general, the prosecuting attorney of the county in which the public body serves, or any person may commence a civil action in the circuit court to challenge the validity of a decision of a public body made in violation of this act.

(2) A decision made by a public body may be invalidated if the public body has not complied with the requirements of section 3(1), (2), and (3) in making the decision or if failure to give notice in accordance with section 5 has interfered with substantial compliance with section 3(1), (2), and (3) and the court finds that the noncompliance or failure has impaired the rights of the public under this act.

(3) The circuit court shall not have jurisdiction to invalidate a decision of a public body for a violation of this act unless an action is commenced pursuant to this section within the following specified period of time:

(a) Within 60 days after the approved minutes are made available to the public by the public body except as otherwise provided in subdivision (b).

(b) If the decision involves the approval of contracts, the receipt or acceptance of bids, the making of assessments, the procedures pertaining to the issuance of bonds or other evidences of indebtedness, or the submission of a borrowing proposal to the electors, within 30 days after the approved minutes are made available to the public pursuant to that decision.

(4) Venue for an action under this section shall be any county in which a local public body serves or, if the decision of a state public body is at issue, in Ingham county.

(5) In any case where an action has been initiated to invalidate a decision of a public body on the ground that it was not taken in conformity with the requirements of this act, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with this act. A decision reenacted in this manner shall be effective from the date of reenactment and shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.271 Civil action to compel compliance or enjoin noncompliance; commencement; venue; security not required; commencement of action for mandamus; court costs and attorney fees.

Sec. 11. (1) If a public body is not complying with this act, the attorney general, prosecuting attorney of the county in which the public body serves, or a person may commence a civil action to compel compliance or to enjoin further noncompliance with this act.

(2) An action for injunctive relief against a local public body shall be commenced in the circuit court, and venue is proper in any county in which the public body serves. An action for an injunction against a state public body shall be commenced in the circuit court and venue is proper in any county in which the public body has its principal office, or in Ingham county. If a person commences an action for injunctive relief, that person shall not be required to post security as a condition for obtaining a preliminary injunction or a temporary restraining order.

(3) An action for mandamus against a public body under this act shall be commenced in the court of appeals.

(4) If a public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act and succeeds in obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.272 Violation as misdemeanor; penalty.

Sec. 12. (1) A public official who intentionally violates this act is guilty of a misdemeanor punishable by a fine of not more than $1,000.00.

(2) A public official who is convicted of intentionally violating a provision of this act for a second time within the same term shall be guilty of a misdemeanor and shall be fined not more than $2,000.00, or imprisoned for not more than 1 year, or both.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.273 Violation; liability.

Sec. 13. (1) A public official who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than $500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action.

(2) Not more than 1 action under this section shall be brought against a public official for a single meeting. An action under this section shall be commenced within 180 days after the date of the violation which gives rise to the cause of action.

(3) An action for damages under this section may be joined with an action for injunctive or exemplary relief under section 11.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.273a Selection of president by governing board of higher education institution; violation; civil fine.

Sec. 13a. If the governing board of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963 violates this act with respect to the process of selecting a president of the institution at any time after the recommendation of final candidates to the governing board, as described in section 8(j), the institution is responsible for the payment of a civil fine of not more than $500,000.00. This civil fine is in addition to any other remedy or penalty under this act. To the extent possible, any payment of fines imposed under this section shall be paid from funds allocated by the institution of higher education to pay for the travel and expenses of the members of the governing board.

History: Add. 1996, Act 464, Imd. Eff. Dec. 26, 1996.

15.274 Repeal of §§ 15.251 to 15.253.

Sec. 14. Act No. 261 of the Public Acts of 1968, being sections 15.251 to 15.253 of the Compiled Laws of 1970, is repealed.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.275 Effective date.

Sec. 15. This act shall take effect January 1, 1977.

History: 1976, Act 267, Eff. Mar. 31, 1977.

Court Decisions on the Open Meetings Act

Michigan courts have rendered decisions which, when published, become precedent and are the law of the state until changed by a higher court or by the Legislature. The following list contains the principal published decisions of Michigan's appellate courts and is current through July 1997. Court decisions may be obtained in law libraries or from the courts of record at a nominal fee.

