

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: Public Policy Basis

- Open and Transparent Government
- Public entitled to “Full and Complete Information regarding the Affairs of Government . . .”



Detroit Water & Sewerage Department , Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

3

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: Public Policy Basis (users)

- The Freedom of Information Act was Designed to Promote Citizen Participation.
- Example of a Citizen Request:

Pursuant to the state open records law, Mich. Comp. Laws Secs. 15.231 to 15.246 , I write to request access to and a copy of the DWSD memo sent the week of August 11,2014 which announces the department's decision to hire Veolia Environmental Services to evaluate its operations.

Detroit Water & Sewerage Department , Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

4

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: Public Policy Basis (users)

- Who else uses FOIA?



Detroit Water & Sewerage Department , Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

5

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: Public Policy Basis

- Excerpt of a Lawyer's FOIA Request (38 Items total):

1) Produce any and all City of Detroit, Detroit Water and Sewerage Department documents, shutoff orders, computerized printouts and/or other material stating the addresses of residential customers from January 1, 2014 to present, where water service was terminated;

2) Produce any and all City of Detroit, Detroit Water and Sewerage Department documents, shutoff orders, computerized printouts and/or other material showing the addresses of the residential customers restored to service after their water was shut off from January 1, 2014 to present;

3) Produce any and all documents, shutoff orders, computerized printouts and/or other material showing the dollar amount owed for each City of Detroit, Detroit Water and Sewerage Department residential customers at the time of water termination from January 1, 2014 to present;

4) Produce any and all City of Detroit, Detroit Water and Sewerage Department documents, shutoff orders, computerized printouts and/or other material submitted to any and all City of Detroit employees and/or City of Detroit contractors, for the purpose of terminating water services to residential customers from January 1, 2014 to present;

5) Produce any and all of Emergency Manager Kevin Orr's Mayor Mike

Detroit Water & Sewerage Department , Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

6

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: Public Policy Basis

Public's right to access and transparency

v.

**Government's desire to recoup costs and limit liability
exposure**



Detroit Water & Sewerage Department, Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

7

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: What's New

- **The July 1, 2015, Revisions Require a Public Body to:**
 - **Adopt a FOIA Policy and Summary of that Policy which is Simple, Readable, and Available on its website.**
- &
- **Change and Limit the Way in Which Fees Are Charged.**

Detroit Water & Sewerage Department, Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

8

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: What's New

- The July 1, 2015, Amendments **Encourage** a Public Body to:
- Place as much information as possible on its website.
- &
- Respond Timely and Accurately.
- &
- Manage its Costs.

Detroit Water & Sewerage Department, Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

9

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: What's New

- The Revised Act Allows a Requester to Specify that Records are Provided through "non-paper physical media"



Detroit Water & Sewerage Department, Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

10

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: What's New

- The Revised FOIA Provides Greater detail on a Requester's Right to Appeal and Dispute Fees and the Process for those Actions.
- &
- Requires that any Lawsuit be Filed in the County where the Public Body is located.



Detroit Water & Sewerage Department , Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

11

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: Costs (Fees)

- A Public Body is only Allowed to Recover Costs if it Posts a Written Summary of its FOIA Policy on its website.
- &
- A Public Body May Recover Labor Costs for Searching, Locating, Examining, Separating, Redacting Records If:
 - *The Public Body can Show that Failure to Charge Would Result in Unreasonably High Costs because of the nature of the request.*

Detroit Water & Sewerage Department , Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

12

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: Costs (Fees)

- The labor cost cannot be more than the hourly wage of the lowest paid employee capable of retrieving the requested information.
- &
- All labor costs must be charged in “increments of 15 minutes” with all partial time increments “rounded down.”

Detroit Water & Sewerage Department , Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

13

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: Costs (Fees)

- A Public Body may use a Contractor to respond to a FOIA request; **But:**
- The use of a contractor must be disclosed on the public body’s Fee Calculation Form.



