

Accessing Government:

How difficult is it?

AN ANALYSIS OF
OPEN GOVERNMENT LAWS
IN THE MIDWEST



Excerpted Portions: Michigan

For full report, please visit www.citizenadvocacycenter.org or www.midwestdemocracynetwork.org

ABOUT THE CITIZEN ADVOCACY CENTER

The Citizen Advocacy Center (Center) is an award-winning, non-profit, non-partisan community legal organization based in the suburbs of Chicago. Founded in 1994, the Center's mission is to build democracy for the 21st century by strengthening the public's capacities, resources and institutions for self-governance.

Community lawyers at the Center help citizens and community groups address self-identified issues of public concern through providing resources and training in how to use civic tools, the law, community organizing, coalition building, and the media to affect government decision-making.

The Center's work has a regional and statewide impact due to our focus on identifying systemic reforms that increase government accountability, accessibility, and transparency as well as citizen participation in government affairs. Additionally, the Center monitors government agencies for abuse of power and anti-democratic policies, and, only when necessary, engages in president setting federal and state litigation to hold government agencies accountable for abuse of power.

ABOUT THE MIDWEST DEMOCRACY NETWORK

The Citizen Advocacy Center is a member of the Midwest Democracy Network, an alliance of Midwest state-based civic and public interest organizations, academic institutions, and policy and legal experts.

Members of the Midwest Democracy Network share a commitment to fundamental democratic values and principles, especially those that speak to honesty, fairness, transparency, accountability, citizen participation, competition, respect for constitutional rights and the rule of law, and the public's need for reliable information. They believe that such principles must be continuously reinforced and zealously protected against those who see politics as a means to promote narrow interests rather than the common good.

Toward these ends, members seek to reduce the influence of money in politics; keep courts fair and impartial; promote open and transparent government; create fair processes for drawing congressional and legislative districts; guarantee the integrity of our election systems; promote ethical government and lobbying practices; and democratize the media.

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ANALYSIS OF OPEN GOVERNMENT LAWS

Executive Summary

“A popular government without proper information or the means of acquiring it is but a prologue to a farce or a tragedy—or perhaps both. Knowledge will forever govern ignorance; and the people who mean to be their own governors, must arm themselves with the power which knowledge gives.”

—James Madison, Letter to W. T. Barry, 1822

Strong open government laws that mandate transparency in conducting the people’s business are essential components of a healthy democracy. The ideals of a government that is of the people, by the people, and for the people require that the public have, to the fullest extent possible, the capacity to access the governmental decision-making process and documents that are created and maintained with public tax dollars.

Broad access to government ensures the public’s capacity to play a role in the democratic process and provides a mechanism by which the public can knowledgeably discuss issues of public concern, make informed judgments as to the actions of public officials, and monitor government to ensure that it is acting in the public interest.

Both the federal government and all individual states have open government laws. These laws uphold the ideals of transparency in government and mandate liberal access to government documents and government meetings. By providing public access to government meetings and robust access to information regarding government affairs, open government statutes are cornerstone laws that ensure and protect the free flow of information from government to the people.

However, state open government laws have statutorily weak features that must be reformed. Moreover, the implementation of state open government laws suffers from inconsistent governmental responses, despite strong public policy statements which are supposed to provide a framework to interpret statutory provisions. While public bodies have the legal burden to ensure compliance with open government laws, more often than not compliance rests on the shoulders of the public.

Our democracy is weakened when government can circumvent transparency based on ineffective oversight mechanisms, a lack of penalties or implementation of penalties, a lack of training that leads to inadvertent violations, excessive fees that make information inaccessible, ineffective policies that fail to address the integration of technology in the businesses of governing, or few resources available to provide assistance to people when government is resistant to permitting proper access or disclosure. These are just a few of the barriers that impede public participation.

A healthy democracy requires that open government barriers be identified, dismantled, and replaced with effective statutory language and institutional protocols that ensure citizen participation and government operation in the light of day.

To address systemic barriers that chill public participation and access to government, the Citizen Advocacy Center (Center) conducted a systemic overview of open government laws in the states of Michigan, Ohio, Illinois, Wisconsin, and Minnesota with the goals of evaluating the provisions and implementation of the statutes.

In executing this project, the Center reviewed the relevant statutes and more than 1,000 legal cases, attorney general opinions, and professional publications to produce a comprehensive study of each state's respective strengths and weaknesses. The study serves as a valuable resource for policy makers, good government organizations, the media, and citizens who regularly use open government laws.