Because the Legislature has amended the Open Meetings Act after its enactment, the cases interpreting and applying the Act may not reflect the current law. For example, the cases listed below concerning university presidential searches were decided under the Act before the effective date of the amendment that permits closed meetings at early stages of university presidential searches.

1. **In re "Sunshine Law" 1976 PA 267,** 400 Mich 660 (1977)

   Section of the Open Meetings Act that retains the requirement that the Act applies "to a court while exercising rulemaking authority and while deliberating or deciding upon the issuance of an administrative order" is unconstitutional as intrusion into exercise of constitutionally derived judicial powers.

2. **Midland Township v Michigan State Boundary Commission,** 401 Mich 641 (1977), reh den, app dis 435 US 1004

   An annexation proceeding is not a "contested case" even though the Boundary Commission must hold a public hearing and representatives of a city, village, or township and other persons have a right to be heard at such a hearing before the commission makes its determination. Affording the public an opportunity to be heard on an annexation decision does not create a substantive personal right in the decision which requires procedural protection under the Administrative Procedures Act.

3. **Hubka v Department of Corrections,** 197 Mich App 117 (1992); rev in part, 443 Mich 864 (1993)

   The 60-day period for bringing action to invalidate a decision taken at a meeting closed in violation of the Open Meetings Act did not apply to divest circuit court of jurisdiction to determine that the meeting violated the Act and to require disclosure of the meeting minutes.

4. **Booth Newspapers, Inc v University of Michigan Board of Regents,** 192 Mich App 574 (1992); rev in part 444 Mich 211 (1993)

   A university board of regents must comply with Open Meetings Act requirements in the process of selecting a university president, when conducting interviews, undertaking deliberations, and making decisions about candidates, whether or not a vote is taken.

5. **Wexford County Prosecuting Attorney v Pranger,** 83 Mich App 197 (1978)

   Closed session exceptions of the Open Meetings Act are to be construed strictly to limit the situations that are not open to the public.

6. **Esperance v Chesterfield Township,** 89 Mich App 456 (1979)

   Those seeking to have decision of public body invalidated under the Open Meetings Act must allege not only that the public body failed to comply with the Act, but also that such failure impaired rights of the public.

7. **Booth Newspapers, Inc v Regents of University of Michigan,** 93 Mich App 100 (1979)

   Written opinion of counsel to university board of regents was "material" that need not have been disclosed under the Freedom of Information Act, and, thus, was exempt from open meeting requirement of the Open Meetings Act.

8. **Southland Corporation v Liquor Control Commission,** 95 Mich App 466 (1980)

   Plaintiff's claim that committee had violated the Open Meetings Act because certain committee members' votes were counted although they had not been present for deliberations or for the final vote on the rules was sufficient to withstand a motion for summary judgment for failure to state a claim.

9. **Regents of University of Michigan v Washtenaw County Coalition Against Apartheid,** 97 Mich App 532 (1980), lv den

   The Open Meetings Act permits public body to exclude those who breach the peace at meeting by reconvening at new location, accompanied by notice to general public of new time and location.

10. **Arnold Transit Company v City of Mackinac Island,** 99 Mich App 266 (1980), aff'd 415 Mich 362 (1982); reh den; app dis 464 US 804; reh den

    Rigid adherence to procedural mandate of the Open Meetings Act will not be required if it is clear that a substantial compliance provides realistic fulfillment of the purpose for which the mandate was included in the statute. Public bodies cannot call themselves "committees" to avoid the requirements of the Act.

11. **Coldwater Township v City of Coldwater,** 101 Mich App 322 (1980)

    The State Boundary Commission must notify interested parties of the public hearing on an annexation petition by publication at least seven days before date of hearing, by sending notification by certified mail to clerks of the affected townships, and by giving notice in the manner required by the Open Meetings Act.

12. **Felice v Cheboygan County Zoning Commission,** 103 Mich App 742 (1981)

    Where plaintiff stipulated to dismiss the claim for injunctive relief and abandoned invalidation action, obviating the necessity for the court to make a finding and order such relief, plaintiff has not succeeded in obtaining "relief in the action" so as to allow award of costs and attorney fees under the Open Meetings Act.

13. **Rochester Board of Education v Michigan State Board of Education,** 104 Mich App 569 (1981)

    Where the State Board of Education provided parties with the full panoply of procedural safeguards guaranteed by the Administrative Procedures Act in contested cases, it should not allow parties or nonparties to address it concerning the merits of a contested case at a public meeting, because the Administrative Procedures Act requires that contested cases be decided solely on record evidence.

