AGENDA
CITY OF LAPEER
JOINT MEETING
LAPEER CITY COMMISSION,
PLANNING COMMISSION,
DOWNTOWN DEVELOPMENT AUTHORITY,
AND ZONING BOARD OF APPEALS
COMMUNITY CENTER, LOWER LEVEL
880 S. SAGINAW ST., LAPEER, MI 48446
AUGUST 14, 2023
5:30 P.M.

CALL TO ORDER

A. Roll Call

B. Introductions

   a. Ice Breaker

C. Training Session

   a. Freedom of Information Act – FOIA

   b. Open Meetings Act – OMA

D. Discussion on 1 – 3 Year - Strategic Planning – City of Lapeer

E. Public Comments

ADJOURNMENT

Notice:
Persons with disabilities needing accommodations for effective participation through electronic means in this meeting should contact the City Clerk at (810) 664-5231 or by email at clerk@ci.lapeer.mi.us at least two working days in advance of the meeting. An attempt will be made to make reasonable accommodations.

FREEDOM OF INFORMATION ACT HANDBOOK

ATTORNEY GENERAL DANA NESSEL

Additional copies available at michigan.gov/ag/foia

Updated January 2023

Dear Citizen:

As the chief law enforcement officer for Michigan, I encourage you to know your rights under the Michigan Freedom of Information Act (FOIA). The FOIA gives citizens the right of access to most public records. If access is wrongfully denied, citizens are authorized to bring suit to compel disclosure and may be awarded damages and reasonable attorney fees.

This FOIA Handbook is intended to be a quick reference guide and to help you understand your rights under the act. This Handbook is not meant to provide legal advice, be encyclopedic on every subject or resolve every situation that may be encountered in working with the FOIA. Legal questions should be addressed to your attorney.

Sincerely yours,

Dana Nessel
Attorney General for
the State of Michigan

Contents

FREEDOM OF INFORMATION ACT

THE BASICS

The Act

The Freedom of Information Act (FOIA) is 1976 PA 442, MCL 15.231 through 15.246. The FOIA took effect April 13, 1977. The current version of the statute can be obtained from the Michigan Legislature's website and on the Attorney General's website.

What is the FOIA's purpose?

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."[1]

To that end, the FOIA regulates and sets requirements for the disclosure of certain public records of certain public bodies in the executive branch of government, including all state agencies, county governments, local governments, and public colleges and universities, as well as, school boards and other boards, commissions, and councils. It provides the mechanism through which the people may examine and review the records about the workings of government and its officials.[2]

What is the federal FOIA?

The federal FOIA applies to federal agencies as defined under the act.[3] State of Michigan public bodies are not subject to the federal FOIA. To submit a FOIA request to federal agencies, the request should be sent to the specific federal agency.

THE REQUESTING PERSON

Who may make a FOIA request?

The FOIA provides that "persons" have a right to access "public records." A "person" is defined as: "an individual, corporation, limited liability company,

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[1] MCL 15.231(2).
[2] *Messenger v Ingham Co Prosecutor*, 232 Mich App 633, 641; 591 NW2d 393 (1998).
[3] USC 552a *et seq.*

partnership, firm, organization, association, governmental entity, or other legal entity [except] 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."[4]

How is a FOIA request made?

A person may ask to inspect, copy, or receive a copy of a public record by making a written request for the public record to the FOIA coordinator of the public body.[5] The request must describe the public record sufficiently to enable the public body to find the requested public record.[6] A written request may be made physically, for example, by mailing a letter, or electronically, for example, by facsimile, email, or other electronic transmission.[7]

A FOIA request does not need to include any mention of the FOIA. However, "[i]f a public body does not respond to a written request in a timely manner as required under section 5(2), the public body shall . . . [r]educe the charges for labor costs otherwise permitted under this section by 5% for each day the public body exceeds the time permitted under section 5(2) for a response to the request, with a maximum 50% reduction, if . . . [t]he written request included language that conveyed a request for information within the first 250 words of the body of a letter, facsimile, electronic mail, or electronic mail attachment, or specifically included the words, characters, or abbreviations for 'freedom of information', 'information', 'FOIA', 'copy', or a recognizable misspelling of such, or appropriate legal code reference for this act, on the front of an envelope, or in the subject line of an electronic mail, letter, or facsimile cover page."[8]

Where should a FOIA request be sent?

There is no single government office that handles all FOIA requests. Each FOIA request must be made to the particular state, county, or local public body that has the records being sought. For example, if the requester wants to know about a corporate registration, the request might be directed to the Michigan Department of Licensing & Regulatory Affairs. The requester may have to perform research to find the proper agency office to handle the FOIA request.

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[4] MCL 15.232(g).
[5] MCL 15.235(1).
[6] MCL 15.233(1); *Herald Co v City of Bay City,* 463 Mich 111; 614 NW2d 873 (2000); *Kincaid v Dep't of Corrections,* 180 Mich App 176; 446 NW2d 604 (1989); *Capitol Information Ass'n v Ann Arbor Police,* 138 Mich App 655; 360 NW2d 262 (1984).
[7] MCL 15.232(m).
[8] MCL 14.234(9)(a)(ii).

A list of state agencies can be obtained from the State of Michigan's website.

When is a FOIA request deemed received?

If a FOIA request is made by facsimile, electronic mail, or other electronic transmission to the public body, the request is considered received one business day after the electronic transmission is made.[9] If a FOIA request is sent to the public body by U.S. mail, it is considered received the day of receipt.

Can a person inspect the records of a public body?

A person can inspect the records of a public body. The public body has a responsibility to provide reasonable facilities during normal business hours so that a requester may inspect records and take notes.[10] A public body may make reasonable rules necessary to prevent excessive and unreasonable interference with the discharge of its function. A public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction.[11]

Can a person subscribe to future public records?

A person has the right to subscribe to future issuances of public records that 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.[12]

THE PUBLIC BODY

What is a public body?

A public body is broadly defined as:

a. A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government.
b. An agency, board, commission, or council in the legislative branch of state government.

[9] MCL 15.235(1).
[10] MCL 15.233(3).
[11] MCL 15.233(3); *Cashel v Regents of the University of Michigan,* 141 Mich App 541; 367 NW2d 841 (1985).
[12] MCL 15.233(1).

c. 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.
d. Any other body which is created by state or local authority, or which is primarily funded by or through state or local authority.[13]
e. A private, non-governmental body may be a public body subject to FOIA if it receives fifty percent or more of its funding through State or local governmental grants or subsidies.[14]

What entities are not Public Bodies?

Several governmental bodies are not public bodies as defined in the FOIA: The Governor, the Lieutenant Governor, the executive office of the Governor, and any employee of either executive office is not a public body.[15] The Judicial branch of government is not a public body.[16] When acting in the capacity as clerk of the circuit court, the office and employees of the county clerk are not a public body.[17] An individual Legislator is not a public body.[18] A private non-governmental organization that receives payment from governmental sources in return for providing services is not a public body.[19]

What is a FOIA Coordinator?

A FOIA Coordinator is the individual responsible for receiving and processing requests for a public body's public records and for approving denials when appropriate. A FOIA Coordinator may designate another individual to act on his or her behalf in receiving and processing requests for the public body's records, and in approving denials as appropriate.[20] An employee of a public body who

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[13] MCL 15.232(h); see OAG, 2001 - 2002, No 7087, p 45 (August 21, 2001); OAG, 1999 - 2000, No 7066, p 156 (November 7, 2000); OAG, 1997-1998, No 6942, p 40 (July 3, 1997); *Detroit News, Inc. v Policemen and Firemen Retirement System of the City of Detroit,* 252 Mich App 59; 651 NW2d 127 (2002); *Sclafani v Domestic Violence Escape,* 255 Mich App 260; 660 NW2d 97 (2003); *State Defender Union Employees v The Legal Aid & Defender Ass'n of Detroit,* 230 Mich App 426; 584 NW2d 359 (1998); *Jackson v Eastern Michigan University,* 215 Mich App 240; 544 NW2d 737 (1996).
[14] *Sclafani v Domestic Violence Escape,* 255 Mich App 260; 660 NW2d 97 (2003); *State Defender Union Employees v Legal Aid & Defender Ass'n of Detroit*, 230 Mich App 426; 584 NW2d 359 (1998); *Kubick v Child & Family Services of Michigan, Inc*, 171 Mich App 304; 429 NW2d 881 (1988).
[15] MCL 15.232(h)(i).
[16] MCL 15.232(h)(iv).
[17] MCL 15.232(h)(iv).
[18] MCL 15.232(d), OAG, 1985 - 1986, No 6390, p 375 (September 26, 1986).
[19] *State Defender Union Employees v Legal Aid & Defender Ass'n of Detroit*, 230 Mich App 426; 584 NW2d 359 (1998).
[20] MCL 15.236.

receives a request for a public record is required by the FOIA to promptly forward the request to the FOIA Coordinator.[21]

Who is the FOIA Coordinator for a public body?

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, is required to designate an individual as the public body's FOIA Coordinator. In a county not having an executive form of government, unless another individual is designated as the FOIA Coordinator, the chairperson of the county board of commissioners is designated the FOIA Coordinator for that county. For all other public bodies, the chief administrative officer of the respective public body is designated the public body's FOIA Coordinator.[22]

What amount of time does a public body have to respond to a FOIA request?

Unless otherwise agreed to in writing by the person making the request, the public body must respond to a request for a public record within *five business days after receiving the request*, or within 15 business days if the statutorily-permitted 10-business day extension is taken,[23] by doing one of the following:

a. Granting the request.
b. Issue a written notice denying the request.
c. Issue a written notice granting the request in part and denying the request in part.
d. Issue a notice requesting an additional 10 business days in which to respond to the request.[24]

A failure to respond constitutes a denial as more fully explained in the act.[25]

Does the information that is the subject of the FOIA request have to be provided to the requester within five business days?

Not necessarily. Existing information subject to the request does not have to be provided to the requester within five business days. The public body must issue a written notice in response to the request for a public record within five business days after receiving the request.[26] If the request is for a readily

[21] MCL 15.233(1).
[22] MCL 15.236(2).
[23] MCL 15.235(2)(d).
[24] MCL 15.235(2); OAG, 1979 - 1980, No 5500, p 255 (July 23, 1979).
[25] MCL 15.235(3). See also OAG, 2005 - 2006, No 7172, p 20 (March 17, 2005); *Scharret v City of Berkley*, 249 Mich App 405; 642 NW2d 685 (2002).
[26] MCL 15.235(2).

available public record, however, the information generally should be provided within the five-business day period.

Is a public body required to provide the records in hard copy or electronic form?

Public Bodies are required to provide public records in the format requested if the record exists within the public body in that format.[27]

Does a public body have to reproduce the records if the requester has already asked for and received the records under a previous request?

A public body is not required to provide a requester with additional copies of records it already has provided to the requester unless the requester can demonstrate why the copies already provided were not sufficient.[28] A public body, however, is not prohibited from providing additional copies.

PUBLIC RECORDS

What is a public record?

A 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."[29] A "writing" is broadly defined as "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."[30]

What is not considered a public record?

The legislature and courts have designated certain records as not being public records. The following are examples of records that are not considered "public records" under the FOIA:

- Computer software is not a public record.[31] "Software" is defined as "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

[27] *Farrell v Detroit*, 209 Mich App 7; 530 NW2d 105 (1995).
[28] *Densmore v Dep't of Corrections*, 203 Mich App 366; 512 NW2d 72 (1994).
[29] MCL 15.232(i).
[30] MCL 15.232(l).
[31] MCL 15.232(i).

information or data, or a field name if disclosure of that field name does not violate a software license."[32]

- A record that, while prepared, owned, used, in the possession of, or retained by a public body, is not done so in the performance of an official function is not a public record.[33] A personal email not transmitted in performance of an official function is not a public record.[34] It should be noted however, that personal email could become a public record if it relates to one of the public body's official functions. For example, email used to support a disciplinary action for abusing the public body's computer acceptable use policy would be related to one of the public body's official functions - discipline of an employee.[35]
- Peer review information related to the professional review function in hospitals and health facilities.[36]
- Obligations and interest coupons of a county, city, village, township, charter township, school district, community college district, port district, metropolitan district, drainage district, the state or any officer, agency, commission or department thereof, or any other public or governmental authority or agency within the state with the power to issue obligations.[37]
- Information submitted to the Department of Environment, Great Lakes, and Energy, other state agency, or local unit of government under MCL 324.63501 *et seq* that pertains only to the analysis of the chemical and physical properties of coal, excepting information regarding such mineral or elemental content that is potentially toxic in the environment, or information that pertains to the exact location of archeological site.[38]
- A notice of the acceptance or nonacceptance of a guilty or nolo contendere plea sent to the prosecuting attorney from a court pursuant to the William Van Regenmorter Crime Victim's Rights Act.[39]
- The separate written statement containing a crime victim's name, address, and telephone number that an investigating law enforcement

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[32] MCL 15.232(j).
[33] *Howell Education Association MEA/NEA v Howell Board of Education*, 287 Mich App 228; 789 NW2d 495 (2010).
[34] *Howell Education Association MEA/NEA v Howell Board of Education*, 287 Mich App 228; 789 NW2d 495 (2010).
[35] *Howell Education Association MEA/NEA v Howell Board of Education*, 287 Mich App 228; 789 NW2d 495 (2010).
[36] MCL 333.21515; MCL 333.20175; MCL 330.1143a; MCL 330.1748; *In re Lieberman*, 250 Mich App 381; 646 NW2d 199 (2002).
[37] MCL 129.125.
[38] MCL 324.63508.
[39] MCL 780.751 *et seq*; MCL 780.816.

officer is required to submit under the William Van Regenmorter Crime Victim's Rights Act.[40]

- The separate written statement containing a crime victim's name, address, and telephone number that an investigating agency is required to submit under the William Van Regenmorter Crime Victim's Rights Act to support a complaint or a petition seeking to invoke the court's jurisdiction for a juvenile offense.[41]
- Under the Uniform Securities Act, the following are not public records:
    1. A record obtained by the administrator in connection with an audit or inspection under MCL 451.2411(4) or an investigation under section MCL 451.2602.
    2. A part of a report filed in connection with a registration statement under sections MCL 451.2301 and MCL 451.2303 through MCL 451.2305, or a record under section MCL 451.2411(4), that contains trade secrets or confidential information when the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized bylaw.
    3. A record that is not required to be provided to the administrator or filed under this act and is provided to the administrator only on the condition that the record will not be subject to public examination or disclosure.
    4. A nonpublic record received from a person specified in section MCL 451.2608.
    5. Any social security number, residential address unless used as a business address, or residential telephone number unless used as a business telephone number contained in a record that is filed.
    6. A record obtained by the administrator through a designee that is determined by a rule or order under this act to have been either of the following:
        a. Appropriately expunged from the administrator's records by that designee.
        b. Appropriately determined to be nonpublic or non-disclosable by that designee if the administrator finds that this is in the public interest and for the protection of investors.[42]
- Any information regarding any person's transactional history contained in the database regarding deferred presentment service transactions under the Deferred Presentment Service Transactions Act.[43]

[40] MCL 780.751 *et seq*; MCL 780.812.
[41] MCL 780.751 *et seq*; MCL 780.784.
[42] MCL 451.2607.
[43] MCL 487.2142(8).

- A prescription or equivalent record on file in a pharmacy.[44]
- The log or other means of recording the sale of ephedrine or pseudoephedrine maintained under the Public Health Code.[45]
- Hospital accreditation information provided for the purpose of licensure under the Public Health Code.[46]
- A report prepared pursuant to the Mental Health Code to accompany the petition for the appointment of a guardian for an individual who has a developmental disability is not a public record.[47]
- Except as otherwise provided in MCL 331.532, the record of a proceeding and the reports, findings, and conclusions of a review entity and data collected by or for a review entity under MCL 331.531 *et seq*.[48]
- The test results and records of pregnant women for the detection of venereal disease, hepatitis B, and HIV or HIV antibody under the Public Health Code.[49]
- Reports submitted to the Department of Health and Human Services regarding an individual suffering from an illness arising out of and in the course of the individual's employment or caused by exposure to a hazardous substance or agent or to a specific industrial practice that is hazardous.[50]
- The data and any report containing any patient identifiers obtained from the data collected by the electronic system established to monitor schedule 2, 3, 4, and 5 controlled substances dispensed in this state.[51]

What public records are subject to disclosure?

The FOIA requires the disclosure of all public records, except to the extent that they fall within a statutorily-recognized exemption.[52] Some common examples of types of records that may be subject to disclosure as public records include electronic records such as email, data saved on a computer, digital photographs, and any other electronically stored information; and physical records such as minutes of open meetings, officials' voting records, employee discipline

[44] MCL 333.17752.
[45] MCL 333.1101; MCL 333.17766e.
[46] MCL 333.20155.
[47] MCL 330.1001, *et seq*; MCL 330.1612.
[48] MCL 331.533.
[49] MCL 333.5123.
[50] MCL 333.5621.
[51] MCL 333.7333a.
[52] *Subpoena Duces Tecum to the Wayne County Prosecutor v City of Detroit*, 205 Mich App 700; 518 NW2d 522 (1994).

investigation information, final orders or decisions in contested cases and the records on which they were made, promulgated rules, and documents that implement or interpret laws, rules, or policies, including, but not limited to, guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions.

What public records are exempt from disclosure?

