



April 14, 2022

Rep. Steve Johnson, Chair  
House Oversight Committee  
124 N. Capitol Ave.  
Lansing, MI 48933

Dear Chair Johnson and Members of the Committee,

The Michigan Association of Counties, representing Michigan county governments, oppose HB 5921, HB 5923 – 5925 as introduced. Counties across Michigan consistently comply with the Freedom of Information Act and work with the public to ensure transparency and accountability in government. The provisions in the Act require dedicated staff, on-going communication and compliance with requests. At the same time, the Act protects specific exemptions from record disclosures to safeguard personal privacy, legal investigations, attorney-client privilege information, certain appraisals and other similar exemptions.

HB 5921, if enacted, could have the unintended consequences of releasing protected records if someone didn't catch the right exemption the first time and could potentially force a local agency to violate other laws.

HB 5923 needs some clarifying language to ensure compliance with the act. The definition of a legal holiday should be inserted. Many local units recognize holidays that may not always co-inside with state or federal holidays. Requiring a written acknowledgement of a request within two days, on top of requiring compliance within five days is extra busy work for the FOIA coordinator, when a simple phone call could achieve the same result. Is there a specific format they should follow? Can it be an electronic form of communication? Does it need to match the format the original request was submitted under?

In addition, HB 5923 is very likely to increase legal costs and provide for greater delays in the process. Each request denial will necessitate consultation with attorneys to ensure the accurate acknowledgement and description of the record, and to ensure it does not disclose exempted information. Is it the intention to require a description of medical records, acknowledgement of sexual abuse investigations and the records associated with it? Will counties be required to describe exempted legal opinions?

HB 5924 blurs the line over what is FOIA-able in an outside legal practice. *MacKenzie v Wales Twp*, 247 Mich App 124 (2001) prevents the hiding of a record with a consultant. Where a public body created and used a record, the fact that they subsequently "stored" it with a third-party does not prevent disclosure. Clarification should be made to ensure that outside legal counsel and not a public body are subject to FOIA.

HB 5925, if enacted, would open the floodgates of litigation against public bodies, especially by the press who would claim public benefit for every request. Then a public body would likely have to absorb the entire cost of fulfilling these requests to avoid litigation. A person can already bring the challenge as to the fee. If the purpose of this amendment is to challenge the public benefit argument, then a clear definition of public benefit should be included.

MAC stands ready and willing to sit down with the bills sponsors and staff to work on the legislation to achieve clear, fair and reasonable changes to the act.



Deena Bosworth  
Director,  
Governmental Affairs  
Michigan Assoc. of Counties