14. **Local 79 v Lapeer County Hospital,** 111 Mich App 441 (1981)

    The circuit court is the proper forum to seek relief for a violation of the Open Meetings Act.

15. **Ridenour v Dearborn Board of Education,** 111 Mich App 798 (1981)

    The evaluation of the performance of school administrators is not an action that is exempt from the requirements of the Open Meetings Act.

16. **Palladium Publishing Company v River Valley School District,** 115 Mich App 490 (1982), lv den

    The Open Meetings Act requires the naming of a suspended or expelled student at the meeting and in the board's minutes when a student is expelled or suspended by action of a board of education.

17. **Perlongo v Iron River TV,** 122 Mich App 433 (1983)

    The Open Meetings Act does not apply to a nonstock, nonprofit corporation that was created independent of state or local authority and without the assistance of public funds.

18. **Menominee County Taxpayers v Menominee Clerk,** 139 Mich App 814 (1984), lv den

    When the county clerk, county prosecutor, and probate judge, come together to appoint a county treasurer, pursuant to statute, they constituted a "public body" for purposes of the Open Meetings Act.

19. **Rasch v East Jordan,** 141 Mich App 336 (1985)

    An action under section 13 of the Open Meetings Act must be commenced within 180 days after the date of the violation. Where the 180 days have elapsed, the action is barred.

20. **Goode v DSS,** 143 Mich App 756 (1985), lv den

    A hearing conducted by teleconference over speaker phones where all interested persons are allowed to attend, conforms with the requirements of the Open Meetings Act. Also, the release of a written opinion to the public rather than calling a second hearing to announce the same, would meet the requirements of the Act.

21. **Cape v Howell Board of Education,** 145 Mich App 459 (1985)

    In extending the time period of an option contract, the Board of Education made a "decision" requiring compliance with the Open Meetings Act. Also, the time period for commencing an action under the Open Meetings Act begins to run when the minutes of the meeting in question are approved and made available to the public.

22. **Crowley v Governor,** 167 Mich App 539 (1988), lv den

    Legislative leadership committee does not deliberate on or make decisions regarding legislation or public policy and is not subject to the Open Meetings Act.

23. **Booth Newspapers v Wyoming,** 168 Mich App 459 (1988)

    Public body may not hold closed sessions with attorney under the attorney-client privilege, if the discussion is of nonlegal matters.

24. **Detroit News v Detroit,** 185 Mich App 296 (1990), lv den

    Burden of establishing that a meeting of a public body is exempt from the Open Meetings Act is on the public body.

25. **St. Aubin v Ishpeming City Council,** 197 Mich App 100 (1992)

An informal canvas by one member of a public body of all the members of the body is not a meeting for purposes of the Open Meetings Act.

26. **Jackson v Eastern Michigan University Foundation,** 215 Mich App 240 (1996)

A foundation empowered to exercise delegated authority by resolution of a university board of regents is a public body subject to the Open Meetings Act.

27. **Meyers v Patchkowski,** 216 Mich App 513 (1996)

The public body is a necessary party to an action seeking injunctive relief for noncompliance with the Open Meetings Act.

28. **Wilkins v Gagliardi,** 219 Mich App 260 (1996)

A person must allege facts that show impairment of public rights when seeking to invalidate a decision made at a legislative meeting held in violation of the Open Meetings Act. The speech or debate clause of the Michigan Constitution of 1963 provides immunity for the chair of a legislative committee in a suit alleging violation of the Act.

29. **Federated Publications, Inc v Board of Trustees of Michigan State University,** 221 Mich App 103 (1997)

Universities' constitutional autonomy does not preclude application of the Open Meetings Act to university presidential searches.

30. **Moore v Fennville Public Schools Board of Education,** 223 Mich App 196 (1997)

A public body may arrive at a conclusion as to negotiating strategy at a closed meeting. That conclusion is not a "decision" that the Open Meetings Act requires to be made at an open meeting.