Specifically, the Center analyzed how the public in each state is entitled to participate in the democratic process and to what extent policy goals of mandating transparency and accessibility to government operations are achieved.

With regard to the Freedom of Information Act (FOIA) statutes, the Center focused on issues such as:

- Response time to requests;
- Appeal time and procedures;
- Fees and costs associated with requests;
- Fines and penalties for lack of responsiveness by a government body;
- The frequency with which available fines and penalties have been implemented;
- The extent of exempt information from public records requests;
- The presence of government resources to act as an ombudsman; and
- Provisions that mandate access and disclosure of public records created via the Internet.

With regard to the Open Meetings Act (OMA) statutes, the Center reviewed:

- Public notice and agenda requirements;
- Provisions to address the use of the Internet and other forms of electronic communications to conduct meetings;
- Fines and penalties;
- The frequency with which available fines and penalties are implemented; and
- The extent to which a public body can close public meetings.

During the course of completing the Midwest Open Government Project, four major themes surfaced.

The first is that all of the surveyed Midwestern states suffer from a lack of enforcement implementation. In every state surveyed except Illinois, public information laws have some kind of fine or penalty provision to deter non-compliance. While fine and penalty schemes are available, a review of case law indicates that they are rarely enforced in the states where present.

With respect to open government laws, every state statute includes a variety of enforcement and penalty provisions, some of which include criminal charges and removal from office. Despite strong provisions, few states implement their statutory provisions to hold public bodies accountable. The lack of implementation of enforcement provisions has a detrimental ripple effect: public bodies are less likely to be responsive to requests for public information and more likely to inappropriately utilize exemption provisions. In addition, government bodies are less likely to hold open government meetings.

The second theme is that no state surveyed has a statutorily created entity with enforcement powers specifically dedicated to ensuring compliance with sunshine laws. It is laudable that every state examined had either state resources or non-profit organizations available to the media, public officials, and the general public to navigate respective open government statutes, provide training, and advocate for more transparency, accountability, and accessibility of government. Despite these resources and considering the systemic lack of enforcement among open government laws in general, a statutorily created office with enforcement powers would substantially increase the likelihood that governmental bodies will comply with open government laws.

The third theme is the lack of mandated training for public officials and public employees on appropriate utilization of open government statutes. Ohio was the only state surveyed that requires every elected official, or a designee, to receive three hours of training regarding use of that state's open records law during every term in office. Mandatory training for those who fall under the purview of open records and open meetings laws is essential to promoting open government. Required training increases the capacity of public officials and employees to comply with the law and offers a degree of accountability.

The fourth theme is that participatory opportunities for the public during open meetings are absent. The preamble of each state's open meetings statute identifies broad goals as ensuring transparency in the government decisionmaking process and guaranteeing that the public has access to full and complete information regarding the affairs of government.

Beyond having the capacity to access government information and observe how government operates, a healthy democracy requires an engaged public that has the opportunity to publicly comment on issues that public officials intend to take action on. Michigan is the only state surveyed that requires public bodies to provide an opportunity for the public to speak at public meetings, within appropriate restrictions. This is a tremendously important element that is conspicuously absent in other states.

In addition to the major themes identified above, the Midwest Open Government Project brought to light interesting aspects of each state's open government laws. For example:

- Ohio's OMA has outstanding provisions within the statute and remarkable fines and penalties for non-compliance, however, the statute does not apply to home rule units of government per the Ohio Constitution;
- In Illinois, the notice and minutes provisions of the OMA are the most stringent of the five statutes, but its FOIA was the only state surveyed that fails to have any kind of penalties or fines for violations. In addition, Illinois's statute has the longest list of exemptions by far, making the statute perplexing;
- With respect to Michigan, while its OMA mandates public comment opportunity at public meetings and its FOIA covers private entities that receive more than half of its funding from a government agency, the Governor's office, Lieutenant Governor's office and legislature are exempt from the statute. In addition, Michigan has the most stringent requirements regarding the imposition of fees for searching and compiling public records and the shortest statute of limitations for a lawsuit to be filed under OMA when issues of expenditures are at stake;

- Wisconsin, while considered to have fairly strong open government laws, is devoid of an administrative appeals process for when requests are denied and lacks a firm statutory deadline by which public bodies must respond to requests for records. The lack of a firm deadline results in unjustified delays in accessing government information; and
- Minnesota places a high priority on protecting the privacy of a requestor of public records, as well as an individual who may be the subject of a request. The high sensitivity to protecting individual privacy coupled with many regulations, leads to tremendously complex and confusing open records laws. The multi-tiered system regarding the production of government documents renders the statutes virtually unusable to general public. Moreover, public bodies in Minnesota are not required by law to provide public notice of meetings, agendas detailing what action public bodies will take at such meetings, or that any minutes beyond the recording of votes be taken.