Except to the extent that a record falls within a statutorily-recognized exemption,[53] the FOIA permits, but does not require, a public body to withhold from public disclosure the following enumerated categories of public records:[54]

1. Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of the individual's privacy.[55]
2. Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:
    a. Interfere with law enforcement proceedings.
    b. Deprive a person of the right to a fair trial or impartial administrative adjudication.
    c. Constitute an unwarranted invasion of personal privacy.
    d. 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.
    e. Disclose law enforcement investigative techniques or procedures.
    f. Endanger the life or physical safety of law enforcement personnel.[56]
3. 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.[57]

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[53] MCL 15.243(1)(d).
[54] MCL 15.243(1)(a) - (aa).
[55] MCL 15.243(1)(a); *Stone Street Capital, Inc v Michigan Bureau of State Lottery*, 263 Mich App 683; 689 NW2d 541 (2004); *Herald Co v Ann Arbor Public Schools,* 224 Mich App 266; 568 NW2d 411 (1997); *Booth Newspapers, Inc v University of Michigan Board of Regents,* 444 Mich 211; 507 NW2d 422 (1993); *Practical Political Consulting, Inc v Terry Lynn Land,* 287 Mich App 434; 789 NW2d 178 (2010).
[56] MCL 15.243(1)(b)(i)-(vi).
[57] MCL 15.243(1)(c).

4. Records or information specifically described and exempted from disclosure by statute. A regulation cannot serve as the basis for this exception, the records must be described and exempted by a statute.[58]
5. A public record or information 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.[59]
6. Trade secrets or commercial or financial information voluntarily provided to a public body for use in developing governmental policy if:
    a. The information is submitted upon a promise of confidentiality by the public body.
    b. 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.
    c. 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.[60]
7. Information or records subject to attorney-client privilege.[61]
8. 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.[62]
9. 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.[63]
10. Appraisals of real property to be acquired by a public body until either of the following occurs:
    a. An agreement is entered into.
    b. Three years have elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.[64]
11. Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment, or

[58] MCL 15.243(1)(d); *ACLU v Calhoun Co Sheriff's Office*, ____ Mich App ____ (2022).
[59] MCL 15.243(1)(e).
[60] MCL 15.243(1)(f)(i)-(iii).
[61] MCL 15.243(1)(g).
[62] MCL 15.243(1)(h).
[63] MCL 15.243(1)(i).
[64] MCL 15.243(1)(j)(i)-(ii).

academic examination, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.[65]

12. 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, including protected health information, as defined in 45 CFR 160.103.[66]
13. 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 communication between officials and employees of public bodies clearly outweighs the public interest in disclosure. . .[67]
14. 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.[68]
15. Information that would reveal the exact location of archeological sites.[69]
16. 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 lapsed from the time the public body completes testing.[70]
17. Academic transcripts of an institution of higher education established undersection 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.[71]
18. Records of a campaign committee including a committee that receives money from a state campaign fund.[72]
19. 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 which would do any of the following:
    a. Identify or provide a means of identifying an informant.
    b. 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.

[65] MCL 15.243(1)(k).
[66] MCL 15.243(1)(l).
[67] MCL 15.243(1)(m).
[68] MCL 15.243(1)(n).
[69] MCL 15.243(1)(o).
[70] MCL 15.243(1)(p).
[71] MCL 15.243(1)(q).
[72] MCL 15.243(1)(r).

c. Disclose the personal address or telephone number of active or retired law enforcement officers or agents or a special skill that they may have.
d. Disclose the name, address, or telephone numbers of family members, relatives, children, or parents of active or retired law enforcement officers or agents.
e. Disclose operational instructions for law enforcement officers or agents.
f. Reveal the contents of staff manuals provided for law enforcement officers or agents.
g. 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 agents.
h. Identify or provide a means of identifying a person as a law enforcement officer, agent, or informant.
i. Disclose personnel records of law enforcement agencies.
j. Identify or provide a means of identifying residences that law enforcement agencies are requested to check in the absence of their owners or tenants.[73]

20. Except as otherwise provided in this subdivision, records and information pertaining to an investigation or a compliance conference conducted by the department under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, before a complaint is issued. This subdivision does not apply to records or information pertaining to one or more of the following:
    a. The fact that an allegation has been received and an investigation is being conducted, and the date the allegation was received.
    b. The fact that an allegation was received by the department; the fact that the department did not issue a complaint for the allegation; and the fact that the allegation was dismissed.[74]
21. 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.[75]
22. Records or information relating to a civil action in which the requesting party and the public body are parties.[76]
23. Information or records that would disclose the social security number of an individual.[77]

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[73] MCL 15.243(1)(s); *Post-Newsweek Stations, Michigan, Inc v Detroit,* 179 Mich App 331; 445 NW2d 529 (1989); *Payne v Grand Rapids Police Chief,* 178 Mich App 193; 443 NW2d 481 (1989).
[74] MCL 15.243(1)(t)(i) and (ii).
[75] MCL 15.243(1)(u).
[76] MCL 15.243(1)(v).
[77] MCL 15.243(1)(w).

24. 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 VII 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.[78]
25. Records or information of measures designed to protect the security or safety of persons or property, whether public or private, including, but not limited to, building, public works, and public water supply designs to the extent that those designs relate to the ongoing security measures of a public body, capabilities and plans for responding to a violation of the Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.543a to 750.543z, emergency response plans, risk planning documents, threat assessments, and domestic preparedness strategies, unless disclosure would not impair a public body's ability to protect the security or safety of persons or property or unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance.[79]
26. Information that would identify or provide a means of identifying a person that may, as a result of disclosure of the information, become a victim of a cybersecurity incident or that would disclose a person's cybersecurity plans or cybersecurity-related practices, procedures, methods, results, organizational information system infrastructure, hardware, or software.[80]
27. Research data on road and attendant infrastructure collected, measured, recorded, processed, or disseminated by a public agency or private entity, or information about software or hardware created or used by the private entity for such purposes.
28. A public body shall exempt from disclosure information that, if released, would prevent the public body from complying with 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974. A public body that is a local or intermediate school district or a public school academy shall exempt from disclosure directory information, as defined by 20 USC 1232g, commonly referred to as the family educational

[78] MCL 15.243(1)(x).
[79] MCL 15.243(1)(y).
[80] MCL 15.243(1)(z).

rights and privacy act of 1974, requested for the purpose of surveys, marketing, or solicitation, unless that public body determines that the use is consistent with the educational mission of the public body and beneficial to the affected students.[81]

Are personnel records exempt from disclosure under the FOIA?

Personnel records possessed by public bodies that are subject to the act generally are not exempt from disclosure unless the information falls within one of the FOIA exemptions.[82] However, personnel records of employees of the Department of Corrections, employees of the center for forensics psychiatry, and employees of a psychiatric hospital that houses prisoners are exempt from disclosure under FOIA.[83] Personnel records of law enforcement agencies are exempt under the FOIA, unless the public interest in disclosure outweighs the public interest in nondisclosure.[84]

Are student records exempt from disclosure under the FOIA?

Student records possessed by public bodies that are subject to the act are exempt from disclosure if the release of the record would prevent compliance with the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g.[85] Directory information, defined as: "the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student,"[86] may be released unless the public body is informed in writing by the student or the student's parent not to release the information without prior consent.[87]

FEES FOR PUBLIC RECORDS

May a public body charge a fee for public records?

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, and

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[81] MCL 15.243(2).
[82] *Bradley v Saranac Community Schools Board of Education, Lansing Ass'n of School Admr's v Lansing School District,* 455 Mich 285; 565 NW2d 650 (1997).
[83] MCL 791.230a; *Clerical-Technical Union of MSU v MSU Board of Trustees,* 190 Mich App 300; 475 NW2d 373 (1991); *Michigan Federation of Teachers and School Related Personnel, AFT, AFL-CIO v University of Michigan*, 481 Mich 657; 753 NW2d 28 (2008).
[84] MCL 15.243(1)(s)(ix).
[85] MCL 15.243(2).
[86] 20 USC 1232g(a)(5)(A).
[87] 20 USC 1232g(a)(5)(B).

actual mailing, duplication, and labor costs.[88] The fee may be waived or reduced if the public body determines it is in the interest of the public because searching for or furnishing copies of the public record can be considered as primarily benefitting the general public. If the fee is more than $50.00, the public body may collect a deposit of not more than 50% of the total amount prior to processing the request.[89]

Are there any limitations on the charging of fees?

In calculating the cost of labor incurred in duplication and mailing and the cost of examination, review, separation, and deletion, a public body may not charge more than the hourly wage of the lowest paid public body employee capable of performing the tasks necessary to comply with the request.[90] A fee shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information unless the failure to charge a fee in the particular instance would result in an unreasonably high cost to the public body because of the nature of the request.[91] A public search shall be made and a copy of a public record shall be furnished without charge for the first $20.00 of the fee 1) for an individual who submits an affidavit stating that the individual is receiving public assistance or, if not receiving public assistance, providing facts showing an inability to pay because of indigency; and 2) as to certain nonprofit entities.[92]

DENIAL OF A FOIA REQUEST

What is required of a public body when it denies a FOIA request?

If a request for a public record is denied in full or in part, the public body must issue a written notice to the requester not more than five business days after the public body receives the request or within 15 business days if the statutorily-permitted 10-business day extension is taken.[93] A written notice denying a request for a public record in whole or in part is a public body's final disclosure determination.

What must the public body's written notice contain?

The written notice must contain an explanation of the basis for the exemption or, if applicable, a certification that the public record being requested does not exist within the public body under the name given by the requester or by

[88] MCL 15.234.
[89] MCL 15.234(8).
[90] MCL 15.234(3).
[91] MCL 15.234(3).
[92] MCL 15.234(2)(a) and (b).
[93] MCL 15.235(2); *Key v Township of Paw Paw,* 254 Mich App 508; 657 NW2d 546 (2002).

another name reasonably known to the public body. The notice must provide a description of the public record that is being withheld or the information on the public record that is redacted, if a redaction is made. The notice must also contain a full explanation of the requesting person's right to appeal the denial to the head of the public body or seek judicial review.[94] Notification of the right to judicial review must include notification of the right to receive attorney fees and collect damages if the requester prevails.[95]

REMEDIES

What can a requester do if the requester does not agree with the public body's denial?

If a public body makes a final determination to deny all or a portion of a request, the requester may either submit a written appeal to the head of the public body that specifically states the word "appeal" and identifies the reason or reasons the denial should be reversed or, within 180 days after the public body's final determination to deny the request, commence an action in the appropriate court to compel the public body's disclosure of the public records.[96]

If the denial is appealed to the head of the public body, what must the head of the public body do?

If appealed to the head of the public body, the head of the public body must do one of the following within 10 business days after receiving the written appeal or within 20 business days if the statutorily-permitted 10-business day extension applies:

a. Reverse the denial.
b. Issue a written notice to the requester upholding the denial.
c. Reverse the denial in part and issue a written notice to the requester upholding the denial in part.
d. Issue a written notice extending for not more than 10 business days the period to respond. This extension can only be taken because of unusual circumstances[97] and only once for a particular written appeal.[98]

If a board or commission is the head of a public body, it is not considered to have received a written appeal until its first regularly scheduled meeting following submission of the written appeal.[99]

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[94] MCL 15.235(4)(d)(ii).
[95] MCL 15.235(4)(e).
[96] MCL 15.240(1)(a) and (b).
[97] MCL 15.232(g).
[98] MCL 15.240(2).
[99] MCL 15.240(3).

If the head of the public body fails to respond to a written appeal, or if the head of the public body upholds all or a portion of the denial, the requester may seek judicial review of the nondisclosure by commencing an action in the appropriate court within 180 days after the final decision denying the request.[100]

If an action is commenced in circuit court against a local or county public body, either as an alternative to appealing to the head of the public body or for review of the public body's final determination to deny the request, the action may be brought in the circuit court in the county where the requester resides, the county where the requester has his or her principal place of business, the county where the public record is located, or a county where the public body has an office.[101] If the action is against a department or agency of the State of Michigan, the action must be filed in the Court of Claims.[102]

What can a requester do if the requester disputes the charging of a fee?

If a public body requires a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4 of the FOIA, the requesting person may do the following:

a. If the public body provides for fee appeals to the head of the public body in its publicly available procedures and guidelines, submit to the head of the public body a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under the public body's available procedures and guidelines or section 4 of the FOIA.
b. Within 45 days after receiving the notice of the required fee or a determination of an appeal to the head of a public body, commence a civil action in the circuit court, or if the decision of a state public body is at issue, in the court of claims, for a fee reduction. An action, however, cannot be filed unless the public body does not provide for fee appeals; the head of the public body failed to respond to the written appeal; or the head of the public body issued a determination to a written appeal upholding the fee.[103]

[100] MCL 15.240(3).
[101] MCL 15.240(4).
[102] MCL 15.240(1)(b).
[103] MCL 15.240a(1).

If the fee is appealed to the head of the public body, what must the head of the public body do?

Within 10 business days after receiving a written fee appeal, or no more than a total of 20 business days if the extension is taken as permitted under the act, the head of the public body must do one of the following:

a. Waive the fee.
b. Reduce the fee and issue a written determination indicating the specific basis under section 4 of the FOIA that supports the remaining fee amount and affirming that the statements in the determination are accurate and the reduced fee complies with the public body's publicly available procedures and guidelines and section 4 of the FOIA.
c. Uphold the fee and issue a written determination indicating the specific basis under section 4 of the FOIA that supports the required fee amount and affirming that the statements in the determination are accurate and the fee complies with the public body's publicly available procedures and guidelines and section 4 of the FOIA.[104]

If a board or commission is the head of a public body, it is not considered to have received a written appeal until its first regularly scheduled meeting following submission of the written appeal.[105]

Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located.[106]

What are the penalties for a violation of the FOIA?

As to the FOIA's disclosure provisions, if the requester fully prevails in an action in court, the court must award reasonable attorneys' fees, costs, and disbursements; if the requester partially prevails, the court may award all, some, or none of these.[107] If the court finds that the public body has arbitrarily and capriciously violated the FOIA 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 $1,000.00 to the person seeking the right to inspect or receive a copy of a public record.[108] If the court determines that a public body willfully and intentionally failed to comply with the FOIA or otherwise acted in bad faith, the court shall order the public body to pay, in

[104] MCL 15.240a(2).
[105] MCL 15.240a(3).
[106] MCL 15.240a(4).
[107] MCL 15.240(6).
[108] MCL 15.240(7); *Thomas v City of New Baltimore,* 254 Mich App 196; 657 NW2d 530 (2002); *Local 312 of the AFSCME, AFL-CIO v City of Detroit,* 207 Mich App 472; 525 NW2d 487 (1994); *Bredemeier v Kentwood Board of Education*, 95 Mich App 767; 291 NW2d 199 (1980).

addition to any other award or sanction, a civil fine of not less than $2,500.00 or more than $7,500.00 for each occurrence.[109]

As to the FOIA's fee provisions, if the court determines that the public body required a fee that exceeds the amount permitted under the public body's publicly available procedures and guidelines or section 4 of the FOIA, the court shall reduce the fee to a permissible amount.[110] If the requesting person prevails by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.[111] If the court determines that the public body has arbitrarily and capriciously violated the act by charging an excessive fee, the court shall order the public body to pay a civil fine of $500.00. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of $500.00 to the person seeking the fee reduction.[112] If the court determines that a public body willfully and intentionally failed to comply with the FOIA or otherwise acted in bad faith, the court shall order the public body to pay, in addition to any other award or sanction, a civil fine of not less than $2,500.00 or more than $7,500.00 for each occurrence.[113]

[109] MCL 15.240b.
[110] MCL 15.240a(4).
[111] MCL 15.240a(6).
[112] MCL 15.240a(7).
[113] MCL 15.240b.

OPINIONS AND CASES KEY WORD AND TOPIC INDEX

ATTORNEY GENERAL OPINIONS

There are numerous Opinions of the Attorney General (OAG) that explain various applications of the FOIA. While these opinions are binding on state agencies, they are not binding on the courts or on local units of government. Attorney General opinions can be accessed on the Attorney General's website. Below, in chronological order, is a list of opinions.

Note: This is not an exhaustive list and that some of the opinions may have been affected by statutory changes or subsequent case law.

- Unless exempt from disclosure by law, records of the Brown-McNeeley insurance fund are public records. OAG, 1977–1978, No 5156, p 66 (March 24, 1977).

- The FOIA's definition of public body includes single member bodies. OAG, 1977-1978, No 5183-A, p 97 (April 18, 1977).

- Records subject to the confidentiality provisions of the Child Protection Law, MCL 722.621*et seq*; are exempt from disclosure under sections 13(1)(a) and 13(1)(d) of the FOIA. OAG, 1977-1978, No 5297, p 430 (April 28, 1978).

- The office of county sheriff is subject to the provisions of the FOIA. OAG, 1977-1978, No 5419, p 758 (December 29, 1978).

- Certain records protected from disclosure by the Social Welfare Act, are exempt from disclosure under section 13(1)(d) of the FOIA, which exempts records that are exempt from disclosure by statute. OAG, 1979-1980, No 5436, p 31 (February 1, 1979).

- The Insurance Commissioner is required to charge a rate for making copies of public records requested in accordance with the FOIA. OAG, 1979-1980, No 5465, p 104 (March 26,1979).

- File photographs routinely taken of criminal suspects by law enforcement agencies are public records as defined by the FOIA. To the extent that the release of a person's photograph is a clearly unwarranted invasion of personal privacy, a public body may refuse to permit a person to inspect or make copies of the photograph. OAG, 1979-1980, No 5593, p 468 (November 14, 1979).

- The exemption contained in section 13(1)(n) [now section 13(1)(m)] of the FOIA for communications and notes within a public body or between public bodies of an advisory nature does not constitute an exemption for purposes of the Open Meetings Act in view of a specific statutory provision that

states that this exemption does not constitute an exemption for the purposes of section 8(h) of the Open Meetings Act. OAG, 1979-1980, No 5608, p 496 (December 17, 1979).

- 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. OAG, 1979-1980, No 5632, p 563 (January 24, 1980).

- 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 FOIA. OAG, 1979-1980, No 5725, p 842 (June 23, 1980).

- Rules promulgated by the State Ethics Board require that records and files concerning dismissed complaints or terminated investigations be suppressed or expunged. This rule is consistent with the FOIA's privacy exemption since records would be suppressed only if a determination was made that a violation was unfounded. OAG, 1979-1980, No 5760, p 935 (August 26, 1980).

