



POLICY CHANGE: FOIA January 18, 2019

A bulletin from our library lawyer, Anne Seuryneck of Foster Swift, recently informed us of changes to Michigan’s Freedom of Information Act law, effective 12/28/2018. Her bulletin is below, with relevant sections highlighted for reference.



January 2019

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New Amendments to the Freedom of Information Act – Public Act 523 of 2018



Anne M. Seuryneck

Effective December 28, 2018, the Legislature approved two important amendments to the Michigan Freedom of Information Act. Public Act 523 added a new requirement to Section 3 regarding the information that must be included in a FOIA request. In addition, Act 523 amended Section 4 to address what happens when a requester does not pay a deposit in a timely manner.

Section 3 of the FOIA now requires that the requesting person must include that person’s complete name, address, and contact information, and, if the request is made by a person other than an individual, the complete name, address, and contact information of the person’s agent who is an individual. An address must be written in compliance with United States Postal Service addressing standards. Contact information must include a valid telephone number or electronic mail address. This new requirement does not apply to an individual who qualifies as indigent under Section 4(2)(a) of the FOIA. Essentially, the amendment prevents an anonymous FOIA or a FOIA that does not fully identify the person making the request. This has been a problem in the past where the requester has sent emails or other written requests using only the first name and little contact information.

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Public bodies have also been faced with deciding what to do when a requester does not respond to request for a deposit. Currently, pursuant to the FOIA, a public body can ask for a deposit of up to ½ of the total estimate fee if that fee is expected to exceed \$50.00. The public body may also ask for 100% deposit if a requester has not paid for a previous request and meets other requirements under the Act. Under FOIA 523, if (1) a public body requests a deposit and (2) that deposit is not received by the public body within 45 days from receipt of the notice of deposit, and (3) if the requesting person has not filed an appeal of the deposit amount, the request shall be considered abandoned by the requesting person. In such case, the public body is no longer required to fulfill the request.

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Act 523 does include a new notice requirement for deposits. The deposit letter is considered received three days after it is sent, regardless of the means of transmission. The deposit letter must include notice of the **date by which the deposit must be received**, which is 48 days after the date the deposit letter is sent. So, each deposit letter must now include the deadline.

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If you have any questions about Act 523 or FOIA compliance, please call Anne Seuryneck at (616) 726-2240.

Highlighted section one might need a change to our FOIA policy. The second paragraph of the policy currently states:

“Requests preferably should be submitted in writing to the Library FOIA Coordinator. Requests for records should be as specific as possible. Library users' private information and Library records that identify an individual as having requested or obtained certain materials from the Library are protected from disclosure in accordance with the Michigan Library Privacy Act.”

We may want to change this to something like:

“Requests preferably should be submitted in writing to the Library FOIA Coordinator. Requests for records should be as specific as possible, and must include the complete personal name, valid address, and telephone number or email address of the requestor or the requestor's agent. Library users' private information and Library records that identify an individual as having requested or obtained certain materials from the Library are protected from disclosure in accordance with the Michigan Library Privacy Act.”

The full policy with this suggested change follows this summary.

The second and third highlighted sections can be addressed by modifying our procedures. This has already been done on our FOIA worksheet that we fill out for every FOIA request. This updated worksheet may be found on the worksheet linked at the bottom of https://www.branchdistrictlibrary.org/foia_policy, with the changes on top of page 1 and page 7.

BRANCH DISTRICT LIBRARY POLICY *FREEDOM OF INFORMATION ACT*



Adopted: 20 April 2015

Revised:

The Library Director serves as the FOIA Coordinator for the Branch District Library.

Requests preferably should be submitted in writing to the Library FOIA Coordinator. Requests for records should be as specific as possible, and must include the complete personal name, valid address, and telephone number or email address of the requestor or the requestor's agent. Library users' private information and Library records that identify an individual as having requested or obtained certain materials from the Library are protected from disclosure in accordance with the Michigan Library Privacy Act.

The FOIA Coordinator will respond in writing within five business days to all requests for Library records. If the request for records is approved, this response will include an estimate of the timeframe required to fulfill the request and a fee calculation estimate.

Section 10 of the Michigan Freedom of Information Act provides for appeals of decisions to deny access to public records. If the Branch District Library makes a final determination to deny all or a portion of a request for library business records, the requester may submit to the Library Board a written appeal that specifically states the word "appeal" and identifies the reason or reasons the denial should be reversed.

In compliance with Michigan Freedom of Information Act, granted requests for Library records may be filled for a fee. This fee may cover expenses related to searching for, locating, and examining documents, as well as removing exempt data. There may be a charge of the hourly rate currently earned by the lowest paid employee capable of searching for, locating, and examining the requested materials, billed at 15-minute increments, with partials rounded down.

The printing fee for copies will be \$ 0.10 per sheet of paper for each sheet needed to fulfill the request. Double-sided printing and copying will be used to minimize the number of sheets of paper. In addition, there will be a charge of the hourly rate currently earned by the lowest paid employee capable of copying the requested materials, billed at 15-minute increments, with partials rounded down.

If delivery of documents is requested on nonpaper physical media, a fee may be charged to cover the cost of the media, provided the library has the technological capability to deliver the

documents on the requested media. A fee may be charged to cover the costs of mailing documents on paper or on nonpaper physical media.

Library packets and approved minutes may be viewed on the library's web site at any time for no fee. FOIA requests for documents that are publicly available on the library's web site will be answered with a link to the online documents. If a person wishes to examine physical library records in person without having the records duplicated, an appointment must be made for viewing during normal business hours. The Library may make reasonable rules to protect its records and to prevent excessive and unreasonable interference with the discharge of its functions.