As the Center completed its broad overview of each state's statutory provisions, we completed comparative analyses highlighting positive and negative anomalies that influenced our eventual reform recommendations for each state. In addition to the individual state policy reports that provide an overview of each state's open government laws and the identification of specific strengths and weaknesses, the Center drafted ten model statutes that are tailored to each state that good government advocates can use to begin the conversation about how to advance specific reforms.

Additionally, the Center has produced citizen guides that translate dense legalese into an easily understandable format for the public. The combination of the policy reports, model legislation, and citizen guides results in a comprehensive open government tool box that can be effectively deployed to advance systemic democratic protocols. The Midwest Open Government Project is a substantial endeavor embarked on by the Center that has produced significant results to help strengthen democracy and build the capacity of the public to participate and affect government decision-making.

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MICHIGAN

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MICHIGAN

Michigan is considered to have fairly strong open government laws that explicitly make full access to government a top priority. In 1977, the Michigan General Assembly enacted the Michigan Freedom of Information Act (FOIA) which mandates that, within specified limitations, the FOIA allows anyone to inspect and obtain copies of all public records prepared, possessed, used by, or in the control of any public office. This access to government information is fundamental to the system of open government in Michigan and ensures that citizens have the right to be informed about the actions of public offices on matters of public concern.

In 1976, the Michigan General Assembly enacted the Michigan Open Meetings Act (OMA). The OMA promotes openness and accountability in government and courts have ruled that general provisions should be interpreted broadly. *Booth Newspapers Inc. v. University of Michigan Board of Regents*, 192 Mich. App. 574, 481 N.W.2d 778, 782 (1992). The OMA places a high value on public participation in government meetings and requires public bodies to provide the public with adequate notice of meetings, keep records of public meetings and publish meeting minutes within strict deadlines.

The FOIA and OMA have numerous strengths but the most impressive aspect of Michigan's open government laws is the range of penalties available for violations. Michigan law permits prevailing plaintiffs in FOIA litigation to recover actual and compensatory damages, as well as punitive damages against a public body. Moreover, violations of the OMA subject a public body official to civil and criminal penalties. Also notable is that Michigan is the only state surveyed that requires public comment opportunities at government meetings.

While Michigan OMA and FOIA have several strengths, there are also many weaknesses. Prosecuting attorneys often fail to pursue criminal actions and the courts rarely assess criminal penalties for substantial OMA violations. Additionally, Michigan has the most restrictive provisions regarding the costs for the production of documents. The OMA allows a public body to charge for searching, examining, and reviewing public records.

In regards to information exempt from the FOIA, Michigan's list is extensive. It is second to Illinois, with twenty exemptions that specifically exclude the Governor, Lieutenant Governor, employees of those executive offices and the state legislators from the FOIA. Moreover, Michigan joins Illinois as the only two states surveyed that exempt records pertaining to education and documents related to the internal operations of public bodies. Further, Michigan has the most restrictive statute of limitations provisions.

Reform is needed to improve certain aspects of access to government and government documents in Michigan. In addition, enforcement provisions already established by the FOIA and the OMA statutes need to be imposed. The following provides an analysis of the strengths and weaknesses of Michigan's sunshine laws and a summary of the main components. Copies of model versions of both statutes and citizen guides are available by contacting the Citizen Advocacy Center.

ANALYSIS OF MICHIGAN'S

Freedom of Information Act

STRENGTHS

of Michigan's Freedom of Information Act

Michigan's FOIA has numerous strengths designed to ensure access to public records. Cases interpreting the FOIA have strictly construed exemptions and courts have generally ruled in favor of disclosure. Notably, a Michigan appellate court ruled that public bodies may not create new exemptions under the Act. *Messenger v. Consumer & Industry Services* 238 Mich.App. 524, 531, 606 N.W.2d 38, 42 (Mich.App. 1999).