- Since the Law Enforcement Information Network Policy Council does not receive and maintain records in the LIEN system, it does not possess copies of records and as a result has no material to furnish persons seeking such records under the FOIA. OAG, 1979-1980, No 5797, p 1038 (October 14, 1980).

- 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. OAG, 1979-1980, No 5832, p 1125 (December 18, 1980).

- Employment records disclosing salary history and employment dates are subject to disclosure under the FOIA. OAG, 1981-1982, No 6019, p 507 (December 29, 1981).

- 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 1966 PA 134, section 11b, and are exempt from disclosure under the FOIA. OAG, 1981-1982, No 6023, p 518 (January 8, 1982).

- A township is not required to enact its own Freedom of Information Act in order to comply with the state FOIA. OAG, 1981-1982, No 6042, p 584 (February 25, 1982).

- A school district must furnish the records of a student upon request of another school district in which the student is enrolled as incidental to the operation of free public elementary and secondary schools required by the Michigan Constitution 1963, art 8, § 2, 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. OAG, 1981-1982, No 6064, p 641 (April 30, 1982).

- Records of a public body showing the number of days a public employee is absent from work are not exempt from disclosure under the FOIA. OAG, 1981-1982, No 6087, p 698 (July 28, 1982).

- The FOIA does not require a sheriff to furnish jail booking records to a private security firm if the sheriff determines disclosure would constitute a clearly unwarranted invasion of privacy. OAG, 1985-1986, No 6389, p 374 (September 24, 1986).

- State legislators are exempt from the FOIA. OAG, 1985-1986, No 6390, p 375 (September 26, 1986).

- Surveys, comments, and other information received by the Qualifications Advisory Committee in its performance evaluation of worker's compensation magistrates are confidential by statute and, therefore, are exempt from disclosure under the FOIA. OAG, 1987-1988, No 6504, p 295 (March 4, 1988).

- The FOIA does not apply to a private nonprofit corporation. OAG, 1989-1990, No 6563, p 27 (January 26, 1989).

- While the personal files of the Auditor General are exempt from disclosure, the general files, records, and final audit reports prepared by the Auditor General's staff are subject to FOIA and must be disclosed, except where a portion is specifically exempted by statute. OAG, 1989-1990, No 6613, p 299 (March 14, 1990).

- A public officer's or employee's routine performance evaluation is not exempt from disclosure, even when the evaluation is discussed in a closed meeting held pursuant to the Open Meetings Act. OAG, 1989-1990, No 6668, p 409 (November 28, 1990).

- The records maintained by the Department of State Police on the STATIS computer system meet the definition of a "public record" set forth in section 2(c) [now section 2(i)] of the FOIA. Therefore, that Department must search the STATIS computer system when it responds to a FOIA request. It must also allow the examination of, or produce copies of, all documents it finds unless the records sought fall within one or more of the

specific exemptions set forth in section 13 of the FOIA. Although participating law enforcement agencies other than the Department of State Police have remote computer terminals that allow them access to the STATIS computer, those records are not writings in the possession of those agencies within the meaning of the FOIA, section 2(c) and (e) [now section 2(i) and (*l*)] unless those records are saved to a computer storage device or printed by the participating agency. Thus, law enforcement agencies other than the Department of State Police are not obligated under the FOIA to search the STATIS system for records except for those records that they contributed to that system. OAG, 1993-1994, No 6820, p 196 (October 11, 1994).

- Section 4(2) [now section 4(8)] of the FOIA permits a public body to charge a deposit of not more than one-half of the projected total fee if that fee exceeds $50.00. A public body may establish a fee in advance of compiling the records responsive to a request under the FOIA so long as the fee represents the actual cost of responding to the request based on prior experience and it is calculated in accordance with section 4 of the FOIA. OAG, 1995-1996, No 6923, p 224 (October 23, 1996).

- A private, voluntary unincorporated association of lake property owners is not a public body subject to the FOIA. A corporation formed under the Summer Resort Owners Corporation Act, 1929 PA 137, MCL 455.201 *et seq*, is a public body subject to the provisions of the FOIA. OAG, 1997-1998, No 6942, p 40 (July 3, 1997).

- The state Insurance Bureau, in response to a request made under the FOIA, 1976 PA 442, must provide copies of copyrighted manuals of rules and rates that are in its possession and are required by law to be filed by insurers with the bureau, without first obtaining the permission of the copyright holder. OAG, 1997-1998, No 6965, p 93 (January 16, 1998).

- Under the FOIA, the Auditor General may, in the discharge of his duties to audit the state and its departments, access nonexempt public records of local units of government under the FOIA. OAG, 1997-1998, No 6970, p 108 (January 28, 1998).

- A public body may require that its fees be paid in full prior to actual delivery of the copies. However, a public body may not refuse to process a subsequent FOIA request on the ground that the requester failed to pay fees charged for a prior FOIA request.

A public body may refuse to process a FOIA request if the requester fails to pay a good faith deposit properly requested by the public body pursuant to section 4(2) [now section 4(8)] of the FOIA.

Although the FOIA does not specify a limitations period within which a public body must commence a lawsuit to collect fees charged for complying with a records request, the 6-year limitations period applicable to contract claims governs such a cause of action. OAG, 1997- 1998, No 6977, p 131 (April 1, 1998).

- When establishing fees chargeable under the FOIA, a public body may include in the calculation of labor costs, the fringe benefits paid to employees [now limited to no more than 50% of the applicable labor charge amount to cover or partially cover the cost of fringe benefits, MCL 15.234(2)]. OAG 1999-2000, No 7017, p 27 (May 13, 1999).

- An urban redevelopment corporation organized under the Urban Redevelopment Corporations Law is a public body subject to the Open Meetings Act and FOIA. OAG, 1999-2000, No 7066, p 156 (November 7, 2000).

- The FOIA permits a public body to charge a fee for the actual incremental cost of duplicating or publishing a record, including labor directly attributable to those tasks, even when the labor is performed by a public employee during business hours and does not add extra costs to the public body's normal budget.

Under section 4(3) of the FOIA, a public body may not charge a fee for the cost of its search, examination, review, and the deletion and separation of exempt from nonexempt information, unless failure to charge a fee would result in unreasonably high costs to the public body. This fee limitation, however, does not apply to a public body's costs incurred in the necessary copying or publication of a public record for inspection, or for providing a copy of a public record and mailing the copy.

The phrase "unreasonably high costs," as used in section 4(3) of the FOIA, prohibits a public body from charging a fee for the costs of search, examination, review, and deletion and separation of exempt from nonexempt information unless the costs incurred by a public body for those activities in the particular instance would be excessive and beyond the normal or usual amount for those services. OAG, 2001-2002, No 7083, p 32 (June 7, 2001).

- The board of trustees of a retirement system established and administered by a home rule city charter is a public body subject to the Open Meetings Act and the FOIA. OAG 2001-2002, No 7087, p 45 (August 21, 2001).

- Under the FOIA, a public body may not impose a more restrictive schedule for access to its public records for certain persons than it does for

the public generally, based solely upon the purpose for which the records are sought. OAG, 2001-2002, No 7095, p 64 (December 6, 2001).

- Under section 5 of the FOIA, the five business days within which a public body must respond to a request for public records means five consecutive weekdays, other than Saturdays, Sundays, or legal holidays, regardless of when the particular public body is open for public business. OAG, 2005-2006, No 7172, p 20 (March 17, 2005).

- In complying with its obligations under the OMA to provide the public access to meeting minutes, the public body must also discharge its other public functions and duties. To that end, a rule of reasonableness is applicable in providing a public body an adequate opportunity to meet the request to inspect minutes. A public body must make at least a copy of its minutes available for inspection as provided in MCL 15.269(1) of the OMA. A public body must also avoid undue delay in meeting a request and is obligated to comply with the response periods of the FOIA, and the specific provisions of the OMA, such as section 9(3) for the proposed and approved minutes. But to protect the integrity of its official records, and to allow sufficient time to retrieve such records, if necessary, it may be reasonable for a public body to require advance notice of, and supervision of, the inspection of a record copy of meeting minutes. OAG, 2009-2010, No 7244, p 122 (March 3, 2010).

- Photographs or video recordings of students participating in school activities will qualify as education records for purposes of the Family Educational Rights and Privacy Act, 20 USC 1232g, and that Act's prohibition on the release of such records, if they contain information directly related to a student, and are maintained by the school district.

A school or district may designate photographs and video recordings of students engaged in school activities as a category of "directory information" that may be disclosed without written consent under the Family Educational Rights and Privacy Act, 20 USC 1232g, as long as the school or district provides the required notice to parents that such media will be considered directory information, and further provides parents with a reasonable opportunity to opt out or deny consent to the release of such information.

A school or district has no legal responsibility under the Family Educational Rights and Privacy Act, 20 USC 1232g, with respect to photographs or video recordings of students participating in school activities taken by a person not acting on behalf of the school or district, unless the photographs and video recordings are "maintained" by the school or district under 20 USC 1232g(a)(4)(A)(ii). OAG, 2009-2010, No 7245, p 125 (March 29, 2010).

- Voted ballots, which are not traceable to the individual voter, are public records subject to disclosure under the FOIA. The Secretary of State, in the role as the Chief Elections Officer, or the Director of Elections through the authority vested in that office, may exercise supervisory authority over local elections officials responding to a FOIA request for voted ballots by issuing directions for the review of the ballots in order to protect their physical integrity and the security of the voted ballots.

A person must be allowed to inspect or examine voted ballots, which are not traceable to the individual voter, and to receive copies of the ballots subject to reasonable restrictions prescribed by the Secretary of State. The public body may charge a fee for the copying of the voted ballots as provided for in section 4 of the FOIA.

A person requesting access to voted ballots, which are not traceable to the individual voter is entitled to a response from a public body granting or denying the request within 5 to 15 business days. However, the public body in possession of the ballots may not provide access to the ballots for inspection or copying until 30 days after certification of the election by the relevant board of canvassers. OAG 2009-2010, No 7247, p 134 (May 13, 2010).

- The FOIA does not impose a specific time by which a public body must fulfill a request for public records that it has granted. The public body is guided by, but is not bound by, the "best efforts estimate" the public body must provide under subsection 4(8) of the FOIA.

The "best efforts estimate" must be a calculation that contemplates the public body working diligently to fulfill its obligation to produce the records to the requester; it must be comparable to what a reasonable person in the same circumstances as the public body would provide for fulfilling a similar public records request; and it must be made in good faith, that is, it must be made honestly and without the intention to defraud or delay the requester. OAG 2017-2018, No 7300 (December 12, 2017).

- The following responses, among others not included here, to specific inquiries are found in OAG, 1979-1980, No 5500 (July 23, 1979):
    - A summary of the FOIA. p 255.
    - A government agency does not fall within the meaning of "person" for purposes of obtaining information under the FOIA. p 261.
    - The Civil Service Commission is subject to the provisions of the Freedom of Information Act. p 261.

- 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 FOIA. p 262.

- A board of trustees of a county hospital may refuse to make available records of its proceedings or reports received and records compiled that would constitute a clearly unwarranted invasion of an individual's privacy under section 13(1)(a) [of the FOIA]; involve disclosure that would violate physician-patient or psychologist-patient privilege under section 13(1)(i) [now section 13(1)(h)]; or involve disclosure of medical, counseling or psychological factor evaluations concerning a named individual under section 13(1)(m) [now section13(l)(l)]. p 263.

- 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) 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, 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.

- 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.

- Computer software developed by and in the possession of a public body is not a public record. p 264.

- 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.

- Copyrighted materials are not subject to the Act. p 266. [But see *Blue Cross/Blue Shield v Insurance Bureau*, 104 Mich App 113 (1981).]

- A request for data that refers only 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 that the request describe the public record sufficiently to enable the public body to find it. p 268.

- If a public body maintains a file of the names of employees that it has fired or suspended over a certain designated period of time, it must disclose the list if requested. p 268.
- A public body may charge a fee for providing a copy of a public record. p 268.
- The five-business 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 for that reason. Subsequently, if 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.
- A school board may meet in closed session pursuant to the Open Meetings Act to consider matters that are exempt from disclosure under the FOIA. p 270.
- 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.
- 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.
- Since motor vehicle registration lists have not been declared to be confidential, they are required to be open to public inspection. p 300.

PUBLISHED COURT OPINIONS

Michigan courts have rendered decisions that, when "reported," become precedent and are the law of the state until changed by a higher court or by legislative changes. The following list contains decisions, in alphabetical order, of Michigan's appellate courts regarding FOIA. Court opinions may be obtained from law libraries or from the courts of record at a nominal fee.

Note: This is not an exhaustive list and, again, some of the opinions may have been affected by statutory changes or subsequent case law. Also note: In May 2000, the Michigan Legislature re-lettered subsection 13(1) of the FOIA. Changes are made below.

ACLU v Calhoun Cnty Sheriff's Office, ____ Mich ____ (2022). A regulation cannot serve as the basis for exempting from disclosure public records under MCL 15.243(1)(d) because that exemption applies to "records or information specifically described and exempted from disclosure by statute" and a regulation is not a statute, thus overruling *Soave v Michigan Dep't of Education, 139 Mich App 99 (1984), and Michigan Council of Trout Unlimited v Michigan Dep't of Military Affairs, 213 Mich App 203 (1995).*

Alpena Title, Inc v Alpena County, 84 Mich App 308; 269 NW2d 578 (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. However, the Insurance Commissioner is required to charge a rate for making copies of public records requested in accordance with the FOIA.

Amberg v City of Dearborn 497 Mich 28; 859 NW2d 674 (2014). The court determined that video surveillance recordings created by a private entity that came into possession of the public body in the performance of an official function supported a finding that the recordings were public records, where the public body received copies as relevant evidence in a pending misdemeanor criminal matter. For a plaintiff in a FOIA action to prevail entitling plaintiff to fees and costs, the action must be reasonably necessary to compel the disclosure and the action must have a substantial causative effect on the delivery of the information.

Arabo v Michigan Gaming Control Bd, 310 Mich App 370; 872 NW2d 223 (2015). There is no requirement under the FOIA that a public body, in responding to a request, must restate the request or specify the information sought by the requester. A public body may not simply choose how much it will

charge for records requested. Further, FOIA does not provide for money damages or confer a remedy based on a violation of provisions allowing a government body to charge a fee for records. In response to a FOIA request, the public body is not required to make a compilation, summary, or report of information, or create a new public record. In camera inspection of Gaming Control Board records was not warranted in requester's FOIA action against the Board because allowing counsel to view responsive documents in camera would have required the Board to effectively process the request. Because requester failed to pay the deposit regarding the FOIA request, the Board was not obligated to make a final determination regarding the request. Furthermore, retrieving and examining the information, without receipt of the required fee assessed by the Board, would have resulted in undue burden and expense for the Board and would either cause exempt materials to be divulged or cause the Board to incur the additional expense of ascertaining and redacting exempt materials without first receiving the required payment.

Baker, PC v City of Westland, 245 Mich App 90; 627 NW2d 27 (2001). Accident reports containing the names, addresses, injury codes, and accident dates for injured and deceased accident victims do not have to be released when requested under the FOIA. Involvement in an automobile accident is an intimate detail of a person's private life. Disclosure of the information would not contribute significantly to the public's understanding of the operations or activities of the government and, therefore, would be a clearly unwarranted invasion of privacy. The FOIA's privacy exemption may be applied to deceased private citizens and their families where there is no public interest in disclosure.

Ballard v Dep't of Corrections, 122 Mich App 123; 332 NW2d 435 (1982). A film made by the Department of Corrections (DOC) showing a prisoner being forcibly removed from his or her prison cell is a public record and must be disclosed. Exemption asserted by the DOC did not outweigh the public interest in disclosure.

Bechtel Power Corp v Dep't of Treasury, 128 Mich App 324; 340 NW2d 297 (1983). Tax information may be protected against disclosure under 13(1)(a) and 13(1)(d) of the FOIA.

Bitterman v Village of Oakley, 309 Mich App 53; 88 NW2d 642 (2015). Under the FOIA's privacy exemption, information is of a personal nature if it is intimate, embarrassing, private, or confidential. In the absence of special circumstances, an individual's name is not information of a personal nature for purposes of FOIA's privacy exemption. If private information is included in the records of a public body, the court must determine whether the information is exempt because it relates to an individual's private life according to the

community standards, customs, and views. Courts must ask whether the requested information would shed light on the governmental agency's conduct or further the core purpose of FOIA, and in all but a limited number of circumstances, the public's interest in governmental accountability prevails over an individual's expectation of privacy.

Names of donors to defendant's police fund were not information of a personal nature. The fact that the donors used private assets to contribute to the police fund did not necessarily make the information of a personal nature. Plaintiff did not seek disclosure of the amount of each donor's contribution, only the names of the donors. The private funds were donated for public use and donations to the police fund were not used solely to fund the police department. Village council meeting minutes reflected that large amounts were transferred from the police fund to cover other governmental operating expenses, and disclosure of the names of donors would serve a core FOIA purpose by facilitating the public's access to information regarding the affairs of its local government.

Blue Cross/Blue Shield v Insurance Bureau, 104 Mich App 113; 304 NW2d 499 (1981). A 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.

Booth Newspapers, Inc v Kalamazoo School District, 181 Mich App 752; 450 NW2d 286 (1989). The trial court appropriately ordered the release of tenure charges and a settlement agreement concerning allegations of sexual misconduct against an unmarried teacher in redacted form. The records were redacted to prevent the identity of the teacher and the students involved from being disclosed, to protect their privacy. The FOIA confers discretion upon a court to award an appropriate portion of the reasonable attorney fees incurred by a party that has prevailed in part. When a plaintiff prevails only as to a portion of the request, the award of fees should be fairly allocable to that portion.

Booth Newspapers, Inc v Kent County Treasurer, 175 Mich App 523; 438 NW2d 317 (1989). Tax records indicating the monthly or quarterly tax payments made by individual hotels and motels under a county hotel/motel tax do not fall within the FOIA's privacy exemption.