Opinions of the Attorney General Relating to the Open Meetings Act

The Attorney General has issued numerous Opinions of the Attorney General (OAG) which explain various applications of the Open Meetings Act. This list of the principal opinions issued is current through July 1997. Copies of OAGs may be obtained by writing to:

Attorney General Frank Kelley
525 West Ottawa
Law Building, 7th Floor
Lansing, Michigan 48913

Because the Legislature has amended the Open Meetings Act after its enactment, the Opinions of the Attorney General interpreting and applying the Act may not pertain to its current provisions. For example, opinions concerning university presidential searches were rendered under the Act before the effective date of the amendment that permits closed meetings at early stages of university presidential searches.

1. The following responses to specific inquiries are from Attorney General Opinion No. 5183, dated March 8, 1977:
   a. The Open Meetings Act provisions apply to Michigan Employment Security Commission referee hearings. p. 29
   b. The Michigan Traffic Safety Information Council is a "public body" within the definition of the Open Meetings Act. p. 29
   c. The Michigan Environmental Review Board and the Interdepartmental Environmental Review Committee are subject to the provisions of the Open Meetings Act. p. 29
   d. The Blind Stand Operators Advisory Committee is not controlled by the provisions of the Open Meetings Act. p. 30
   e. Hearings under the Teachers Tenure Act fall within the provisions of the closed meeting exceptions provided for in section 8(a) of the Open Meetings Act. p. 32
   f. Section 8(b) of the Act allows the school district to consider dismissal, suspension, or disciplining of a student in closed session when requested by the student or the student's parent or guardian. p. 32
   g. The Boundary Commission is prohibited from adopting and approving findings of fact and order through a conference call meeting under the provisions of the Open Meetings Act. p. 32
   h. Where a large organized group knows in advance that it will attend a public meeting and the regular meeting place of the public body is insufficient to contain the number of persons wishing to attend the meeting, the group is required to give advance notice to the public body. However, the public body is under a duty to exercise sincere efforts to accommodate the number of people who may reasonably be expected to attend. p. 33
   i. To facilitate the orderly conduct of the meeting and communication between persons who wish to address the public body, it is reasonable to require a person to identify himself or herself and give advance indication that he or she wishes to speak. Such a condition may be adopted as a rule in accordance with section 3(5)of the Act. p. 34
   j. Organizations are not required to establish a regular meeting schedule as a result of the Open Meetings Act. p. 37
   k. The provisions of section 8(f) of the Act apply to employment interviews for the position of school superintendent with the local K-12 school boards. p. 41
   l. Where an ex officio member of a committee is authorized to appoint or designate another person to represent him or her at a meeting, the designee is the proper attendant at the meeting and it is his or her presence or absence that should be noted in the minutes as required in section 9(1) of the Act. p. 43
2. A single member officer, whether serving in an adjudicative capacity or rendering a policy decision, is not subject to the requirement of the Open Meetings Act. Attorney General Opinion No. 5183-A, p. 97, April 18, 1977.
3. The provision in the Open Meetings Act which defines a public body so as to include a lessee performing an essential public purpose is unconstitutional because the title of the Act does not refer to organizations other than "public bodies". Attorney General Opinion No. 5207, p. 157, June 24, 1977.
4. A board of education may not: (a) deny a person the right to address a meeting of the board on the sole ground that that person is a representative of an organization of board employees; (b) limit the subject and issues that certain persons may cover in the course of addressing the meeting; (c) require persons to exhaust administrative remedies before addressing issues at a public meeting; nor (d) prohibit a person from addressing it on grounds the matter to be addressed is or might be the subject of a closed meeting. Attorney General Opinion No. 5218, p. 224, September 13, 1977.
5. A legislative committee is included within the purview of the Open Meetings Act and may not engage in the practice of "round-robining" by which votes on a measure are obtained by a member of the committee going to other members and obtaining their signatures on a tally sheet. Attorney General Opinion No. 5222, p. 216, September 1, 1977.

