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Local Government Transparency

In Michigan, local government (whether it be a township, city or village) can be a true friend of lake communities. Such governments can protect lakes via zoning ordinances, regulatory ordinances (such as dock and boat ordinances, wetlands ordinances, anti-fertilizer ordinances, blight ordinances and green belt ordinances), obtaining water quality grants, creating special assessment districts to protect and improve lakes and promoting lake – friendly policies. Unfortunately, however, an uncooperative local government not only misses out on many opportunities to protect area lakes, but can also be an actual detriment to a lake community.

Quite often, it is difficult for lake associations and property owners to ascertain what local governments are doing to protect lake communities without obtaining and reviewing relevant municipal documents, records and data. Although many governments tout their “transparency,” in fact, a number of local governments try to improperly manage what information gets out. Happily, Michigan has the Freedom of Information Act, being MCL 15.231 *et seq.* (“FOIA”).

FOIA is relatively easy for members of the public to use if a few basic rules are followed. First, the overwhelming majority of documents, records, minutes and other writings in the possession or control of a local government in Michigan are subject to FOIA and must be disclosed to a member of the public when a proper FOIA request is submitted. Unless a document is expressly exempted under FOIA, a copy of the document must be made available for inspection or copied when a proper FOIA request is made. Exempt documents can include privileged and confidential communications with a municipal attorney, certain documents subject to privacy laws (for example, social security numbers) and some real estate agreements.

A FOIA request to a local government must be in writing. Most municipalities have FOIA forms that must be utilized. When submitting a FOIA request, it is very important for the requesting party to be precise. The FOIA request must be such that a reasonable person can understand what document or documents are being requested. Furthermore,



if possible, a date range should be included in the FOIA request. For example, a poorly-drafted FOIA request might state “I request all records from Acme Township about Scout Park.” A better FOIA request would be “I request all documents, maps, records and writings that mention, show or pertain to Scout Park located at 123 Main Avenue and which record, document, map or writing was dated, created, received or generated at any time between January 1, 2010 and January 1, 2019.”

Under FOIA, a municipality can charge a reasonable fee for retrieving the documents requested and for copying and mailing costs. However, such amounts are strictly regulated and limited by statute. A municipality is also obligated to have an official fee schedule available. Local governments in Michigan are also required to adopt written FOIA policies and procedures.

In most cases, the local government must produce the documents requested within five business days (i.e. Monday through Friday), but, for a significant number of documents requested, a municipality can invoke an additional ten-day grace period, for a total of 15 business days.

In most cases, a written FOIA request should be directed to the municipal clerk or the municipal Freedom of Information Act Coordinator.

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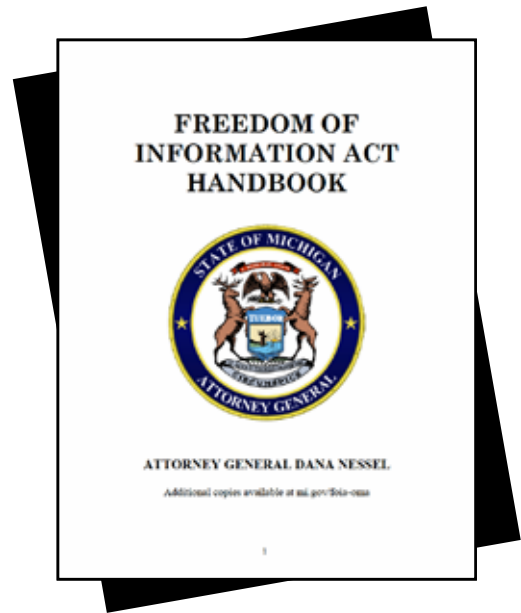
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FOIA request properly filed with a municipality requires all officials, employees, officers, agents, departments, boards and commissions within that municipality to search all of their respective records for the documents requested.

If a municipality violates FOIA and the requesting party files a lawsuit, the municipality may have to not only provide the documents requested, but in some cases it is also obligated to reimburse the requesting party for that party's attorney fees and court costs.

It is always best to work with the local municipality involved regarding a FOIA request. If the municipality requests a reasonable further time extension, it is normally prudent to agree to that. Or, if the municipal official involved has questions, it is usually the best practice to reasonably accommodate that municipal official and answer questions to the degree that such questions are appropriate.



For a comprehensive publication regarding FOIA, the Michigan Attorney General has compiled a document called the "Freedom of Information Act Handbook" which is available at https://www.michigan.gov/documents/ag/FOIA_Handbook_2019_644053_7.pdf. [R.](#)