Detroit Water & Sewerage Department , Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

14

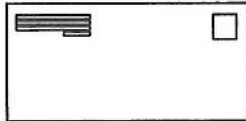
MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: Costs (Fees)

- **The Amount a Public Body may charge for a Contractor's Labor in responding to a FOIA Request is Limited to the Lesser of:**
 - 1) The lowest paid employee capable of retrieving the requested information;
 - or**
 - 2) 6 times the state minimum wage. (Michigan Minimum Wage is \$8.15 per hour. (6 times \$8.15= \$48.90 per hour.)

Detroit Water & Sewerage Department, Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

15

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: Costs(Fees)

- **A Public Body may Recover Actual Costs of Non-Paper Physical Media and Mailing.** 
- **Costs for Paper Copies generally may not exceed \$0.10 per page.**



Detroit Water & Sewerage Department, Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

16

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: Costs (Fees)

- **LIMITS**
- A Public Body **cannot** Charge more than the Itemized Labor, Material Costs and Mailing for its response.
- A Public Body must furnish a public record to an **Indigent** without charge for the first **\$20.00** of the Fee if the Individual submits Adequate Proof of Indigency.
- **Indigent** is defined to include non-profit organizations related to disability assistance or advocacy for people with mental illness

Detroit Water & Sewerage Department, Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

17

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: Costs (Fees)

- A Public Body has the Burden of Justifying its Costs and, depending on the size and complexity of a FOIA Request may not Recover its Actual Costs.



Detroit Water & Sewerage Department, Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

18

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: Penalties

- **Late:**
- A Public Body's Allowable Fees are **Reduced by 5%** of the original fee for each day it fails to make Requested Records Available for Inspection (Maximum 50%) .



Detroit Water & Sewerage Department . Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

39

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: Appeals

- **FEES:**
- A FOIA Requester may Appeal the amount of a Proposed Fee to the Head of the Public Body.
- The Head of the Public Body has **10 Business Days** to respond.
- If the Requester still Disputes the Proposed Fee they have **45 Days** to file suit.



Detroit Water & Sewerage Department . Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

40

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: Appeals

- **RESPONSE:**
 - A FOIA Requester who is not Satisfied with a Public Body's Response may Appeal to the Head of the Public Body who has **10 Days** to Respond to the Appeal
- or
- May Directly File Suit.



Detroit Water & Sewerage Department, Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

21

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: Lawsuits

- Unless it can show "Good Cause" a Public Body may **not** claim an exemption that it did not previously cite in its response to the FOIA Requestor.

PLEADING
IGNORANCE

Detroit Water & Sewerage Department, Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

22

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: Lawsuits

- **FINES AND PENALTIES:**
- **Willful and Intentional” Conduct:** The Court may impose a *civil fine of not less than \$2,500 or more than \$7,500* each time it finds a Public Body “willfully and intentionally” failed to comply with the FOIA. The civil fine will go to the general fund of the State Treasury.

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: Lawsuits

- **FINES AND PENALTIES:**
- **Punitive Damages:** A FOIA Requestor who Wins his or her Lawsuit can receive \$1,000.00 in Punitive Damages.

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: Lawsuits

- **Attorney's Fees:**
- A Requesting Party who wins his or her Lawsuit is entitled to receive actual attorney fees and costs.



Detroit Water & Sewerage Department , Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

25

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: Takeaways

- The FOIA Amendments are Designed to Focus Public Bodies on Transparency.
- The FOIA Amendments Recognize the Digital Age and Encourage Public Bodies to make Information available on their Website and in Electronic Form.
- The FOIA Amendments require Public Bodies to accurately Reflect and Detail their FOIA Costs (Fees).
- The FOIA Amendments may still produce Unintended Consequences and will Generate Litigation.

Detroit Water & Sewerage Department , Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

26

MICHIGAN FREEDOM OF INFORMATION ACT AMENDMENTS: Final Takeaway

- **The Best Way to Avoid FOIA Litigation is to Promote Transparency Whenever Possible.**



Detroit Water & Sewerage Department, Board of
Water Commissioners Great Lakes Water
Authority Board of Directors

27