Booth Newspapers, Inc v Regents of University of Michigan, 93 Mich App 100; 286 NW2d 55 (1979). The written opinion of a public body's attorney is exempt from disclosure under the FOIA and may serve as a basis for holding a closed session meeting under the Open Meetings Act.

Booth Newspapers, Inc v University of Michigan Board of Regents, 444 Mich 211; 507 NW2d 422 (1993). To exempt information under section 13(1)(a) of the FOIA, information must be of a "personal nature," and disclosure of that information must constitute a "clearly unwarranted" invasion of privacy. Travel expense records of members of a public body do not constitute "records of a personal nature." The privacy exemption does not permit the withholding of information that conceivably could lead to the revelation of personal information. Therefore, a public body may not withhold travel expense records because their disclosure might lead to information concerning the candidates interviewed by board members.

Bradley v Saranac Community Schools Board of Education, Lansing Ass'n of School Admr's v Lansing School District, 455 Mich 285; 565 NW2d 650 (1997). The FOIA does not have a specific exemption for personnel records. Thus, the personnel records of non-law enforcement public employees generally are available to the public. Information that falls within one of the exemptions of the FOIA may be redacted.

The privacy exemption under section 13(1)(a) of the FOIA consists of two elements, both of which must be met in order for an exemption to apply. First, the information must be of a "personal nature." Second, the disclosure must be a "clearly unwarranted invasion of privacy."

Performance appraisals, disciplinary actions, and complaints relating to employees' accomplishments in their public jobs do not reveal intimate or embarrassing details of their private lives and, therefore, they are not records of a "personal nature."

Performance evaluations of public employees are not counseling evaluations protected from disclosure by section 13(1)(l) of the FOIA.

Section 13(1)(n) (now section 13(1)(m)) of the FOIA provides an exemption for communications passing within or between public bodies. Documents in the possession of a school district prepared by parents are not within the scope of this exemption. Further, the exemption must be asserted by a public body rather than by a private individual.

Bredemeier v Kentwood Board of Education, 95 Mich App 767; 291 NW2d 199 (1980). The FOIA does not require a school board to record the purpose of the meetings in question, but if it is recorded, it must be disclosed. Attorney fees, costs, and disbursements are awarded to a prevailing party under the FOIA. However, to prevail, a party must show at a minimum that bringing a court action was necessary and had a causative effect on delivery of the information.

Lack of court-ordered disclosure precludes an award of punitive damages under the FOIA.

Breighner v Michigan High School Athletic Ass'n, Inc, 471 Mich 217; 683 NW2d 639 (2004). The Michigan High School Athletic Association, Inc. (MHSAA) is not a "public body" within the meaning of the FOIA that is funded "by or through" a governmental authority, rather it is an independent, nonprofit corporation primarily funded through its own activities. Therefore, the MHSAA is not subject to the FOIA's provisions.

Bukowski v City of Detroit, 248 Mich 268; 732 NW2d 75 (2007). Exemption for frank communications in section 13(1)(m) of the FOIA applies to notes or communications that were preliminary to a final agency determination at the time they were created, even if they were no longer preliminary at the time of the FOIA request.

Capitol Information Ass'n v Ann Arbor Police Dep't, 138 Mich App 655; 360 NW2d 262 (1984). Plaintiff's request, seeking "all correspondence" between local police department and "all federal law enforcement/investigative" agencies, was "absurdly overbroad" and failed to sufficiently identify specific records as required by section 3(1) of the FOIA.

Cashel v Regents of the University of Michigan, 141 Mich App 541; 367 NW2d 841 (1985). Where a person seeking to inspect records will take more than two weeks to complete inspection, he or she may be assessed labor costs incurred by a public body to supervise his or her inspection.

Cashel v Smith, 117 Mich App 405; 324 NW2d 336 (1982). Depositions may sometimes be appropriate in FOIA 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.

City of Warren v City of Detroit, 261 Mich App 165; 680 NW2d 57 (2004). The computer software formula used to set water rates is merely computer-stored information or data and, thus, is a public record subject to disclosure under the FOIA. The FOIA's exception of "software" would allow for nondisclosure of the set of computer statements or instructions that are used to utilize the formula and data; however, the formula itself is distinct information separate from the software.

Clerical-Technical Union of MSU v MSU Board of Trustees, 190 Mich App 300; 475 NW2d 373 (1991). The home addresses of donors to Michigan State

University are information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of privacy.

Coalition Protecting Auto No-Fault v Michigan Catastrophic Claims Ass'n, 317 Mich App 1; 894 NW 2d 758 (2016). The Michigan Catastrophic Claims Association is a public body under the FOIA, but its records are exempt from disclosure under MCL 500.134(4) and (6)(c), and thus, recognized as exempt under section 13(1)(d) of the FOIA.

Coblentz v City of Novi, 475 Mich 558; 719 NW2d 73 (2006). Defendant was not required to produce certain records described in plaintiff's FOIA request where defendant's uncontroverted affidavit stated that records did not exist. Plaintiff was entitled to the non-disclosed exhibits that accompanied a settlement agreement between defendant and a third party, where plaintiff's FOIA request described the records sufficiently to enable the defendant to find the records and where no exemption from disclosure applied. Plaintiff also was entitled to records exempted by defendant under section 13(1)(f) of the FOIA because the defendant did not meet the requirements of 13(1)(f)(*iii*); it did not record a description of the records in a central place within a reasonable time after the records came into defendant's possession. Fees to recoup the labor costs incurred in processing FOIA requests do not include the cost of independent contractors.

Connoisseur Communication of Flint v University of Michigan, 230 Mich App 732; 584 NW2d 647 (1998). The University of Michigan properly denied a FOIA request for the vehicle records of a student athlete. The information was protected pursuant to the Family Educational Rights and Privacy Act (FERPA) and, therefore, exempt from disclosure under the FOIA (now section 13(2) of the act).

Cramer v Village of Oakley, 316 Mich App 60; 890 NW2d 895 (2016), part III of the opinion vacated as moot by Supreme Court April 5, 2017 order. A public body must respond to a request for public records within the statutory timeframe contained in the FOIA by granting or denying the request. The public body, however, is not required to produce the requested documents within that time frame. The words "granted" and "fulfilled" with regard to a FOIA request are not synonymous. Nothing precludes a plaintiff from filing suit "if faced with an inordinate delay in the production of the requested records."

Dawkins v Dep't of Civil Service, 130 Mich App 669; 344 NW2d 43 (1983). If a plaintiff in a FOIA case prevails only in part, he/she may be awarded either all of his/her court costs and attorney fees or only that portion fairly allocable to the successful portion of the case. The fact that the defendant's refusal to

disclose the records was made in good faith has no bearing on the plaintiff's right to recover these costs.

DeMaria Building Co, Inc, v Dep't of Management & Budget, 159 Mich App 729; 407 NW2d 72 (1987). The exemption found in section 13(1)(n) (now section 13(1)(m)) of the FOIA, for communications and notes within a public body or between public bodies, does not apply to an outside consultant's report to a public body.

Detroit Free Press v Dep't of Consumer & Industry Services, 246 Mich App 311; 631 NW2d 769 (2001). Consumer complaints filed with the Department of Consumer and Industry Services against property insurers and health insurers contain information of a personal nature. Disclosure of the names and addresses of the complainants may be withheld, when requested pursuant to FOIA, because disclosure of the information would constitute a clearly unwarranted invasion of the individual's privacy. Other information in the complaints regarding how well the agency is complying with its statutory function should, however, be disclosed

Densmore v Dep't of Corrections, 203 Mich App 363; 512 NW2d 72 (1994). A public body does not need to provide additional copies of records it has already provided unless the requestor can demonstrate why the copy already provided was not sufficient.

Detroit Free Press v City of Southfield, 269 Mich App 275; 713 NW2d 28 (2005). The pension income amounts of police and firefighter pension recipients reflect specific governmental decisions regarding retirees' continuing compensation for public service. Therefore, the pension amounts are more comparable to public salaries than to private assets and do not constitute information exempt from disclosure under the FOIA because it is not information of a personal nature and the public interest in disclosure outweighs the public interest in nondisclosure.

Detroit Free Press v City of Warren, 250 Mich App 164; 645 NW2d 71 (2002). The names of public officials and employees associated with information concerning grand jury proceedings constitute information concerning matters of legitimate public concern. It is not information of a personal nature that is exempt from disclosure under section 13(1)(a) of the FOIA.

Detroit Free Press v Dep't of State Police, 243 Mich App 218; 622 NW2d 313 (2000). The State Police is not required to disclose information regarding state legislators who applied for concealed weapons permits. Legislators who apply for a concealed weapons permit are exercising a right guaranteed to all. The fact

that a person has requested and/or secured permission to carry a concealed weapon is an intimate and potentially embarrassing detail of one's private life. Disclosure of the information would not contribute significantly to the public's understanding of the operations or activities of the government and, therefore, would be exempt from disclosure under 13(1)(a) as a clearly unwarranted invasion of privacy.

Detroit Free Press, Inc v Dep't of Attorney General, 271 Mich App 418; 722 NW2d 277 (2006). Plaintiff was not a "prevailing party" as that term is defined under the FOIA where the trial court did not order disclosure of any public records and the dispute centered entirely on the FOIA processing fee charged for copies of records. Therefore, plaintiff was not entitled to the attorney fees and costs awarded by the trial court under section 10(6) of the FOIA.

Detroit Free Press, Inc v Oakland County Sheriff, 164 Mich App 656; 418 NW2d 124 (1987). Booking photographs of persons arrested, charged with felonies, and awaiting trial are not protected from release as an unwarranted invasion of personal privacy.

Detroit News, Inc v Detroit, 185 Mich App 296; 460 NW2d 312 (1990). The minutes of a closed city council meeting held in violation of the Open Meetings Act, are public records and are available upon request under the FOIA. Oral opinions of an attorney are not "public records" under the FOIA and cannot be used to authorize holding a closed session under the OMA.

Detroit News, Inc v Detroit, 204 Mich App 720; 516 NW2d 151 (1994). Telephone bills paid by a public body constitute expense records of public officials and employees and are "public records" under the FOIA.

Detroit News, Inc v Policeman and Firemen Retirement Sys of the City of Detroit, 252 Mich App 59; 651 NW2d 127 (2002). The Policemen and Firemen Retirement System is a public body because it is a body that is "created by state or local authority or which is primarily funded by or through state or local authority."

Eastly v University of Michigan, 178 Mich App 723; 444 NW2d 820 (1989). A public body must have in its possession or control a copy of the requested document before it can be produced or before a court can order its production.

Ellison v Dep't of State, 320 Mich App 1; 906 NW2d 221 (2017). Plaintiff made a FOIA request for defendant's database. While the information sought is a public record under the FOIA, the FOIA's fee provisions do 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." MCL 15.240(10).

The Michigan Vehicle Code provides that an entire computerized central file or other file of records maintained under this act shall not be provided to a nongovernmental person or entity, unless the person or entity pays the prescribed fee for each individual record contained within the computerized file. MCL 257.208b(9). It was undisputed that plaintiff did not pay the required amount. Thus, the trial court correctly concluded that defendant had grounds to deny plaintiff's FOIA request because plaintiff had not paid the statutorily required fee.

ESPN, Inc v Michigan State Univ, 311 Mich App 662; 876 NW2d 593 (2015). The privacy exemption of FOIA has two prongs that the information sought to be withheld from disclosure must satisfy. First, the information must be of personal nature. Second, it must be the case that the public disclosure of that information would constitute a clearly unwarranted invasion of an individual's privacy. With respect to the second prong, a court must balance the public interest in disclosure against the interest the Legislature intended the exemption to protect. The relevant public interest to be weighed in this balance is the extent to which disclosure would serve the core purpose of the FOIA, which is contributing significantly to public understanding of the operations or activities of the government.

Evening News Ass'n v City of Troy, 417 Mich 481; 339 NW2d 421 (1983). A general claim that records are involved in an ongoing criminal investigation and that their disclosure would "interfere with law enforcement proceedings" is not sufficient to sustain an exemption under section 13(1)(b) of the FOIA. A public body must indicate factually and in detail how a particular document or category of documents satisfies the exemption; mere conclusory allegations are not sufficient.

Farrell v Detroit, 209 Mich App 7; 530 NW2d 105 (1995). Computer records are public records that are subject to disclosure pursuant to the FOIA. A public body is required to provide public records in the form requested, rather than just providing the information contained in the public records. Providing a computer printout of the information contained on a computer tape does not satisfy a request for the computer tape itself.

Favors v Dep't of Corrections, 192 Mich App 131; 480 NW2d 604 (1991). The form used in determining whether a prisoner should be awarded disciplinary credits was exempt from disclosure under section 13(1)(n) (now section 13(1)(m)) of the FOIA in that it covered other than purely factual materials, was advisory

in nature and preliminary to final agency determination of policy or action. The public interest in encouraging frank communications within the Department of Corrections (DOC) clearly outweighed the public interest in disclosure of worksheet forms. The trial court failed to comply with the technical requirements of the FOIA because it did not require the DOC to bear the burden of proving that a public record was exempt. However, that failure did not require reversal of a grant of summary disposition to the DOC in the inmate's action where the DOC clearly reached the correct result.

Grebner v Clinton Charter Twp, 216 Mich App 736; 550 NW2d 265 (1996). Section 522(1) of the Michigan Election Law, 1954 PA 116, MCL 168.1 *et seq*, which provides for the making, certifying, and delivery of a computer tape to any person upon payment to the clerk of the court of the cost of making, certifying, and delivering the tape, disk, or listing is not a statute "specifically authorizing the sale" of the computer tape. Therefore, the determination of the fee to be charged for obtaining the computer tape is made pursuant to section 4 of the FOIA.

Grebner v Oakland County Clerk, 220 Mich App 513; 560 NW2d 351 (1996). Section 10(1) of the FOIA is a combined jurisdiction and venue provision. This provision makes it clear that circuit courts have jurisdiction to hear FOIA cases and specifies the counties in which the action may be brought.

Hagen v Dep't of Education, 431 Mich 118; 427 NW2d 879 (1988). The decisions of the State Tenure Commission are matters of public record. When a private hearing is requested by a teacher, as provided under the Teacher Tenure Act, the decision resulting from the private hearing may be withheld during the administrative stage of the teacher's appeal. Once a final administrative decision is reached, the decision may not be withheld from disclosure.

Hartzell v Mayville Community School District, 183 Mich App 782; 455 NW2d 411 (1990). The FOIA requires disclosure of the fact that a requested document does not exist. A plaintiff in a FOIA action that is forced to file a lawsuit to ascertain that a document does not exist is a prevailing party entitled to an award of costs and reasonable attorney fees.

Haskins v Oronoko Twp Supervisor, 172 Mich App 73; 431 NW2d 210 (1988). The trial court properly complied with the holding in *The Evening News Ass'n v City of Troy,* 417 Mich 481; 339 NW2d 421 (1983), when it conducted an *in-camera* inspection of the records sought and determined that certain records are exempt from disclosure under the narrowly drawn statutory exemptions designed to protect the identity of confidential informants.

Herald Co v Ann Arbor Public Schools, 224 Mich App 266; 568 NW2d 411 (1997). Once documentation that is the subject of a FOIA lawsuit has been disclosed, the subject of the controversy disappears. The privacy exemption of the FOIA allows a public body to withhold from disclosure public records of a personal nature where the information would constitute a clearly unwarranted invasion of an individual's privacy. Information is considered personal if it concerns a particular person and his or her intimate affairs, interests, or activities. While the records sought in this case were personal in nature in that they contained information about a teacher's family and observations about his or her conduct, the disclosure did not constitute a "clearly unwarranted" invasion of privacy because the records discussed the professional performance of a teacher in the classroom that is an issue of legitimate concern to the public.

A public body may exempt from disclosure, pursuant to section 13(1)(n) (now section13(1)(m)), advisory communications within a public body or between public bodies to the extent that they are not nonfactual and are preliminary to a final agency determination. However, if records meet these substantive tests, the public body must also establish that the public interest in encouraging frank communications within the public body or between public bodies clearly outweighs the public interest in disclosure. In this case, the public interest in disclosing records that contain public observations of a teacher who has been convicted of carrying a concealed weapon is not clearly outweighed by the public interest in encouraging frank communications within the public body.

A class of documents may be exempt from the FOIA, so long as the exempt categories are clearly described and drawn with precision so that all documents within a category are similar in nature. Exempt material must be segregated from nonexempt material to the extent practicable.

Section 13(1)(i) (now section 13(1)(h)) of the FOIA exempts information subject to the physician-patient privilege. The purpose of the privilege is to protect the physician-patient relationship and ensure that communications between the two are confidential. Attendance records that do not contain any information that a physician acquired while treating an employee are not covered by this exemption. The fact that an employee waives the physician-patient privilege by submitting to his or her employer attendance records that contain medical records does not mean that the privilege was waived with regard to third parties who request disclosure of the records under the FOIA.

The FOIA excludes from disclosure information protected by the attorney-client privilege. The scope of the privilege is narrow, including only those communications by the client to its advisor that are made for the purpose of obtaining legal advice. A tape recording of an interview of the teacher by the school district is not within the attorney-client privilege.

Herald Co v City of Bay City, 463 Mich 111; 614 NW2d 873 (2000). The FOIA does not establish detailed requirements for a valid request. If a citizen submits a request for the names, current job titles, and cities of residence and ages for job candidates, and the city possesses records containing the information, the city is obligated to provide the records even though they were not specifically described in the request.

The fact of application for a public job, or the typical background information that may be contained in an application, is not information of a personal nature protected from disclosure under section 13(1)(a) of the FOIA. If embarrassing or intimate personal information is contained in an application, the public body is under a duty to separate the exempt material and make the nonexempt material available to the public.

Herald Co, Inc v Eastern Michigan Univ Bd of Regents, 475 Mich 463; 719 NW2d 19 (2006). The advisory, non-factual portions of a letter written by defendant's vice president of finance to a member of the Board of Regents were exempt as frank communications under section 13(1)(m) of the FOIA, where the balance of competing interests favored nondisclosure.

