

Court Clarifies Public Bodies Requirement to Provide Documents Under FOIA

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A public body must respond to a FOIA request within five days, but the Michigan Court of Appeals has opined that there is no obligation to produce the requested information within that timeframe.

In a June 23, 2016, published opinion, the Michigan Court of Appeals has held that although a public body must respond to a request for public records within the statutory timeframe contained in the Michigan Freedom of Information Act, Act 442, Public Acts of Michigan, 1976, as amended ("FOIA"), by granting or denying the request, the public body is not required to deliver the requested documents at that time.

Section 5(2) of FOIA requires a public body to respond to a request for a public record within five business days after the public body receives the request by: (i) granting the request, (ii) denying the request, (iii) granting the request in part and denying the request in part, or (iv) issuing a notice extending for not more than 10 business days the period during which the public body shall respond to the request.

In *Cramer v. Village of Oakley*, Case No. 330736, MI Ct. of Appeals (June 23, 2016), plaintiff submitted six separate FOIA requests to defendant Village of Oakley on May 15, 2015. On May 20, 2015, the village's FOIA coordinator sent plaintiff six letters granting the FOIA requests and further stating that the village would provide the documentation after conducting a search for the requested records.

That same day, counsel for plaintiff acknowledged receipt of the letters and informed the FOIA coordinator that the documents must be provided by May 22. On May 28, plaintiff filed suit alleging that the village violated FOIA by not providing the documents within five business days of receiving the request. The trial court concluded that the May 20 letters did not comply with FOIA because the requested documents themselves were not produced within the statutory timeframe for a response.

The Court of Appeals found that the village complied with Section 5(2) of FOIA by issuing a letter granting the request within the required timeframe and agreeing to provide the public records after conducting a search. The court held that Section 5(2) "*does not mandate that a FOIA recipient, upon granting a FOIA request, deliver the requested documents within the time period specified for responding to the FOIA request.*"

To reach its findings, the court analyzed the meaning of the words "grant" and "fulfill." The court found that the word "grant" means to "agree" and that it is not synonymous with the completion, or fulfillment, of the duty agreed to. The court also determined that the Legislature's use of the phrase "granted and fulfilled" in a separate and recently amended section of FOIA suggested the two terms have separate meanings. Thus, a public body could "grant" a request and "fulfill" that request at a later date.

The court also considered recent amendments to FOIA which contemplate several steps that a public body must follow in responding to a request. Specifically, the court looked at Section 4(8) of FOIA which now requires "that a public body's 'response' under [section 5] 'shall also contain a best efforts estimate ... regarding the time frame it will take ... to comply with the law in providing the public records to the requestor.'" The court found this requirement "provides further evidence that the Legislature intended that a grant of a request ... is distinct from the fulfillment of that request."

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Finally, the court rejected plaintiff's assertion that this interpretation could allow a public body to "grant" a request but never "fulfill" it.

The court noted that nothing precludes a plaintiff from filing suit when faced with an inordinate delay in the production of public records amounting to an effective denial. In addition, the court highlighted FOIA's penalties for arbitrary and capricious refusal or delay in disclosing public records.

Though the decision offers some relief for public bodies fulfilling FOIA requests, it is subject to appeal, and may be considered by the Michigan Supreme Court at a later date.

If you have any questions about the Michigan Freedom of Information Act, please contact your Miller Canfield attorney or any of the people listed on this e-alert.

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