6. The Huron River Watershed Council established pursuant to the local river management act is a public body performing a governmental function and must comply with the provisions of the Open Meetings Act. Attorney General Opinion No. 5256, p. 329, January 23, 1978.
7. The Open Meetings Act prohibits a voting procedure at a public meeting which prevents citizens from knowing how members of the public body have voted. Attorney General Opinion No. 5262, p. 338, January 31, 1978.
8. Meetings of the tax boards of review must comply with the requirements of the Open Meetings Act. Attorney General Opinion No. 5281, p. 377, March 8, 1978.
9. A public body may not hold a closed session for the purpose of discussing the disposition of real property by sale or lease. Attorney General Opinion No. 5284, p. 389, March 21, 1978.
10. Section 8(c) of the Open Meetings Act authorizes a city council to meet in closed session to discuss strategy connected with collective bargaining agreements. Attorney General Opinion No. 5286, p. 403, March 31, 1978.
11. A political party caucus at which a quorum of the members of the board of county commissioners are present to discuss business that will arise at a meeting of the board is subject to the Open Meetings Act. Attorney General Opinion No. 5298, p. 434, May 2, 1978.
12. Meetings of legislative joint conference committees are subject to the Open Meetings Act. Attorney General Opinion No. 5300, p. 451, May 22, 1978.
13. Every decision of the Michigan Public Service Commission must be discussed at an open meeting except those specifications exempted under section 8 of the Open Meetings Act, discussions of matters involving section 11 of the Motor Carriers Act and accident reports and certain trade secrets pursuant to the Gas Safety Standards Act. Attorney General Opinion No. 5310, p. 465, June 7, 1978.
14. A public body may adopt a rule imposing time limits during which a member of the public may address the public body. Attorney General Opinion No. 5332, p. 536, July 13, 1978.
15. A public body may adopt a rule prohibiting a personal attack on an officer, employee, or board member only if the personal attack is totally unrelated to the manner in which the officer, employee, or board member performs his or her duties. Attorney General Opinion No. 5332, p. 536, July 13, 1978.
16. A public body may meet in a closed session to vote upon the rejection of an owner's offer to sell at a designated price. Attorney General Opinion No. 5364, p. 606, September 7, 1978.
17. A public body may meet in a closed session to direct its agents as to their limits in negotiating for the purchase of real property. Attorney General Opinion No. 5364, p. 606, September 7, 1978.
18. The designated electors of constituent school districts may elect members of an intermediate school board by secret ballot. Attorney General Opinion No. 5412, p. 737, December 20, 1978.
19. The exemption from the Open Meetings Act which permits members of a public body constituting a quorum to attend a conference permits members of the public body to listen to the concerns of members of the public or of persons with special knowledge in the presence of other interested persons. It does not permit public bodies to conduct closed sessions to listen to presentations by department heads and administrators of the public body. Attorney General Opinion No. 5433, p. 29, January 31, 1979.
20. Youth Parole and Review Board proceedings are subject to the Open Meetings Act. Part of the Board proceedings may be closed pursuant to section 8(h) of the Open Meetings Act, however, when confidential records are discussed. Attorney General Opinion No. 5436, p. 31, February 1, 1979.
21. When members of a public body constituting a quorum are unaware that they are being brought together by another, this is a "chance gathering" that is exempt from the provisions of the Open Meetings Act and there is no violation of the Act as long as matters of public policy are not discussed by the members with each other at that meeting. Attorney General Opinion No. 5437, p. 36, February 2, 1979.
22. A city council must hold an open meeting pursuant to the Open Meetings Act when it wishes to discuss the course of action to be taken in resolving a dispute between the police department and the city council. Attorney General Opinion No. 5444, p. 55, February 21, 1979.
23. A public body may not take final action on any matter during a closed meeting. Attorney General Opinion No. 5445, p. 57, February 22, 1979.
24. The following responses to specific inquiries are from Attorney General Opinion No. 5500, dated July 23, 1979:
    a. Access to notes of a public meeting may not be denied solely because the notes may be revised. p. 264
    b. School boards may meet in closed sessions to consider matters exempt from disclosure under the Freedom of Information Act. p. 270

25. The promotion and tenure committee and the budget committee of a state university are advisory boards and are therefore not subject to the provisions of the Open Meetings Act. Attorney General Opinion No. 5505, p. 221, July 3, 1979.

26. When a public body convenes in a closed session in accordance with section 8 of the Open Meetings Act, it may request its officers, employees, or certain private citizens to meet with it in closed session to assist in its consideration. Attorney General Opinion No. 5532, p. 324, August 7, 1979.

27. Although a public meeting of a public body need not be held within the boundaries of the governmental unit, such a meeting may not be held at a distance from the governmental unit that would make it difficult or inconvenient for citizens residing in the area served by the public body to attend. Attorney General Opinion No. 5560, p. 386, September 13, 1979.