Herald Co v Kalamazoo, 229 Mich App 376; 581 NW2d 295 (1998). Law enforcement exemptions of the Michigan FOIA are more restrictive than parallel provisions of the federal FOIA. The correct standard under the Michigan FOIA is whether a document "would" (not "could") interfere with law enforcement proceedings.

An investigation will not be considered "on-going" for the purposes of the FOIA without an active, on-going, law enforcement investigation. In the absence of such activities, the investigation cannot be considered open although the period of limitations may still be running.

Hoffman v Bay City School District, 137 Mich App 333; 357 NW2d 686 (1984). Where an attorney investigated the business and finance practices of a school district and orally reported his or her opinion regarding the investigation to the school board but did not share the actual documents, the investigative file itself is not a public record of the board.

Hopkins v Township of Duncan, 294 Mich App 401; 812 NW2d 27 (2011). Handwritten notes taken by a township board member at the township board meeting for his personal use, not circulated among other board members, not used in the creation of the minutes of any board meetings and retained or destroyed at the member's sole discretion are not "public records" under the FOIA.

Howell Education Association MEA/NEA v Howell Board of Education, 287 Mich App 228; 789 NW2d 495 (2010). A public-school employee's email that involves an entirely private or personal matter unrelated to the public body's official function does not constitute a "public record" under the FOIA solely because it is held in a public body's email system's digital memory. The mere violation of an acceptable use policy that bars personal use of the email system but does not expressly provide that emails are subject to the FOIA, does not render personal emails "public records" subject to FOIA.

Hubka v Pennfield Twp, 197 Mich App 117; 494 NW2d 800 (1992). Letters sent by a township attorney to a township board that contain information obtained by the attorney from township employees under compulsion and promises of confidentiality are protected from disclosure under the FOIA by the attorney-client privilege. Likewise, the opinions, conclusions, and recommendations of the attorney, based on the information, are protected.

Hyson v Dep't of Corrections, 205 Mich App 422; 521 NW2d 841 (1994). Statements made by confidential witnesses relating to a major misconduct charge against a prison inmate may be withheld when requested pursuant to the FOIA because disclosure of the documents, even with the names of witnesses deleted, would reveal their identities and jeopardize their personal safety within the prison. In addition, the release would preclude the public body's ability to maintain the physical security of the penal institution.

In re Buchanan, 152 Mich App 706; 394 NW2d 78 (1986). The common-law right of access to court records is not without limitation.

In re Subpoena Duces Tecum, on remand from the Michigan Supreme Court, 205 Mich App 700; 518 NW2d 522 (1994). Section 13(1)(n) (now section 13(1)(m)) of the FOIA protects from disclosure communications within or between public bodies of an advisory nature that are other than purely factual and are preliminary to a final agency determination of policy or action. The burden is on the public body to show, in each particular instance, that the public interest in encouraging frank communications between officials and employees of the public body clearly outweighs the public interest in disclosure. It is not adequate to show that the requested document falls within a general category of documents that may be protected.

International Union, UPGWA v Dep't of State Police, 118 Mich App 292; 324 NW2d 611 (1982), aff'd by equally divided court, 422 Mich 432 (1985). The exemption of a list of names and home addresses of private security guards from disclosure to a union seeking that list for collective bargaining purposes is not

justified. The public purpose of collective bargaining outweighs the employees' interest in the privacy of this information. However, the union was ordered not to engage in further disclosure of the list for other unrelated purposes.

Jackson v Eastern Michigan University, 215 Mich App 240; 544 NW2d 737 (1996). Eastern Michigan University Foundation is primarily funded by Eastern Michigan University and, therefore, is a public body subject to the FOIA.

Jordan v Martimucci, 101 Mich App 212; 300 NW2d 325 (1980). A plaintiff who brings an action under the FOIA for punitive damages for delay in disclosure of requested information must demonstrate that he or she has received the requested information as a result of court-ordered disclosure and that the defendant acted arbitrarily and capriciously in failing to comply with the disclosure request in a timely manner.

Kearney v Dep't of Mental Health, 168 Mich App 406; 425 NW2d 161 (1988). The FOIA exempts from disclosure records exempted from disclosure by other statutory authority. Mental health treatment records are exempt under the Mental Health Code. However, treatment records may be disclosed where the holder of the record and the patient consent. Persons requesting records under the FOIA are not entitled to free copies of the records. The holder of a public record may charge a fee for providing copies. There is, however, a waiver of the first $20.00 for those who, by affidavit, show an inability to pay because of indigency.

Kent County Sheriff's Ass'n v Sheriff, 463 Mich 353; 616 NW2d 677 (2000). The FOIA provides citizens with broad rights to obtain public records limited only by the coverage of the statute an its exemptions. The fact that another body of law potentially gives an additional basis for access to records, in this case the Public Employment Relations Act, does not limit the applicability of the FOIA or the jurisdiction of the circuit court to consider relief under the FOIA.

Internal investigation records of a law enforcement agency may be exempt as personnel records under section 13(1)(s)(*ix*) of the FOIA where it is sufficiently established that public interest favors nondisclosure over disclosure.

Kestenbaum v Michigan State University, 414 Mich 510; 327 NW2d 783 (1982). 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 personal and falls within an enumerated exception. Public disclosure of the tape would constitute a clearly unwarranted invasion of a person's privacy.

Key v Township of Paw Paw, 254 Mich App 508; 657 NW2d 546 (2002). The public body complied with the FOIA when the FOIA Coordinator denied a request for information because the information sought could not be located.

When a public body timely claims the additional 10 business days for a response as provided in section 5(2)(d) of the FOIA, the new response deadline is 15 business days after the receipt of the request, regardless of when the notice of extension is issued.

King v Michigan State Police, 303 Mich App 162; 841 NW2d 914 (2013). Polygraph report was exempt from public disclosure by statute. The trial court's decision to reduce fees charged by a public body for processing the request was reversed as clearly erroneous. A public body's decision to grant a request "as to existing, non-exempt records" in its possession did not present an unripe controversy in light of the parties' stipulation to treat the plaintiff's response to the public body's motion for summary disposition as an appeal from the public body's denial of part of the request. The Court also held the public body's production of some, but not all, of the requested records did not render the case moot.

King v Oakland County Prosecutor, 303 Mich App 222; 842 NW2d 403 (2013). When analyzing a public body's assertion of an exemption under section 13 of the FOIA, a trial court may make complete and particularized findings of fact justifying use of the exemption; it may conduct an *in-camera* review of the disputed records; or it may allow plaintiff's counsel to conduct an *in-camera* review of the disputed records whenever possible. A trial court, however, need not use all three procedures and should strictly limit use of an *in-camera* review by counsel. The Court also held the exemption in section 13(1)(b)(*i*) is narrower than its counterpart in the federal FOIA, since the state exemption only applies to records that "would" interfere with law enforcement proceedings, and not to all records that "could" interfere with law enforcement proceedings. The Court also held there was no need to take the depositions of department heads and other high-ranking officials, when their depositions are not essential to prevent prejudice to the party seeking the discovery.

Kincaid v Dep't of Corrections, 180 Mich App 176; 446 NW2d 604 (1989). A public body bears the burden of proof of demonstrating a proper justification for the denial of a FOIA request. A request for disclosure of information under the FOIA must describe the requested records sufficiently to enable the public body to find them. When a request is denied because of an insufficient description, the requesting person may (1) rewrite the request with additional information, or (2) file suit in circuit court where the sole issue would be whether the information describing the desired records was sufficient. A FOIA request by an

inmate, that erroneously states both the date of a guilty determination on a misconduct and the hearing date with respect to the records sought, reasonably and sufficiently describes the records. A public body acts in an arbitrary and capricious manner by repeatedly refusing to look for a record so described.

Kocher v Dep't of Treasury, 241 Mich App 378; 615 NW2d 767 (2000). The addresses of unclaimed property holders maintained by the Michigan Department of Treasury fall within the definition of personal information, and their release would constitute a clearly unwarranted invasion of privacy. Disclosure of the information would not enhance the public's understanding of the operations or activities of the government.

Krug v Ingham County Sheriff's Office, 264 Mich App 475; 691 NW2d 50 (2004). Defendant was not entitled to issue blanket denials of all FOIA requests relating to open case files without actually reviewing the case first to determine what information is exempt. A defendant should treat a lawsuit filed as a result of a FOIA denial as a continuing request for information. If the defendant determines that the information has become nonexempt during the course of the FOIA litigation, the records should be released.

Kubick v Child & Family Services of Michigan, 171 Mich App 304; 429 NW2d 881 (1988). While there is no bright-line rule as to what constitutes "primarily funded" to determine if a body is a "public body" as defined in the FOIA, a private nonprofit corporation that receives less than half of its funding from government sources is not a public body which is primarily funded by or through state or local authority. Accordingly, such corporation is not subject to the requirements of the FOIA regarding the disclosure of information by public bodies.

Landry v City of Dearborn, 259 Mich App 416; 674 NW2d 697 (2003). Section 13(1)(s)(*ix*) of the FOIA permits nondisclosure of law enforcement personnel records. The meaning of the term "personnel records" in that section includes all records used by law enforcement agencies in the selection or hiring of officers, as well as the applications received by the city from unsuccessful applicants. The public interest in disclosing the information did not outweigh the public interest in not disclosing the information.

Laracey v Financial Institutions Bureau, 163 Mich App 437; 414 NW2d 909 (1987). An attorney who filed a *pro se* action is not entitled to recover attorney fees in a FOIA lawsuit.

Lapeer County Abstract & Title Co v Lapeer County Register of Deeds, 264 Mich App 167; 691 NW2d 11 (2004). While the FOIA grants a general right to receive

copies of public records, nothing in the FOIA requires a public body to provide copies in a microfilm format rather than in the form of a paper copy. Furthermore, the Inspection of Records Act specifically provides that, in response to a request for reproduction of a record of a register of deeds, the register of deeds may select the medium used to reproduce the record.

Lepp v Cheboygan Area Schools, 190 Mich App 726; 476 NW2d 506 (1991). Where the requested information pertains to the party making the request, it is unreasonable to refuse disclosure on the grounds of invasion of privacy.

Local Area Watch v City of Grand Rapids, 262 Mich App 136; 683 NW2d 745 (2004). Under the Open Meetings Act, minutes of closed session meetings may only be disclosed by court order under the Act. Further, under the FOIA, a public body is not required to disclose records protected from disclosure to the public by other statutes. Where the plaintiff sought disclosure of closed meeting minutes, the defendant did not violate the FOIA by withholding the minutes, where there was no judicial determination that the minutes were subject to disclosure under the Open Meetings Act.

Local 79, Service Employees Intern'l Union AFL-CIO, Hospital Employees Division v Lapeer County General Hospital, 111 Mich App 441; 314 NW2d 648 (1981). The proper forum in which to seek relief from a violation of the FOIA is the circuit court and not the Michigan Employment Relations Commission, notwithstanding labor-related issues.

Local 312 of the AFSCME, AFL-CIO v City of Detroit, 207 Mich App 472; 525 NW2d 487 (1994). The Public Employment Relations Act (PERA), 1947 PA 336, MCL 423.201 *et seq,* and the FOIA are not conflicting statutes such that the PERA would prevail over the FOIA with the result that a person involved in a labor dispute would be precluded from obtaining public records under the FOIA. The Legislature has clearly defined the class of persons entitled to seek disclosure of public records pursuant to the FOIA. There is no sound policy reason for distinguishing between persons who are involved in litigation-type proceedings and those who are not.

MacKenzie v Wales Twp, 247 Mich App 124; 635 NW2d 335 (2001). A township must grant access to computer tapes used to prepare property tax notices for the township even though the tapes were created by, and in the possession of, another entity. Because the township used the tapes, albeit indirectly, in performing an official function, the tapes fall within the statutory definition of public records.

Mager v Dep't of State Police, 460 Mich 134; 595 NW2d 142 (1999). State Police is not required to provide the names and addresses of registered handgun owners in response to a FOIA request. Gun registration is information that meets both elements of the FOIA privacy exemption, section 13(1)(a). Gun registration information is of a "personal nature," and the disclosure of such information would constitute a "clearly unwarranted" invasion of the individual's privacy. The Supreme Court further noted that "[the core] purpose [of the FOIA] is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct."

Manning v City of East Tawas, 234 Mich App 244; 593 NW2d 649 (1999). When making an *in-camera* determination whether to compel disclosure under the FOIA, a trial court may order disclosure of nonexempt information and may provide for the redaction of exempt information.

Meredith Corp v City of Flint, 256 Mich App 703; 671 NW2d 101 (2003). Where an action for disclosure of public records is initiated pursuant to the FOIA, the prevailing party's entitlement to an award of reasonable attorney fees, costs, and disbursements includes all such fees, costs, and disbursements related to achieving production of the public records.

Messenger v Dep't of Consumer & Industry Services, 238 Mich App 524; 606 NW2d 38 (1999). Investigation undertaken by the state public body did not fit the definition of investigation found in the Public Health Code, and, therefore, the records sought were not exempt from disclosure under the FOIA.

Messenger v Ingham County Prosecutor, 232 Mich App 633; 591 NW2d 393 (1998). The privilege for attorney work product is recognized by court rule, MCR 2.302(B)(3)(a), and incorporated into the FOIA through section 13(1)(h). When information sought pursuant to the FOIA is identified as attorney work product, it is not subject to disclosure.

McCartney v Attorney General, 231 Mich App 722; 587 NW2d 824 (1998). Letters forwarded by the Governor to the Attorney General for the purpose of seeking legal advice were protected by the attorney-client privilege, and thus, by section 13(1)(h) (now section 13(1)(g)) of the FOIA. Internal memoranda within the Attorney General's office containing recommendations, opinions, and strategies with regard to legal advice requested by the Governor are exempted from disclosure by section 13(1)(n) (now section 13(1)(m)) of the FOIA to the extent that they are preliminary, nonfactual, and part of the deliberative process and exempt because of the attorney-client privilege.

Michigan Federation of Teachers and School Related Personnel, AFT, AFL-CIO v University of Michigan, 481 Mich 657; 753 NW2d 28 (2008). The Court held that employees' home addresses and telephone numbers meet both prongs of FOIA's privacy exemption because that information is "of a personal nature" and its disclosure would constitute a clearly unwarranted invasion of an individual's privacy. The Court reexamined the definition of "information of a personal nature" set forth in *Bradley v Saranac Community Schools Bd of Ed,* 455 Mich 285; 565 NW2d 650 (1997) and concluded that it unnecessarily limited the intended scope of that phrase. The Court cured the deficiency and revised the definition to encompass information of an embarrassing, intimate, *private,* or *confidential* nature. Accordingly, the University of Michigan employees' home addresses and telephone numbers were exempt from disclosure.

Michigan Tax Management Services Co v City of Warren, 437 Mich 506; 473 NW2d 263 (1991). When a prevailing party in a FOIA action is awarded "reasonable" attorney fees, the trial court is obligated to make an independent determination with regard to the amount of the fees. The standard utilized by an appellate court to review such a determination is abuse of discretion.

Milford v Gilb, 148 Mich App 778; 384 NW2d 786 (1985). Under the FOIA, a public body may exempt from disclosure 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 matters and the public interest in encouraging frank communications within the public body or between public bodies clearly outweighs the public interest in disclosure. The public body bears the burden of proof that a statutory exception applies to the item requested.

MLive Media Group v City of Grand Rapids, 321 Mich App 263; 909 NW2d 282 (2017). Defendant failed to show that the recordings, copies of recordings, and transcripts of telephone calls made by its police officers to a police lieutenant concerning a citation issued to a former county assistant prosecutor, which were requested under the FOIA, constituted "[r]ecords or information specifically described and exempted from disclosure by statute." MCL 15.243(1)(d). Defendant's response to the FOIA request did not base its nondisclosure on the argument that public disclosure would violate another statute. Thus, defendant did not meet its burden.

Mullin v Detroit Police Dep't, 133 Mich App 46; 348 NW2d 708 (1984). Defendant properly exempted a computer tape containing personal information on persons involved in traffic accidents. Disclosure of the tape would have been a clearly unwarranted invasion of privacy.

Nabkey v Kent Community Action Program, Inc, 99 Mich App 480; 298 NW2d 11 (1980). No award of attorney fees is possible where a prevailing plaintiff under the FOIA is not represented by an attorney.

Newark Morning Ledger Co v Saginaw County Sheriff, 204 Mich App 215; 514 NW2d 213 (1994). Internal affairs investigation records of a law enforcement agency constitute personnel records, that are exempt from disclosure unless the public interest in disclosure outweighs the public interest in nondisclosure. The mere location of a public record in a personnel file is not determinative as to its status as a personnel record. In determining what is a "personnel record" under the FOIA, the court looked to the definition of that term in the Bullard-Plawecki Employee Right to Know Act (ERKA), MCL 423.501 *et seq*. While the purpose of the FOIA and the ERKA are different, the Legislature's clearly expressed intent in the ERKA to prohibit access by an employee to any internal investigations relating to that employee indicates an intent to not allow public access to such records.

Nicita v City of Detroit, 194 Mich App 657; 487 NW2d 814 (1992). Section 13(1)(i) of the FOIA does not exempt from disclosure bids with respect to development projects once a developer has been chosen.

Nicita v City of Detroit, 216 Mich App 746; 550 NW2d 269 (1996). Business records pertaining to a real estate development company are not exempt from disclosure pursuant to section 13(1)(a) of the FOIA where there is no indication that the records contain information of a personal nature. This section does not protect information that could conceivably lead to the revelation of personal information. Section 13(1)(n) (now section 13(1)(m)) of the FOIA protects communications within or between a public body that are other than purely factual and are preliminary to a final agency determination of policy or action. A public agency must also show that the need for nondisclosure clearly outweighs the public interest in disclosure.