In addition, Michigan is the only state surveyed in which a body primarily funded by or through state or local authority is considered a "public body" under the FOIA if it receives more than half of its funding through state or local authority. *Kubick v. Child & Family Services of Michigan, Inc.* 171 Mich.App. 304, 308, 429 N.W.2d 881, 883 (Mich.App. 1988). For example, a Michigan appellate court held that a private corporation was properly joined as a defendant in a FOIA suit where it possessed public documents pursuant to a contract with a public school. *Jackson v. Eastern Michigan University Foundation* 215 Mich.App. 240, 544 N.W. 2d, 737 (Mich.App. 1996). Subjecting private organizations to the FOIA under certain conditions increases transparency immeasurably.

The Michigan FOIA has firm deadlines for public bodies to respond to requests for information while also allowing reasonable time for the public body to access and produce information. A public body must respond to a FOIA request within five business days of receiving the request, with a ten day extension available in certain cases. Mich. Comp. Laws § 15.235 Sec. 5(2). If a request for

a record is denied, a public body must provide written notice to the requestor within five days (or fifteen days under unusual circumstances). Mich. Comp. Laws § 15.235 Sec. 5(2)(b). Michigan's deadlines theoretically guarantee that a requesting party will receive a response in a timely manner.

The Michigan FOIA also has an administrative appeals provision that allows for review of a denied public document prior to filing a lawsuit. FOIA requestors who face a full or partial denial of their records requests may submit a written appeal to the head of the appropriate public body, or may directly file a claim in court within 180 days of the purported denial. Mich. Comp. Laws § 15.235 Sec. 5(4)(d)(i).

An administrative appeals process benefits the requestors by providing an intermediary step to resolving a dispute prior to filing litigation, as well as giving public bodies the opportunity to circumvent litigation funded by taxpayer dollars. Should administrative efforts fail to resolve a FOIA dispute, a requestor may commence an action in the circuit court to compel the public body's disclosure of public records. Mich. Comp. Laws § 15.240 Sec. 10(1)(b).

Enforcement penalties are a strong component of Michigan's FOIA. The FOIA provides for actual and compensatory damages for prevailing plaintiffs in FOIA litigation, as well as punitive damages against the public body. Mich. Comp. Laws § 15.240 Sec. 10(7).

If a circuit court finds that a public body has arbitrarily and capriciously violated the FOIA statute by refusing or delaying a request for a public document, it may award punitive damages of \$500 to the plaintiff. *Id.* While the fine may seem minimal, and a plaintiff must demonstrate that the public body's disclosure of information was the result of a court order, the availability of punitive damages provides an additional disincentive to violate the FOIA. In addition, prevailing plaintiffs in FOIA litigation are statutorily entitled to reasonable attorneys' fees. Mich. Comp. Laws § 15.240 Sec. 10(6).

Though the exemptions section of the FOIA is extensive, there is a key category omitted. Employment records are substantially available under the Michigan FOIA. Michigan is one of the few states surveyed that allow the disclosure of personnel records that consist solely of performance appraisals, disciplinary actions, and complaints relating to performance in public jobs. As employment matters are typically a contentious area, the intentional omission of personnel records from the FOIA's exemption list serves to significantly advance transparency and openness in government.

The Michigan FOIA also takes a reasonable approach to the requirements pertaining to the language of requests. The statute does not require requestors to submit legally precise requests in order to obtain public records, but rather establishes a mandate that a request need only describe the records “sufficiently” to enable the public body to identify it. Mich. Comp. Laws § 15.233 Sec. 3(1). Regular citizens merely have to describe the public records they seek with enough detail to allow the public body to understand and fill the request accordingly.

Another practical aspect of Michigan’s FOIA is that it permits standing FOIA requests. Under the statute, a person has the right to subscribe to future issuances of public records which are created, issued or disseminated on a regular basis. Mich. Comp. Laws § 15.233 Sec. 3(1). This has a significant practical benefit for public bodies and regular FOIA users, especially the media and civic organizations. It is a convenient and effective mechanism to streamline production of regular requests.

Lastly, the Michigan Freedom of Information Committee (Committee) plays an important role in advancing state open government laws by providing comprehensive guidance on the FOIA.¹ The Committee is a nonprofit organization committed to ensuring the public’s right to access government records and meetings, as provided under the state’s sunshine laws.

