

COVID-19: Michigan Temporary Extensions of Freedom of Information Act Deadlines

April 6, 2020

As anticipated, on April 5, 2020, Michigan Gov. Gretchen Whitmer issued Executive Order 2020-38 suspending “strict compliance” with the required response periods under the Freedom of Information Act (“FOIA”), 1976 PA 442, as amended, MCL 15.235(2), 15.240(2) and 15.240(a)(2), until June 4, 2020, at 11:59 p.m.

FOIA currently requires certain public bodies to provide access to certain public records, through inspection, copying or receiving copies, upon receipt of a written request for a public record. 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.

The order will protect FOIA coordinators by permitting public bodies to delay or defer parts of FOIA requests that require in-person response efforts.

DEADLINE TO RESPOND TO FOIA REQUEST OR APPEAL

A public body must respond in writing to a request or an appeal received at its physical office via mail, hand delivery or facsimile within 10 business days after actual receipt of the request or appeal.

“ACTUAL” RECEIPT OF FOIA REQUEST OR APPEAL

Actual receipt of a request or an appeal happens when an employee physically opens the envelope containing the request or physically takes the faxed request from the fax machine. Nothing in the order requires an employee to report to the office to open mail or check the fax machine if the employee would not otherwise be permitted to report to the office in person and is required to perform those tasks. But note, notwithstanding the order, if a board or commission serves as the “head of the public body” for purposes of hearing appeals, then pursuant to FOIA, the appeal is not considered to be received until the first regularly scheduled meeting of that board or commission following submission of the appeal.

DEFERRAL OF FOIA RESPONSE WHEN IN-PERSON EFFORTS REQUIRED

If a FOIA request requires in-person efforts to respond, such as an in-person search, inspection, examination, preparation, or production of public records, a public body may defer that portion of the request until the expiration of the order or any order that follows from it.

NOTICE TO REQUESTOR

If COVID-19 response efforts, including compliance with any emergency order or mitigation recommendations, interfere with a response to a FOIA request or appeal, a public body may issue a notice to the requestor extending the period of time in which to respond for as long as the public body deems necessary but no longer than the expiration of the order or any order that follows from it. If a public body defers a portion of a FOIA request, it must explain the deferral and its reasons in the response to the requestor.

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If a public body defers a portion of a FOIA request, the requestor may inform the public body in writing that the requestor is amending the request to exclude the deferred portion of the request so that the public body may more promptly process the request. The public body must notify the requestor that he or she may amend the request.

PUBLIC POLICY CONSIDERATIONS

The order provides it is the public policy of Michigan that during the COVID-19 states of emergency and disaster public bodies should continue to respond to FOIA requests as expeditiously as possible, and, to the extent practicable, by using electronic means.

This information is based on the facts and guidance available at the time of publication, and may be subject to change.