Oakland Press v Pontiac Stadium Building Authority, 173 Mich App 41; 433 NW2d 317 (1988). The release of names and addresses of licensees doing business with a public body was not personal information the disclosure of which would be a clearly unwarranted invasion of privacy.

Oakland County Prosecutor v Dep't of Corrections, 222 Mich App 654; 564 NW2d 922 (1997). A prisoner's mental health records submitted to the parole board when seeking parole must be provided to a county prosecutor when requested pursuant to the FOIA so that the prosecutor may determine whether the board's decision to grant parole should be appealed.

Oakland County Treasurer v Title Office, Inc, 245 Mich App 196; 627 NW2d 317 (2001). Electronic records are writings as defined by the FOIA. Public bodies are required to provide public records in the format requested. If there is no explicit statutory language that provides fees for electronic records, the records must be provided using the FOIA fee requirements.

Palladium Publishing Co v River Valley School District, 115 Mich App 490; 321 NW2d 705 (1982). The name of a student suspended by the action of a board of education will appear in the meeting minutes and is not information exempt from disclosure under the FOIA.

Patterson v Allegan County Sheriff, 199 Mich App 638; 502 NW2d 368 (1993). A booking photograph of a county jail inmate kept in the files of a county sheriff is a public record under the FOIA; such photographs may not be withheld from disclosure on the basis of the privacy exemption found in 13(1)(a) of the FOIA.

Payne v Grand Rapids Police Chief, 178 Mich App 193; 443 NW2d 481 (1989). A record of law enforcement investigation may be exempt from disclosure under the FOIA where disclosure would interfere with law enforcement proceedings. However, the agency must demonstrate factually how disclosure of particular records or kinds of records would amount to interference and not merely provide conclusory statements that recite the language of the FOIA.

Pennington v Washtenaw County Sheriff, 125 Mich App 556; 336 NW2d 828 (1983). Failure to respond to a request is treated as a final decision to deny the request. A plaintiff need only make a showing in circuit court that the request was made and denied. The burden is on the defendant to show a viable defense. Nondisclosure based upon the privacy exemption of 13(1)(b)(iii) is limited to intimate details of a highly personal nature.

Penokie v Michigan Technological University, 93 Mich App 650; 287 NW2d 304 (1979). The names and salaries of employees of the defendant university is not information of a personal nature the disclosure of which would constitute a "clearly unwarranted" invasion of personal privacy under the FOIA.

Perlongo v Iron River Cooperative TV, 122 Mich App 433; 332 NW2d 502 (1983). A private nonstock, nonprofit cable television corporation which was not created by state or local authority is not a "public body" for purposes of either the Open Meetings Act or the FOIA, even though it is licensed, franchised, or otherwise regulated by the government.

Post-Newsweek Stations, Michigan, Inc v City of Detroit, 179 Mich App 331; 445 NW2d 529 (1989). In claiming an exemption under the FOIA, for interference

with law enforcement proceedings, the burden of proof is on the public body claiming the exemption. The exemption must be interpreted narrowly, and the public body must separate exempt material from nonexempt and make nonexempt information available. Exempt information must be described with particularity indicating how the information would interfere with law enforcement proceedings. When analyzing claims of exemption under the FOIA, a trial court should receive a complete particularized justification for a denial of a request or hold *in-camera* hearings to determine whether this justification exists, or the court may allow counsel for the requesting party to examine, in-camera, under special agreement, the contested material.

Practical Political Consulting, Inc v Terry Lynn Land, 287 Mich App 434; 789 NW2d 178 (2010). A copy of all voting history of the January 15, 2008, presidential primary including which ballots each voter selected was not exempt by statute and was not information of a personal nature, nor would the disclosure of it constitute a clearly unwarranted invasion of privacy.

Prins v Michigan Department of State Police, 299 Mich App 634; 831 NW2d 867 (2013). A public body has not satisfied FOIA's notice requirement until it sends out or officially circulates its denial of a public record request, which prevents a public body's inadvertent failure to timely mail a denial letter from unduly shortening the 180-day period of limitations on a FOIA case.

Proctor v White Lake Twp Police Department, 248 Mich App 457; 639 NW2d 332 (2001). The FOIA is not unconstitutional simply because it excludes prisoners from obtaining information. Application of the FOIA exclusion does not deprive prisoners of their fundamental right to access the courts or their First Amendment rights.

Progress v Attorney General, 506 Mich 74; 954 NW2d 475 (2020). Plaintiff's unverified complaint in the Court of Claims was sufficient to commence an action against the state for purposes of tolling the statutory limitations period. Thus, plaintiff's amended FOIA complaint was not untimely because it could relate back to the original complaint. Notably, the Court did not disturb the Court of Appeal's determination that the FOIA 180-day limitations period runs from the date of the public body's initial denial of the FOIA request, not from the date of the internal appeal determination, which happens after the public body makes its "final determination."

Quatrine v Mackinaw City Public Schools, 204 Mich App 342; 514 NW2d 254 (1994). Public schools were not required to release records under the FOIA where written parental consent for release of records was not provided.

Rataj v City of Romulus, 306 Mich App 735; 858 NW2d 116 (2014). Plaintiff sought to compel a release of a video recording, unredacted incident report, and police department internal investigation reports and personnel records pertaining to police officer's alleged assault of an individual who had been arrested and handcuffed. The Court determined that disclosure of the video recording would serve the core purpose of the FOIA, and that the recording did not fall within the privacy provisions of section 13(1)(a) of the FOIA. As for the incident report, while the names of the citizen and officer were subject to disclosure, home addresses, dates of birth, and telephone numbers may be withheld from disclosure under the privacy exemption. The internal investigation reports and personnel records pertaining to the incident were exempt under section 13(1)(s)(*ix*) of the FOIA, which permits the nondisclosure of such law enforcement agency records.

Residential Ratepayer Consortium v Public Service Commission, 168 Mich App 476; 425 NW2d 98 (1987). An agency does not waive its defenses in a circuit court action to compel disclosure of documents under the FOIA because they were not raised at the administrative level.

Ridenour v Dearborn Board of Education, 111 Mich App 798; 314 NW2d 760 (1981). It was not permissible to enter closed session under section 8h of the Open Meetings Act to discuss the performance of a school administrator because public disclosure of performance evaluations of school administrators is not an intrusion of privacy as defined by the FOIA. People have a strong interest in public education and taxpayers are increasingly holding administrators accountable for expenditures of tax money.

Scharret v City of Berkley, 249 Mich App 405; 642 NW2d 685 (2002). According to section 5 of the FOIA, a public body is required to respond to a request for information within five business days after receiving the request, and its failure to timely respond constitutes its final determination to deny the request and is a violation of the FOIA.

In addition, nothing in the FOIA states that the resubmission of a request denied by virtue of the public body's failure to respond divests the requesting person of the ability to exercise the options granted under section 10 of the FOIA, based on the initial denial of the request.

To receive an award of attorney fees and costs under the FOIA, the action must be reasonably necessary to compel disclosure, and the action must have a substantial causative effect on the delivery of the information to the requestor.

Schinzel v Wilkerson, 110 Mich App 600; 313 NW2d 167 (1981). A plaintiff appearing in propria persona who prevails in an action commenced pursuant to

the FOIA is entitled to an award of his or her actual expenditures but is not entitled to an award of attorney fees.

Sclafani v Domestic Violence Escape, 255 Mich App 260; 660 NW2d 97 (2003). Section 2(d)(*iv*) of the FOIA (now section 2(h)(*iv*)) states that a public body is "any other body which is created by state or local authority or which is primarily funded by or through state or local authority." The court found that Domestic Violence Escape (DOVE), a non-profit group that educates citizens about domestic violence and provides several services to victims, was a public body and therefore was subject to FOIA because a state or local government authority provided 50% or more of its finding. "Primarily funded" was deemed to include funding from a single or multiple sources.

Shellum v MESC, 194 Mich App 474; 487 NW2d 490 (1992). Information held by MESC concerning the calculated unemployment insurance tax contribution rate of an employer is exempt from disclosure under 13(1)(d) of the FOIA because it utilizes information obtained from the employer, which is protected from disclosure by statute and administrative rule.

Schroeder v Detroit, 221 Mich App 364; 561 NW2d 497 (1997). A person denied employment by a police department was not entitled to receive a copy of his or her psychological evaluation under the FOIA. In cases involving examination instruments as defined by section 13(1)(*l*) (now section 13(1)(k)) of the FOIA, release of the information is not required unless the public interest in disclosure outweighs the public interest in nondisclosure. Here, the public interest in ensuring the integrity of the hiring process outweighed the public interest in disclosing the information to a candidate attempting to investigate the fairness of the test.

State Defender Union Employees v Legal Aid & Defender Ass'n of Detroit, 230 Mich App 426; 584 NW2d 359 (1998). An organization "primarily funded by or through state or local authority" is a public body pursuant to the FOIA. "Funded" means the receipt of government grants or subsidies. An otherwise private organization is not a public body merely because public monies paid in exchange for goods or services comprise a certain percentage of the organization's revenues.

State Employees Ass'n v Dep't of Management & Budget, 428 Mich 104; 404 NW2d 606 (1987). The disclosure of the home addresses of state employees to a recognized employee organization does not constitute a clearly unwarranted invasion of privacy.

State News v Michigan State University, 481 Mich 692; 753 NW2d 20 (2008). Unless an exemption to disclosure provides otherwise, the application of an exemption is determined when the public body asserts the exemption. The passage of time and subsequent events do not affect whether a public record was exempt from disclosure at the time the public body responded to the request.

Stone Street Capital, Inc v Michigan Bureau of State Lottery, 263 Mich App 683; 689 NW2d 541 (2004). The names, addresses, and other personal information of persons who have received lottery winnings directly, by assignment, or by other judgment are exempt from disclosure under the FOIA as the information is entirely unrelated to any inquiry regarding the inner working of government and would constitute a clearly unwarranted invasion of an individual's privacy. Public disclosure of such personal information has the potential to endanger individuals.

Sutton v City of Oak Park, 251 Mich App 345; 650 NW2d 404 (2002). Internal investigation records may be exempt as personnel records of a law enforcement agency if the public interest favors nondisclosure over disclosure.

Swickard v Wayne County Medical Examiner, 438 Mich 536; 475 NW2d 304 (1991). In deciding whether a disclosure of requested information would constitute an invasion of privacy, one looks to constitutional law and common-law as well as customs, mores, or ordinary views of the community. The release of autopsy reports and toxicology test results are not unwarranted infringements on the right to privacy of either the deceased or the deceased's family. The autopsy reports and toxicology test results are not within the doctor-patient privilege.

Swickard v Wayne County Medical Examiner, 196 Mich App 98; 492 NW2d 497 (1992). A party who prevails completely in an action asserting the right to inspect or receive a copy of a public record under the FOIA is entitled to reasonable attorney fees, costs, and disbursements. No time limit is imposed upon a prevailing party for requesting attorney fees.

Tallman v Cheboygan Area Schools, 183 Mich App 123; 454 NW2d 171 (1990). A public body may charge a fee for providing a copy of a public record. Section 4 of the Act provides a method for determining the charge for records, and a public body is obligated to arrive at its fees pursuant to that section.

Taylor v Lansing Board of Water & Light, 272 Mich App 200; 725 NW2d 84 (2006). Personnel files, emails, correspondence, and expense reimbursement information were non-exempt public records subject to the FOIA. Section

13(1)(v) did not exempt the records because plaintiff was not a party to a civil action against defendant when she requested the records. The Court acknowledged that the plaintiff was the admitted best friend of a party involved in a separate civil action against the defendant and that it could be inferred that the plaintiff was merely an instrument through which the plaintiff in the other action sought to gain information. Although the Court described the literal application of the exemption in section 13(1)(v) as absurd in this case, it held the statute must be enforced as written because the statute was unambiguous.

Thomas v City of New Baltimore, 254 Mich App 196; 657 NW2d 530 (2002). Where a person sues under the FOIA and prevails in an action to compel disclosure, the person must be awarded attorney fees, costs, and disbursements, even though the action has been rendered moot by acts of the public body in disposing of the documents.

Thomas v State Board of Law Examiners, 210 Mich App 279; 533 NW2d 3 (1995). The State Board of Law Examiners is an agent of the judiciary and, therefore, not a public body subject to the disclosure requirements of the FOIA.

Title Office, Inc v Van Buren Co Treasurer, 469 Mich 516; 676 NW2d 207 (2004). Fees for electronic copies of property tax records requested from a county treasurer are computed according to the Transcripts and Abstracts of Records Act (TARA), as an exception under the FOIA, section 4(1). "Transcripts," as used in the TARA, is intended to apply to any reproduction of a record on file in the treasurer's office, including electronic copies.

Tobin v Michigan Civil Service Comm'n, 416 Mich 661; 331 NW2d 184 (1982). The FOIA authorizes, but does not require, nondisclosure of public records falling within a FOIA exemption. And the FOIA does not compel a public body to conceal information at the insistence of one who opposes its release.

Traverse City Record Eagle v Traverse City Area Public Schools, 184 Mich App 609; 459 NW2d 28 (1990). A tentative bargaining agreement between a school district and the union that represents the school district's employees was held to be exempt from disclosure pursuant to section 13(1)(n) (now section 13(1)(m)) of the FOIA. This section exempts communication and notes within a public body or between public bodies that are advisory, nonfactual, and preliminary to a final decision. The public interest in encouraging frank communications between the employer and its employees, which leads to effective negotiations, in this case outweighs the public interest in disclosure.

Truel v City of Dearborn, 291 Mich App 125; 804 NW2d 744 (2010). Transcripts of statements given by four police officers during an investigation conducted pursuant to investigative subpoenas issued by the State Police and County Prosecutor's office were exempt from disclosure by statute. Michigan also recognizes the deliberative process privilege, which applies to pre-decision deliberative materials. Although this privilege can be overcome by a showing of sufficient need, the privilege was not overcome in this case.

Walen v Dep't of Corrections, 443 Mich 240; 505 NW2d 519 (1993). A prison disciplinary hearing falls within the definition of "contested case" and, therefore, pursuant to section 11(1) of the FOIA, must be published and made available to the public. The Department of Corrections satisfied the publication requirement by retaining the final orders and decisions from disciplinary hearings in prisoners' files.

Walloon Lake Water System, Inc v Melrose Twp, 163 Mich App 726; 415 NW2d 292 (1987). A public body does not escape liability under the FOIA merely because a capricious act on its part, in this case, willfully disposing of the public record knowing that a suit was pending under the FOIA for disclosure, rendered the lawsuit moot.

Wayne County Prosecutor v City of Detroit, 185 Mich App 265; 460 NW2d 298 (1990). For purposes of the FOIA, a county prosecutor is a person as defined in the act. This allows him or her, in his or her official capacity, to request documents from public bodies under the FOIA.

Wilson v City of Eaton Rapids, 196 Mich App 671; 493 NW2d 433 (1992). A public body's attempt to reconcile a contractual obligation to maintain the confidentiality of a resignation agreement with its statutory obligation under the FOIA does not constitute arbitrary and capricious behavior. Under these circumstances, the plaintiff was not deemed the prevailing party and therefore was not entitled to attorney fees, costs and disbursements.

Yarbrough v Dep't of Corrections, 199 Mich App 180; 501 NW2d 207 (1993). Records compiled in the course of an ongoing internal investigation into an alleged sexual harassment are "investigating records compiled for law enforcement purposes" within the meaning of said terms in section 13(1)(b)(*i*) of the FOIA.

OPEN MEETINGS ACT HANDBOOK

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OPEN MEETINGS ACT

THE BASICS

The Act

The Open Meetings Act (OMA) is 1976 PA 267, MCL 15.261 through 15.275. The OMA took effect January 1, 1977. In enacting the OMA, the Legislature promoted a new era in governmental accountability and fostered openness in government to enhance responsible decision making.[1]

Nothing in the OMA prohibits a public body from adopting an ordinance, resolution, rule, or charter provision that requires a greater degree of openness relative to public body meetings than the standards provided for in the OMA.[2]

What Bodies are Covered?

The OMA applies to all meetings of a public body.[3] A "public body" is broadly defined as:

> [A]ny state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to *exercise governmental or proprietary authority or perform a governmental or proprietary function*; a lessee of such a body performing an essential public purpose and function pursuant to the lease agreement; or the board of a nonprofit corporation formed by a city under section 4o of the home rule city act, 1909 PA 279, MCL 117.4o.[4] [Emphasis added.]

As used in the OMA, the term "public body" connotes a collective entity and does not include an individual government official.[5] The OMA also does not apply to private,

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[1] *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211, 222–223; 507 NW2d 422 (1993).
[2] MCL 15.261.
[3] MCL 15.263. When the Handbook refers to a "board", the term encompasses all boards, commissions, councils, authorities, committees, subcommittees, panels, and any other public body.
[4] MCL 15.262(a). The provision in the OMA that includes a lessee of a public body performing an essential public purpose is unconstitutional because the title of the act does not refer to organizations other than "public bodies." OAG, 1977-1978, No 5207, p 157 (June 24, 1977). Certain boards are excluded "when deliberating the merits of a case." MCL 15.263(7). See also MCL 15.263(8) and (10).
[5] *Herald Co v Bay City*, 463 Mich 111, 129–133; 614 NW2d 873 (2000) (holding that a city manager is not subject to the OMA); *Craig v Detroit Public Schs Chief Executive Officer*, 265 Mich App 572, 579; 697 NW2d 529 (2005). OAG, 1977-1978, No 5183A, p 97 (April 18, 1977).

nonprofit corporations.[6] Furthermore, an advisory body without express decision-making authority is not a "public body" under the OMA.[7]

Public Notice Requirements

A meeting of a public body cannot be held unless public notice is given consistent with the OMA.[8] A public notice must contain the public body's name, telephone number, and address, and must be posted at its principal office and any other locations the public body considers appropriate.[9] If a public body is a part of a state department, a public notice must also be posted in the principal office of the state department.[10]

Public notice requirements are specific to the type of meeting:

1. 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.
2. For a change in schedule of regular meetings of a public body, there shall be posted within three days after the meeting at which the change is made, a public notice stating the new dates, times, and places of its regular meetings.
3. 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.
4. A meeting of a public body which is recessed for more than 36 hours shall be reconvened only after public notice has been posted at least 18 hours before the reconvened meeting.[11]

At their first meeting of the calendar or fiscal year, each board must set the dates, times, and places of the board's regular meetings for the coming year. The OMA

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[6] OAG, 1985-1986, No 6352, p 252 (April 8, 1986) (The Michigan High School Athletic Association is not subject to the OMA.). See also *Perlongo v Iron River Coop TV Antenna Corp*, 122 Mich App 433; 332 NW2d 502 (1983).