28. The Open Meetings Act does not permit a public body to sequester witnesses at a public meeting convened to consider a contract grievance. Attorney General Opinion No. 5595, p. 474, November 20, 1979.

29. A public body may not meet in closed session to consider an evaluation of its officers and employees. Attorney General Opinion No. 5608, p. 496, December 17, 1979.

30. A public body may not exclude a member of the public from its public meeting for failing to stand for the pledge of allegiance. Attorney General Opinion No. 5614, p. 519, December 21, 1979.

31. Where a larger than anticipated group wishes to attend a public meeting, the Open Meetings Act does not require the public body to adjourn the meeting to a larger meeting room, but the public body should exercise reasonable efforts to accommodate interested members of the public, including reconvening the meeting in a larger room where practicable. Attorney General Opinion No. 5614, p. 519, December 31, 1979.

32. The meetings of a board of education expelling a student from school for repeated violations of rules and regulations must list a student's name. Unedited minutes must be furnished to the public on request in accordance with law. Attorney General Opinion No. 5632, p. 563, January 24, 1980.

33. The practice of the Criminal Justice Commission providing that the members of the public may address the commission at the end of its official business is consistent with the Open Meetings Act. Attorney General Opinion No. 5716, p. 812, June 4, 1980.

34. The minimum 18-hour notice required for a special meeting of a public body is not fulfilled if the public is denied access to the notice of the meeting for any part of the 18 hours. The requirement may be met by posting a notice at least 18 hours in advance of the special meeting at the main entrance of the building that houses the principal office of the public body. Attorney General Opinion No. 5724, p. 840, June 20, 1980.

35. The state Board of Ethics is subject to the Open Meetings Act. Attorney General Opinion No. 5760, p. 935, August 26, 1980.

36. When either a committee comprising a quorum of a public body or subcommittees of a public body that constructively constitute a quorum of the public body collectively deliberate on or render decisions on the appointment of a person to fill a vacancy in a public office in a closed session, failure to open such meetings to the public is a violation of the Open Meetings Act. Attorney General Opinion No. 5788, p. 1015, September 23, 1980.

37. The public does not have any right to ask questions during an interview of a candidate for public employment held at an open meeting. Minutes of a closed session of a public body may not be released to the public without a court order. Attorney General Opinion No. 6019, p. 507, December 29, 1981.

38. A resident alien who has not yet become a United States citizen may not vote at the annual meeting of a township. Attorney General Opinion No. 6031, p. 535, January 22, 1982.

39. A township is not required to enact its own freedom of information act in order to comply with the provisions of the state Freedom of Information Act. Attorney General Opinion No. 6042, p. 584, February 25, 1982.

40. The legislature has not required student advisory committees making recommendations to state university officers to be subject to the provisions of the Open Meetings Act. Attorney General Opinion No. 6053, p. 616, April 13, 1982.

41. A public body may, without complying with the Open Meetings Act, attend a conference or informational gathering designed to focus upon issues of general concern and intended primarily to provide training and/or background information, provided that a public body may not, without complying with the Open Meetings Act, engage in discussions or deliberations during such a meeting or otherwise enter into the process of addressing or resolving issues of public policy. Attorney General Opinion No. 6074, p. 662, June 11, 1982.

42. Members of a township's volunteer fire department, who are not authorized to make final decisions on applications for membership or upon matters of public policy generally, do not constitute a "public body" subject to the Open Meetings Act. Attorney General Opinion No. 6077, p. 676, June 16, 1982.

43. A board of education of a school district may not conduct the public business of evaluation of the performance of the superintendent at private meetings of two or more committees of the board, each composed of less than a quorum of the members of the board and including the president of the board to provide continuity in the evaluation deliberations, from which the members of the public are excluded. Attorney General Opinion No. 6091, p. 711, August 18, 1982.

44. A bargaining committee authorized by a board of education to conduct negotiations with school officers and employees, may conduct such negotiations in closed sessions. Attorney General Opinion No. 6172, p. 161, July 20, 1983.

45. A public body is required to furnish a copy of its posted notice of meeting to Michigan newspapers, television stations, and radio stations, when a written request for such a copy is made. It should be sent by first class mail, postage paid, free of charge. Attorney General Opinion No. 6305, p. 115, July 18, 1985.

