

Get Ready - Changes Coming to Freedom of Information Act July 1

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Now that spring has sprung and summer is right around the corner, so too is the effective date for some significant amendments to Michigan's Freedom of Information Act (FOIA).

The changes are significant and detailed, particularly with regard to how public bodies may determine charges for providing information under the updated FOIA, and it will require advanced planning by public bodies to avoid the potential pitfalls when the changes become effective on July 1, 2015.

The bulk of the changes were directed to regulating the costs that may be charged for providing information. After July 1, a public body may not charge a fee at all unless and until it establishes and follows procedures and guidelines for implementing the statutory cost provisions and makes those guidelines publicly available, together with a written summary explaining the FOIA request process from initial submission through appeal.

The calculation of labor costs associated with searching, redacting and duplication is more heavily regulated, including the calculation of fringe benefits or the use of overtime. The cost of copies, postage and other production supplies is, likewise, limited by FOIA's provisions. The public body's ability to recover these costs decreases when it fails to respond in a timely manner. A requester may also appeal the fees that are charged to the head of the public body or in some instances, to the circuit court.

The penalties for failing to timely and appropriately respond under FOIA have also been increased. Punitive damages for arbitrary and capricious conduct have doubled to \$1,000 and such conduct also results in an additional civil fine to be paid to the state treasury. On the bright side, civil FOIA actions must now be filed in the county in which the public record or in an office where the public body is located, rather than in the requester's venue, so municipalities are no longer faced with having to litigate such actions in other counties.

Also notable in the revised FOIA are provisions intended to address the issues raised by vague or repeated requests, dead-beat requesters and the development of technology. FOIA outlines the manner for timing requests that were caught in spam filters and for responding to requests that the municipality provide records via email or on CD, thumb drive or other non-paper media. The result is a

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more instructive, and much more detailed, Freedom of Information Act.

These are just a few of the highlights to show the magnitude of the changes to FOIA that become effective July 1, 2015. Watch for the firm's upcoming Municipal Matters e-newsletter, as well as a webinar discussing these changes in detail.