[7] See *Pinebrook Warren, LLC v City of Warren,* ___Mich App ___ (2022) holding that a review committee was not a public body subject to the OMA because the ordinance that created the committee did not grant the committee with authority to make final licensing decisions, which was retained by the city council. The Court found the lack of an express grant of authority to exercise governmental or proprietary authority or to perform a governmental or proprietary function was determinative.

[8] MCL 15.265(1); *Nicholas v Meridian Charter Twp*, 239 Mich App 525, 531; 609 NW2d 574 (2000).

[9] MCL 15.264(a)-(c).

[10] MCL 15.264(c).

[11] MCL 15.265(2)-(5).

does not require any particular number of meetings. The board may cancel or reschedule its regular meetings.

The minimum 18 hour notice requirement is not fulfilled if the public is denied access to the notice of the meeting for any part of the 18 hours.[12] The requirement may be met by posting at least 18 hours in advance of the meeting using a method designed to assure access to the notice. For example, the public body can post the notice at the main entrance visible on the outside of the building that houses the principal office of the public body.[13] If the public body maintains an "official internet presence" that includes monthly or more frequent updates of public meetings agendas and minutes, they must also post notice of a special meeting at least 18 hours before the meeting on a portion of the body's website fully accessible to the public.[14]

A public body must send copies of the public notices by first class mail to a requesting party, upon the party's payment of a yearly fee of not more than the reasonable estimated cost of printing and postage. Upon written request, a public body, at the same time a public notice of a meeting is posted, must provide a copy of the public notice to any newspaper published in the state or any radio or television station located in the state, free of charge.[15]

Agendas and the OMA

While the OMA requires a public body to give public notice when it meets, it has no requirement that the public notice include an agenda or a specific statement as to the purpose of a meeting.[16] No agenda format is required by the OMA.[17]

Penalties for OMA Violations

A public official who "intentionally violates" the OMA may be found guilty of a misdemeanor[18] and may be personally liable for actual and exemplary damages of not more than $500 for a single meeting.[19] The exemptions in the OMA must be strictly construed. The "rule of lenity" (i.e., courts should mitigate punishment when

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[12] OAG, 1979-1980, No 5724, p 840 (June 20, 1980).
[13] OAG No 5724.
[14] MCL 15.265(4).
[15] MCL 15.266.
[16] OAG, 1993-1994, No 6821, p 199 (October 18, 1994). But, as discussed in OAG No 6821, other statutes may require a public body to state in its notice the business to be transacted at the meeting.
[17] *Lysogorski v Bridgeport Charter Twp*, 256 Mich App 297, 299; 662 NW2d 108 (2003).
[18] MCL 15.272.
[19] MCL 15.273.

the punishment in the criminal statute is unclear) does not apply to construction of the OMA's exemptions.[20]

A decision made by a public body may be invalidated by a court, if the public body has not complied with the requirements of MCL 15.263(1), (2), and (3) [i.e., making decisions at a public meeting] or if failure to give notice in accordance with section 5 has interfered with substantial compliance with MCL 15.263(1), (2), and (3), and the court finds that the noncompliance has impaired the rights of the public under the OMA.

Lawsuits to Compel Compliance

Actions must be brought within 60 days after the public body's approved minutes involving the challenged decision are made publicly available.[21] If the decision involves the approval of contracts, the receipt or acceptance of bids, or the procedures pertaining to the issuance of bonds or other evidences of indebtedness, the action must be brought within 30 days after the approved minutes are made publicly available.[22] If the decision of a state public body is challenged, venue is in the Court of Claims.[23]

Correcting Non-Conforming Decisions

In any case where a lawsuit has been initiated to invalidate a public body's decision on the ground that it was not made in conformity with the OMA, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with the OMA. A decision reenacted in this manner shall be effective from the date of reenactment and is not rendered invalid by any deficiency in its initial enactment.[24] If the board acts quickly, the reenactment may defeat a claim for attorney's fees, since plaintiffs would not be successful in "obtaining relief in the action" within the meaning of the OMA.[25] The public body need not, however, wait for a lawsuit to correct a decision made at a meeting that did not comply with the OMA.[26]

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[20] *People v Whitney*, 228 Mich App 230, 244; 578 NW2d 329 (1998).
[21] MCL 15.270(3)(a).
[22] MCL 15.270(3)(b).
[23] MCL 15.270(4).
[24] MCL 15.270(5).
[25] *Leemreis v Sherman Twp*, 273 Mich App 691, 700; 731 NW2d 787 (2007). *Felice v Cheboygan County Zoning Comm*, 103 Mich App 742, 746; 304 NW2d 1 (1981).
[26] *Lockwood v Ellington Twp,* 323 Mich App 392, 405; 917 NW2d 413 (2018).

DECISIONS MUST BE MADE IN PUBLIC MEETINGS

All Decisions Must be Made at a Meeting Open to the Public

The OMA provides that "[a]ll decisions of a public body shall be made at a meeting open to the public," and that, with limited exceptions, "[a]ll deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public."[27] The OMA defines "decision" to mean "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."[28]

The OMA does not prescribe any specific form of formal voting requirement, but any kind of process that equates to decision-making falls under the act and so must be conducted at an open meeting.[29] For example, where board members use telephone calls or sub-quorum meetings to achieve the same intercommunication that could have been achieved in a full board or commission meeting, the members' conduct is susceptible to "round-the-horn" decision-making, which achieves the same effect as if the entire board had met publicly and formally cast its votes and would violate the OMA.[30]

Canvassing Board Members on How they Might Vote

Although similar to prohibited "round-the-horn" decision making described above, an informal canvas by one member of a public body to find out where the votes would be on a particular issue does not violate the OMA, so long as no decisions are made during the discussions and the discussions are not a deliberate attempt to the avoid the OMA.[31]

Meeting "Informally" to Discuss Matters

To promote openness in government, exceptions to the OMA must be construed strictly.[32] Thus, the closed session exception does not allow a quorum of a public

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[27] MCL 15.263(2) and (3).
[28] MCL 15.262(d).
[29] *Booth Newspapers, Inc,* 444 Mich at 229.
[30] *Booth Newspapers, Inc*, 444 Mich at 229 ("[A]ny alleged distinction between the [public body's] consensus building and a determination or action, as advanced in the OMA's definition of 'decision,' is a distinction without a difference.").
[31] *St Aubin v Ishpeming City Council*, 197 Mich App 100, 103; 494 NW2d 803 (1992).
[32] *Wexford County Prosecutor v Pranger*, 83 Mich App 197, 201, 204; 268 NW2d 344 (1978).

body to meet to discuss matters of public policy, even if there is no intention that the deliberations will lead to a decision on that occasion.[33]

When may a Quorum of a Board Gather Outside an Open Meeting Without Violating the OMA?

The OMA "does not apply to a meeting which is a social or chance gathering or conference not designed to avoid this act."[34] The OMA, however, does not define the terms "social or chance gathering" or "conference," and provides little direct guidance as to the precise scope of this exemption.[35]

In addition to a purely social gathering or chance gathering[36] that does not involve discussions of public policy among the members of the board, a quorum may accept an invitation to address a civic organization,[37] listen to the concerns of a neighborhood organization, or observe demonstrations, if the board doesn't deliberate toward, or make, a decision.[38]

A board quorum also may meet for a workshop, seminar, informational gathering, or professional conference designed to convey, to the conference participants, information about areas of professional interest common to all conference participants rather than a more limited focus on matters or issues of particular interest to a single public body.[39] However, when gatherings are designed to receive input from officers or employees of the public body, the OMA requires that the gathering be held at a public meeting.[40]

For example, the OMA was not violated when several members of the board of county commissioners attended a public meeting of the county planning committee (which had more than fifty members, two who were county commissioners), which resulted in a quorum of the board being present at the meeting (without the

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[33] Compare OAG, 1977-1978, No 5298, p 434, 435 (May 2, 1978). See also OAG, 1979-1980, No 5444, p 55, 56 (February 21, 1979) (explaining that anytime a quorum of a public body meets and considers a matter of public policy, the meeting must comply with the OMA's requirements), with OAG, 1979-1980, No 5437, p 36, 37 (February 2, 1979) (explaining that where members of a public body constituting a quorum come together by chance, the gathering is exempt from the OMA; however, even at a chance meeting, matters of public policy may not be discussed by the members with each other).

[34] MCL 15.263(10).

[35] OAG, 1981-1982, No 6074, p 662, 663 (June 11, 1982).

[36] OAG, 1979-1980, No 5437, p 36 (February 2, 1979).

[37] OAG, 1977-1978, No 5183, p 21, 35 (March 8, 1977).

[38] OAG, 1977-1978, No 5364, p 606, 607 (September 7, 1978).

[39] OAG, 1979-1980, No 5433, p 29, 31 (January 31, 1979).

[40] OAG No 5433 at p 31.

meeting also being noticed as a county commission meeting), since the nonmember commissioners did not engage in deliberations or render decisions.[41]

Advisory Committees and the OMA

The OMA does not apply to committees and subcommittees composed of less than a quorum of the full public body if they "are merely advisory or only capable of making 'recommendations concerning the exercise of governmental authority.'"[42]

Where, on the other hand, a committee or subcommittee is empowered to act on matters in such a fashion as to deprive the full public body of the opportunity to consider a matter, a decision of the committee or subcommittee "is an exercise of governmental authority which effectuates public policy" and the committee or subcommittee proceedings are, therefore, subject to the OMA.[43]

If a joint meeting of two committees of a board (each with less than a quorum of the board) results in the presence of a quorum of the board, the board must comply in all respects with the OMA and notice of the joint meeting must include the fact that a quorum of the board will be present.[44]

Use of Email or Other Electronic Communications Among Board Members During an Open Meeting

Email, texting, or other forms of electronic communications among members of a board or commission during an open meeting that involve deliberations toward decision-making or actual decisions violates the OMA, since those communications are not open to the public and, in effect, transform the open meeting into a "closed" session.

While the OMA does not require that all votes by a public body must be by roll call, voting requirements under the act are met when a vote is taken by roll call, show of hands, or other method that informs the public of the public official's decision rendered by his or her vote. Thus, the OMA bars the use of email or other electronic

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[41] OAG, 1989-1990, No 6636, p 253 (October 23, 1989), cited with approval in *Ryant v Cleveland Twp*, 239 Mich App 430, 434–435; 608 NW2d 101 (2000) and *Nicholas*, 239 Mich App at 531–532. If, however, the noncommittee board members participate in committee deliberations, the OMA would be violated. *Nicholas*, 239 Mich App at 532.

[42] OAG, 1997-1998, No 6935, p 18 (April 2, 1997); OAG No 5183 at p 40.

[43] *Schmiedicke v Clare School Bd*, 228 Mich App 259, 261, 263-264; 577 NW2d 706 (1998); *Morrison v East Lansing*, 255 Mich App 505; 660 NW2d 395 (2003); and OAG, 1997-1998, No 7000, p 197 (December 1, 1998) (A committee composed of less than a quorum of a full board is subject to the OMA, if the committee is effectively authorized to determine whether items will or will not be referred for action by the full board), citing OAG, 1977- 1978, No 5222, p 216 (September 1, 1977).

[44] OAG, 1989-1990, No 6636, at p 254.

communications to conduct a secret ballot at a public meeting, since it would prevent citizens from knowing how members of the public body have voted.[45]

Moreover, the use of electronic communications for discussions or deliberations, which are not, at a minimum, able to be heard by the public in attendance at an open meeting are contrary to the OMA's core purpose – the promotion of openness in government.[46]

Using email to distribute handouts, agenda items, statistical information, or other such material during an open meeting should be permissible under the OMA, particularly when copies of that information are also made available to the public before or during the meeting.

CLOSED SESSIONS

Meeting in Closed Session

A public body may meet in a closed session *only* for one or more of the permitted purposes specified in section 8 of the OMA.[47] The limited purposes for which closed sessions are permitted include, among others:[48]

1. 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*.[49]
2. For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement *if either negotiating party requests a closed hearing*.[50]
3. To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.[51]

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[45] See *Esperance v Chesterfield Twp*, 89 Mich App 456, 464; 280 NW2d 559 (1979); OAG, 1977-1978, No 5262, p 338 (January 31, 1978).
[46] See *Booth Newspapers, Inc*, 444 Mich at 229; *Schmiedicke*, 228 Mich App at 263, 264; *Wexford County Prosecutor*, 83 Mich App at 204.
[47] MCL 15.268. OAG, 1977-1978, No 5183, at p 37.
[48] The other permissible purposes deal with public primary, secondary, and post-secondary student disciplinary hearings – section 8(b); state legislature party caucuses – section 8(g); compliance conferences conducted by the Michigan Department of Community Health – section 8(i); and public university presidential search committee discussions – section 8(j); and school boards considering security planning to address threats to the safety of students and staff – section 8(k).
[49] MCL 15.268(a) (Emphasis added).
[50] MCL 15.268(c) (Emphasis added).
[51] MCL 15.268(d).

4. 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.[52]
5. 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, 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.[53]
6. To consider material exempt from discussion or disclosure by state or federal statute.[54] But note – a board is not permitted to go into closed session to discuss an attorney's oral opinion, as opposed to a written legal memorandum.[55]

Decisions Must be Made During an Open Meeting, Not the Closed Session

Section 3(2) of the OMA requires that "[a]ll decisions of a public body shall be made at a meeting open to the public."[56] Section 2(d) of the OMA defines "decision" to mean "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."[57] And so, the purposes of the closed session must be strictly limited to the exceptions listed above; no decision making is permitted in the closed session.

A Closed Session Must be Conducted During the Course of an Open Meeting

Section 2(c) of the OMA defines "closed session" as "a meeting or part of a meeting of a public body that is closed to the public."[58] Section 9(1) of the OMA provides that

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[52] MCL 15.268(e) (Emphasis added).
[53] MCL 15.268(f) (Emphasis added).
[54] MCL 15.268(h).
[55] *Booth Newspapers, Inc v Wyoming City Council*, 168 Mich App 459, 467, 469-470; 425 NW2d 695 (1988).
[56] MCL 15.263(2). See also *St Aubin*, 197 Mich App at 103; OAG, 1977-1978, No 5262, at p 338–339 (The OMA prohibits a voting procedure at a public meeting which prevents citizens from knowing how members of the public body have voted.); OAG, 1979-1980, No 5445, p 57 (February 22, 1979) (A public body may not take final action on any matter during a closed meeting.).
[57] MCL 15.262(d).
[58] MCL 15.262(c).

the minutes of an open meeting must include "the purpose or purposes for which a closed session is held."[59]

Going into Closed Session

Section 7(1) of the OMA[60] sets out the procedure for calling a closed session:

> 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.

Thus, a public body may go into closed session only upon a motion duly made, seconded, and adopted by a 2/3 roll call vote of the members appointed and serving[61] during an open meeting for the purpose of (1) considering the purchase or lease of real property, (2) consulting with their attorney, (3) considering an employment application, or (4) considering material exempt from disclosure under state or federal law. A majority vote is sufficient for going into closed session for the other OMA permitted purposes.

It is suggested that every motion to go into closed session should cite one or more of the permissible purposes listed in section 8 of the OMA.[62] An example of a motion to go into closed session is:

> I move that the Board meet in closed session under section 8(e) of the Open Meetings Act, to consult with our attorney regarding trial or settlement strategy in connection with [the name of the specific lawsuit].[63]

Another example is the need to privately discuss with the public body's attorney a memorandum of advice as permitted under section 8(h) of the OMA, which provides that "a public body may meet in a closed session . . . to consider material exempt from discussion or disclosure by state or federal statute."[64] The motion should cite section 8(h) of the OMA and the statutory basis for the closed session, such as

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[59] MCL 15.269(1).
[60] MCL 15.267(1).
[61] And not just those attending the meeting. OAG No 5183 at p 37.
[62] MCL 15.268.
[63] "[I]t is clear that the Legislature intended for public bodies to name the pending litigation before entering a closed session." *Vermilya v Delta College Bd of Trustees*, 325 Mich App 416, 421; 925 NW2d 897 (2018). The *Vermilya* court cited the OMA Handbook's recommended motion language with approval. 325 Mich App at 423.
[64] MCL 15.268(h). Proper discussion of a written legal opinion at a closed meeting is, with regard to the attorney-client privilege exemption to the OMA, limited to the meaning of any strictly legal advice presented in the written opinion. *People v Whitney*, 228 Mich App at 245–248.

section 13(1)(g) of the Freedom of Information Act, which exempts from public disclosure "[i]nformation or records subject to the attorney-client privilege."[65]

Leaving a Closed Session

The OMA is silent as to how to leave a closed session. A motion may be made to end the closed session with a majority vote needed for approval. While this is a decision made in a closed session, it is not a decision that "effectuates or formulates public policy."

When the public body has concluded its closed session, the open meeting minutes should state the time the public body reconvened in open session and any votes on matters discussed in the closed session must occur in an open meeting.

Avoid Using the Terms "Closed Session" and "Executive Session" Interchangeably

The term "executive session" does not appear in the OMA, but "closed session" does. "Executive session" is more of a private sector term and is often used to describe a private session of a board of directors, which is not limited as to purpose, where actions can be taken, and no minutes are recorded. This is not the same as a "closed session" under the OMA, and so public bodies should avoid using the term "executive session" to refer to a "closed session."