46. Hearings before the Michigan High School Athletic Association's executive committee or representative council are not subject to the provisions of the Open Meetings Act. Attorney General Opinion No. 6352, p. 252, April 8, 1986.

47. A public officer, elected or appointed, may request that a meeting be closed where allowed by the Open Meetings Act. The minutes of a closed session held pursuant to section 8 of the Act, may only be disclosed upon order of a court in accordance with the Act. Attorney General Opinion No. 6353, p. 255, April 11, 1986.

48. The following responses to specific inquiries are found in Attorney General Opinion No. 6358, p. 269, April 29, 1986:

    a. A public body conducting a lawful closed session meeting under the Open Meetings Act, may selectively include certain individuals while excluding others such as elected municipal officers, department heads, and other officers and individuals who are not members of the public body. p. 269

    b. A public body conducting a lawful closed session meeting with its attorney concerning pending litigation may exclude co-parties to the litigation from attending. p.270

    c. A public body may, if necessary, exclude an unauthorized individual who intrudes upon a closed session by either: (i) having the individual forcibly removed; or (ii) by recessing and moving the session to a new location. p. 271

    d. A public body that recesses and moves a meeting to a new location need not satisfy the 18-hour notice requirement if done within 36 hours. p. 272

49. A public body may meet in closed session in order to approve the minutes of a closed session. Attorney General Opinion No. 6365, p. 288, June 2, 1986.

50. A senior citizen organization that is a private, nonprofit corporation is not subject to the provisions of the Open Meetings Act. Attorney General Opinion No. 6386, p. 369, September 16, 1986.

51. The governing board of the Senate Fiscal Agency is a "public body" and is subject to the provisions of the Open Meetings Act. Attorney General Opinion No. 6487, p. 242, January 14, 1988.

52. A teacher may close a disciplinary hearing if cameras will be present even if the teacher had not originally requested a closed hearing. A public body may impose reasonable restrictions on the filming of a public meeting. Attorney General Opinion No. 6499, p. 280, February 24, 1988.

53. If a joint meeting of two committees of a public board is held and a quorum of the board results, the Open Meetings Act applies to that meeting. If some of the members of a public board serve on a second public board and other members of the first board attend a meeting of the second board as observers and a quorum of the first board results, no meeting of the first board is held requiring notice. Attorney General Opinion No. 6636, p. 253, October 23, 1989.

54. Hunting area control committees are subject to the Open Meetings Act. Attorney General Opinion No. 6652, p. 359, July 25, 1990.

55. A regular meeting of a public body may recess to hold committee meetings for which no notice has been posted only if all of these conditions exist: 1) a quorum of the public body will not be present, 2) the committees are of an advisory nature, and 3) the committees will not deliberate on a common topic leading to a decision of the public body. Attorney General Opinion No. 6752, p. 18, March 10, 1993.

56. A public officer's conviction of a violation of the Open Meetings Act does not automatically create a vacancy in the office. Attorney General Opinion No. 6800, p. 139, May 11, 1994.

57. A public body must make its decisions at meetings that are open to the public. The public body must take minutes of closed sessions that include the place, date, and time of the meeting, the members present and absent, and the purposes of the session. Attorney General Opinion No. 6817, p. 190, September 14, 1994.

58. The Open Meetings Act requires the notice of a special meeting to state the general nature of the business to be conducted. Stating that the purpose of the closed meeting is to discuss an issue does not preclude the body from acting on the matter. Attorney General Opinion No. 6821, p. 199, October 18, 1994.

59. The Open Meetings Act does not preclude an intermediate school district from allowing representatives of member districts to attend a meeting via interactive television. Attorney General Opinion No. 6835, p. 10, February 13, 1995.

60. The Open Meetings Act does not require an advisory board formed by a board of education to recommend athletic policy to open its meetings to the public. Attorney General Opinion No. 6935, p. ____, April 2, 1997.

61. A private, voluntary, unincorporated association of lake property owners is not subject to the Open Meetings Act. A resort owners association incorporated under 1929 PA 137 must comply with the Act. Attorney General Opinion No. 6942, p. ____, July 3, 1997.

— Notes —

The information in this publication is available, upon request, in an alternative, accessible format.