Staff and Others May Join the Board in a Closed Session

A public body may rely upon its officers and employees for assistance when considering matters in a closed session. A public body may also request private citizens to assist, as appropriate, in its considerations.[66]

Forcibly Excluding Persons from a Closed Session

A public body may, if necessary, exclude an unauthorized individual who intrudes upon a closed session by either (1) having the individual forcibly removed by a law enforcement officer, or (2) by recessing and removing the closed session to a new location.[67]

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[65] MCL 15.243(1)(g).
[66] OAG, 1979-1980, No 5532, p 324 (August 7, 1979).
[67] OAG, 1985-1986, No 6358, p 268 (April 29, 1986), citing *Regents of the Univ of Mich v Washtenaw County Coalition Against Apartheid*, 97 Mich App 532; 296 NW2d 94 (1980).

ATTENDING OPEN MEETINGS

Excluding Individuals

No one may be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.[68]

Identifying Public Attendees

No one may be required to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attend a public meeting.[69]

Building security at the meeting site may cause issues. Members of the public might object, based on the OMA, to signing in to gain access to the building where a public meeting is being held.[70] Therefore, it is recommended that public bodies meet in facilities or areas not subject to public access restrictions.

If the public body wishes the members of the public to identify themselves at the meeting, the board chair may announce something like this:

> The Board would appreciate having the members of the public attending the meeting today identify themselves and mention if they would like the opportunity to speak during the public comment period. However, you do not need to give your name to attend this meeting. When the time comes to introduce yourself and you do not want to do so, just say pass.

Since speaking at the meeting is a step beyond "attending" the public meeting and the OMA provides that a person may address the public body "under rules established and recorded by the public body," the board may establish a rule requiring individuals to identify themselves if they wish to speak at a meeting.[71]

Limiting Public Comment

A public body may adopt a rule imposing individual time limits for members of the public addressing the public body.[72] In order to carry out its responsibilities, the board can also consider establishing rules allowing the chairperson to encourage groups to designate one or more individuals to speak on their behalf to avoid cumulative comments. But a rule limiting the period of public comment may not be

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[68] MCL 15.263(6).
[69] MCL 15.263(4).
[70] In addition, "[a]ll meetings of a public body . . . shall be held in a place available to the general public." MCL 15.263(1).
[71] MCL 15.263(5). OAG, 1977-1978, No 5183, at p 34.
[72] OAG, 1977-1978, No 5332, p 536 (July 13, 1978) (The rule must be duly adopted and recorded.). OAG, 1977-1978. No 5183, at p 34.

applied in a manner that denies a person the right to address the public body, such as by limiting all public comment to a half-hour period.[73]

Meeting Location

The OMA only requires that a meeting be held "in a place available to the general public;" it does not dictate that the meeting be held within the geographical limits of the public body's jurisdiction.[74] However, if a meeting is held so far from the public which it serves that it would be difficult or inconvenient for its citizens to attend, the meeting may be considered as not being held at a place available to the general public. Whenever possible, the meeting should be held within the public body's geographical boundaries. A local public body's meeting may not take place in a residential building, if a nonresidential building is available without cost within the local unit's boundaries.[75]

Physical Attendance at Meetings

The OMA has been interpreted to require members of public bodies to be physically present at meetings held within a physical space.[76] The OMA generally does not provide for remote attendance by public body members or members of the public, except to accommodate the absence of a member of a public body due to the member's military duty.[77]

Providing Reasonable Accommodations Under the Americans with Disabilities Act

The Americans with Disabilities Act (ADA), 42 USC 12131 *et seq*, and Rehabilitation Act, MCL 395.81 *et seq*, require state and local boards and commissions to provide reasonable accommodations, which could include an option to participate virtually, to qualified individuals with a disability who request an

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[73] OAG No 5332 at p 538.
[74] OAG, 1979-1980, No 5560, p 386 (September 13, 1979). However, local charter provisions or ordinances may impose geographical limits on public body meetings.
[75] MCL 15.265(6). Under this provision, 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 shall be at the bottom of the display advertisement, set off in a conspicuous manner, and include the following language: "This meeting is open to all members of the public under Michigan's open meetings act."
[76] As part of the measures to prevent the spread of COVID-19, the OMA was amended to temporarily allow public bodies for limited periods to conduct and attend meetings by electronic means. The amendment expired after December 31, 2021, and, generally, only those board members absent due to military duty may participate by electronic means - this provision was part of the OMA before the pandemic.
[77] MCL 15.263(2).

accommodation in order to fully participate in a meeting as a board or commission member or as a member of the general public.[78]

Timing of Public Comment

A public body has discretion under the OMA when to schedule public comment during the meeting.[79] Thus, scheduling public comment at the beginning[80] or the end[81] of the meeting agenda does not violate the OMA. The public has no right to address the commission during its deliberations on a particular matter.[82]

Taping and Broadcasting

The right to attend a public meeting includes the right to tape-record, videotape, broadcast live on radio, and telecast live on television the proceedings of a public body at the public meeting.[83] A board may establish reasonable regulations governing the televising or filming by the electronic media of a hearing open to the public in order to minimize any disruption to the hearing, but it may not prohibit such coverage.[84] And the exercise of the right to tape-record, videotape, and broadcast public meetings is not be dependent upon the prior approval of the public body.[85]

Sound Recordings of Public Meetings

Every meeting of a public body that is a state licensing board, state commission panel, or state rule-making board, except a meeting or part of a meeting held in closed session, must be recorded in a manner that allows for the capture of sound, including, without limitation, in any of the following formats:

a. A sound-only recording.
b. A video recording with sound and picture.
c. A digital or analog broadcast capable of being recorded.

The recording made under this provision must be maintained for a minimum of one year from the date of the meeting in a format that can be reproduced upon a request under the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246. [86]

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[78] See OAG, 2021-2022, No 7318.
[79] MCL 15.263(5).
[80] *Lysogorski*, 256 Mich App at 302.
[81] OAG, 1979-1980, No 5716, p 812 (June 4, 1980).
[82] OAG, 1977-1978, No 5310, p 465, 468 (June 7, 1978).
[83] MCL 15.263(1).
[84] OAG, 1987-1988, No 6499, p 280 (February 24, 1988).
[85] MCL 15.263(1).
[86] MCL 15.269a. This Section is effective as of 91 days after adjournment of the 2022 regular session.

MINUTES

What Must be in the Minutes

At a minimum, the minutes must show 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 must include all roll call votes taken at the meeting.[87] The OMA does not prohibit a public body from preparing a more detailed set of minutes of its public meetings if it chooses to do so.[88]

When Must the Minutes be Available

Proposed minutes must be made available for public inspection within eight days after the applicable meeting. Approved minutes must be made available for public inspection within five days after the public body's approval.[89]

When Must the Minutes be Approved

Minutes must be approved at the board's next meeting.[90] Corrected minutes must show both the original entry and the correction (for example, using a "strikethrough" word processing feature).

Closed Session Minutes

A separate set of minutes must be taken for closed sessions. While closed session minutes must be approved in an open meeting (with contents of the minutes kept confidential), the board may meet in closed session to consider approving the minutes.[91]

Closed session minutes shall only be disclosed if required by a civil action filed under sections 10, 11, or 13 of the OMA.[92] The board secretary may furnish the minutes of a closed session of the body to a board member. A member's dissemination of closed session minutes to the public, however, is a violation of the OMA, and the member risks criminal prosecution and civil penalties.[93] An

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[87] MCL 15.269(1).
[88] Informational letter to Representative Jack Brandenburg from Chief Deputy Attorney General Carol Isaacs dated May 8, 2003.
[89] MCL 15.269(3).
[90] MCL 15.269(1).
[91] OAG, 1985-1986, No 6365, p 288 (June 2, 1986). This, of course, triggers the need for more closed session minutes.
[92] MCL 15.270, 15.271, and 15.273; *Local Area Watch v Grand Rapids*, 262 Mich App 136, 143; 683 NW2d 745 (2004); OAG, 1985-1986 No 6353, p 255 (April 11, 1986).
[93] OAG, 1999-2000, No 7061, p 144 (August 31, 2000).

audiotape of a closed session meeting of a public body is part of the minutes of the session meeting and, thus, must be filed with the clerk of the public body for retention under the OMA.[94] As part of the closed session minutes, the audiotape may also only be disclosed if required by a civil action filed under sections 10, 11, or 13 of the OMA.[95]

Closed session minutes may be destroyed one year and one day *after approval of the minutes of the regular meeting at which the closed session occurred*.[96]

Inadvertent Omissions from the Minutes

The OMA does not invalidate a decision due to a simple error in the minutes, such as inadvertently omitting the vote to go into closed session from a meeting's minutes.[97]

PARLIAMENTARY PROCEDURES

Core Principle

For the actions of a public body to be valid, they must be approved by a majority vote of a quorum, absent a controlling provision to the contrary, at a lawfully convened meeting.[98]

Quorum

A quorum is the minimum number of members who must be present for a board to act. Any substantive action taken in the absence of a quorum is invalid. If a public body properly notices the meeting under OMA, but lacks a quorum when it convenes, the board members in attendance may receive reports and comments from the public or staff, ask questions, and comment on matters of interest, but may not make any decisions.[99]

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[94] *Kitchen v Ferndale City Council*, 253 Mich App 115; 654 NW2d 918 (2002).
[95] MCL 15.270, 15.271, and 15.273; *Local Area Watch v Grand Rapids*, 262 Mich App 136, 143; 683 NW2d 745 (2004); OAG, 1985-1986 No 6353, p 255 (April 11, 1986).
[96] *Kitchen v Ferndale City Council*, 253 Mich App 115; 654 NW2d 918 (2002).
[97] *Willis v Deerfield Twp*, 257 Mich App 541, 554; 669 NW2d 279 (2003).
[98] OAG, 1979-1980, No 5808, p 1060 (October 30, 1980). Robert's Rules of Order Newly Revised (RRONR) (10th ed), p 4. We cite to Robert's Rules in this Handbook as a leading guide on parliamentary procedures. This is not to imply that public bodies are, as a general rule, bound by Robert's Rules.
[99] OAG, 2009-2010, No 7235 (October 9, 2009).

What is the Quorum?

To determine a quorum for any given board, look to the statute, charter provision, or ordinance creating the board in question. On the state level, the Legislature in recent years has set the board quorum in the governing statute itself. The statute will often provide that "a majority of the board appointed and serving shall constitute a quorum." For a 15-member board, that means eight would be the quorum, assuming there are 15 members appointed and serving. Without more in the statute, as few as five board members could then decide an issue, since they would be a majority of a quorum.[100] But recent statutes often provide that "voting upon action taken by the board shall be conducted by majority vote of the members appointed and serving." In that instance, the board needs at least eight favorable votes to act.[101] The Legislature has a backstop statute, which provides that any provision that gives "joint authority to 3 or more public officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority."[102]

Losing a Quorum

Even if a meeting begins with a quorum present, the board loses its right to conduct substantive action whenever the attendance of its members falls below the necessary quorum.[103]

Disqualified Members

A member of a public body who is disqualified due to a conflict of interest may not be counted to establish a quorum to consider that matter.[104]

Expired-term Members

Absent a contrary controlling provision, the general rule is that a public officer holding over after his or her term expires may continue to act until a successor is

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[100] See OAG, 1977-1978, No 5238, p 261 (November 2, 1977).
[101] See OAG, 1979-1980, No 5808, p 1061.
[102] MCL 8.3c. *Wood v Bd of Trustees of the Policemen & Firemen Retirement Sys of Detroit*, 108 Mich App 38, 43; 310 NW2d 39 (1981).
[103] RRONR (10th ed), p 337-338.
[104] OAG, 1981-1982, No 5916, p 218 (June 8, 1981). But see MCL 15.342a, which provides a procedure for disqualified public officials to vote in some limited circumstances where a quorum is otherwise lacking for a public body to conduct business.

appointed and qualified, and so could be counted for quorum purposes and be permitted to vote.[105]

Resigned Members

The common law rule in Michigan is that a public officer's resignation is not effective until it has been accepted by the appointing authority (who, at the state level, is usually the governor). Acceptance of the resignation may be manifested by formal acceptance or by the appointment of a successor.[106] Thus, until a resignation is formally accepted or a successor appointed, the resigning member must be considered "appointed and serving," be counted for quorum purposes, and be permitted to vote.

Voting

- Abstain – To "abstain" means to refuse to vote. Thus, a board member does not "vote" to abstain. If a vote requires a majority or a certain percentage of the members present for approval, an abstention has the same effect as a "no" vote.[107]
- Adjourning the meeting – A presiding officer cannot arbitrarily adjourn a meeting without first calling for a vote of the members present.[108]
- Chairperson voting – Unless a contrary controlling provision exists, all board members may vote on any matter coming before a board.[109] If a board's presiding officer votes on a motion and that vote is tied, the presiding officer cannot then vote again to break the tie unless explicitly authorized by law.[110]
- Expired-term members – To determine when a member's term expires, look first to the statute, charter provision, or ordinance creating the public body. Many statutes provide that "a member shall serve until a successor is appointed." Absent a contrary controlling provision, the general rule is that a public officer

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[105] OAG, 1979-1980, No 5606, p 493 (December 13, 1979), citing *Greyhound Corp v Pub Serv Comm*, 360 Mich 578, 589-590; 104 NW2d 395 (1960). See also, *Cantwell v City of Southfield*, 95 Mich App 375; 290 NW2d 151 (1980).
[106] OAG, 1985-1986, No 6405, p 429, 430 (December 9, 1986), citing *Clark v Detroit Bd of Educ*, 112 Mich 656; 71 NW 177 (1897).
[107] RRONR (10th ed), p 390-395.
[108] *Dingwall v Detroit Common Council*, 82 Mich 568, 571; 46 NW 938 (1890).
[109] See OAG, 1981-1982, No 6054, p 617 (April 14, 1982).
[110] *Price v Oakfield Twp Bd*, 182 Mich 216; 148 NW 438 (1914).

holding over after his or her term expires may continue to act until a successor is appointed and qualified.[111]

- Imposing a greater voting requirement – Where the Legislature has required only a majority vote to act, public bodies can't impose a greater voting requirement, such as requiring a two-thirds vote of its members to alter certain policies or bylaws.[112]
- Majority – The term "majority" means "more than half."[113] For example, on a 15-member board, eight members constitute a majority.
- Proxy voting – The OMA requires that the deliberation and formulation of decisions effectuating public policy be conducted at open meetings.[114] Voting by proxy effectively forecloses any involvement by the absent board member in the board's public discussion and deliberations before the board votes on a matter effectuating public policy.[115] Without explicit statutory authority, this practice is not allowed.[116]
- Roll call vote – There is no bright line rule for conducting a roll call vote.[117] However, the following may be helpful in conducting such a vote. One, when a voice vote reveals a divided vote on the board (i.e., more than one no vote), a roll call vote should be conducted to remove doubt about the vote's count. Two, if board members are participating by teleconference where permitted by law, a roll call will permit the secretary to accurately record the entire vote. Three, when the board is acting on matters of significance, such as, contracts of

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[111] OAG, 1979-1980, No 5606, p 493 (December 13, 1979), citing *Greyhound Corp v Pub Serv Comm*, 360 Mich 578, 589-590; 104 NW2d 395 (1960). See also, *Cantwell v City of Southfield*, 95 Mich App 375; 290 NW2d 151 (1980).

[112] OAG, 1979-1980, No 5738, p 870 (July 14, 1980). OAG, 2001-2002, No 7081, p 27 (April 17, 2001), citing *Wagner v Ypsilanti Village Clerk*, 302 Mich 636; 5 NW2d 513 (1942).

[113] RRONR (10th ed), p 387.

[114] *Esperance v Chesterfield Twp*, 89 Mich App at 464, citing *Pranger*, 83 Mich App 197; 268 NW2d 344 (1978).

[115] Robert's Rules concur: "Ordinarily it [proxy voting] should neither be allowed nor required, because proxy voting is incompatible with the essential characteristics of a deliberative assembly in which membership is individual, personal, and nontransferable." RRONR (10th ed), p 414. The Michigan House and Senate do not allow proxy voting for their members.

[116] OAG, 2009-2010, No 7227, p (March 19, 2009). OAG, 1993-1994, No 6828, p 212 (December 22, 1994), citing *Dingwall*, 82 Mich at 571, where the city council counted and recorded the vote of absent members in appointing election inspectors. The Michigan Supreme Court rejected these appointments, ruling that "the counting of absent members and recording them as voting in the affirmative on all questions, was also an inexcusable outrage."

[117] "The fact that the Open Meetings Act prohibits secret balloting does not mean that all votes must be roll call votes." *Esperance*, 89 Mich App at 464 n 9. The OMA does provide that votes to go into closed session must be by roll call. MCL 15.267.

substantial size or decisions that will have multi-year impacts, a roll call vote is the best choice.

- Round-robin voting – This term means approval for an action outside of a public meeting by passing around a sign-off sheet. This practice has its roots in the legislative committee practice of passing around a tally sheet to gain approval for discharging a bill without a committee meeting. "Round-robining" defeats the public's right to be present and observe the manner in which the body's decisions are made and violates the OMA.
- Secret ballot – The OMA requires that all decisions and deliberations of a public body must be made at an open meeting, and the term "decision" is defined to include voting.[118] The OMA prohibits a "voting procedure at a public meeting that prevents citizens from knowing how members of a public body have voted."[119] Because the use of a secret ballot process would prevent this transparency, all board decisions subject to the OMA must be made by a public vote at an open meeting.[120]
- Tie vote – A tie vote on a motion means that the motion did not gain a majority. Thus, the motion fails.[121]

[118] See MCL 15.262(d) and 15.263(2) and (3).
[119] OAG, 1977-1978, No 5262, at p 338-339.
[120] *Esperance*, 89 Mich App at 464.
[121] *Rouse v Rogers*, 267 Mich 338; 255 NW 203 (1934). RRONR (10th ed), p 392.