The Committee promotes its objectives by providing information and advice to Michigan residents regarding FOIA issues; holding seminars, workshops and speeches free of charge; responding to FOIA developments and trends in Michigan; linking citizens to attorneys who specialize in FOIA; and advocating stronger sunshine laws while opposing legislative initiatives that would abridge the public’s right to access.

The Committee’s website includes the open government laws, summaries of key FOIA decisions, Attorney General opinions and links to websites with additional resources. The Committee is an invaluable resource for individuals and government entities seeking a better understanding of open government laws in Michigan.

¹ www.mfoia.org

WEAKNESSES

of Michigan's Freedom of Information Act

While the Michigan FOIA strongly encourages the accessibility of public records for most people, there are significant weaknesses with the law.

Exemptions that exclude incarcerated individuals' access to information inappropriately bar one segment of the population from obtaining public records.

Notably, the FOIA excludes incarcerated prisoners from FOIA coverage. Mich. Comp. Laws § 15.232 Sec. 2(c). Access to public information is critically important to all individuals, and the refusal to extend FOIA rights to incarcerated prisoners unnecessarily discriminates against one segment of the population.

REFORM: Remove this provision from the statute.

Michigan's broad exemptions, which exclude internal communications, Constitutional officers and the legislature from the FOIA, undermine transparency goals.

Michigan's FOIA exemptions are extensive. One of the most troubling exemptions is the intra-agency immunity exemption for certain public records. Under the FOIA, internal communications and notes between and within public bodies of an advisory nature are exempt from disclosure, including electronic mail communications. Mich. Comp. Laws § 15.243 Sec. 13(1)(m). However, the intra-agency immunity exemption does not apply unless the public body can demonstrate that the public interest in encouraging frank communications between officials and employees of public bodies clearly outweighs the public interest in disclosure.

This provision essentially requires a requestor to file suit against a public body under the FOIA to determine whether a record fits the intra-agency immunity exemption, particularly whether the communication is advisory in nature.

Additionally, the Michigan FOIA exempts the Governor, Lieutenant Governor, employees of those executive offices and the state legislators from the FOIA. Mich. Comp. Laws § 15.243 Sec. 13(4). The exclusion of Constitutional officers and the legislature from the purview of the FOIA grossly undermines the intent of the statute to advance citizens' rights to be informed about the actions of public offices on matters of public concern.

REFORM: Remove the intra-agency exemption from the statute and subject Constitutional officers, as well as the legislature and state employees, to FOIA coverage.

Michigan's costs provision discourages use of FOIA and is the most restrictive of the states surveyed.

Michigan's FOIA lacks sensitivity toward high costs for copies of certain records. Michigan permits a government agency to charge not only for the actual cost of duplication and mailing for public records requests, but also for clerical labor. Mich. Comp. Laws § 15.234 Sec. 4(1). Though the FOIA provides for a full or partial waiver of copying and labor costs if the public body determines a request to be in the public interest because it primarily benefits the general public, such waivers are wholly discretionary and unevenly granted.

While FOIA provides that the first \$20 of work must be free for a person who is on welfare or presents facts showing inability to pay due to indigency, costs for obtaining copies of FOIA documents can be excessive. *Id.*

The potential for excessive copy costs can act as a de facto denial of records and a disincentive to those seeking public records. Moreover, the FOIA is deferential towards public bodies in allowing the recouping of labor costs while being silent on mandating that public bodies electronically post routinely requested documents.

REFORM: Eliminate costs for examination, search, and review of public records and cap costs per page to \$.15.

SUMMARY OF LAW

of Michigan's Freedom of Information Act

The following section provides a summary of the main components of the Michigan FOIA. This summary provides an overview of the nuts and bolts of the FOIA, including what records are covered, how to appeal a denial of records requests and what relief is available through the courts. Also included are assessments based on a review of the relevant case law of the main issues in FOIA litigation, and whether attorneys' fees are actually awarded to successful plaintiffs.

Who is Covered Under the Law?

The Michigan FOIA sets requirements for the disclosure of public records by all "public bodies." All state agencies, county and other local governments, school boards, other boards, departments, commissions, councils, and public colleges and universities are covered.

Michigan courts have held that a body "primarily funded by or through state or local authority" is considered a "public body" if it receives more than half of its funding through state or local authority. Thus, even a private organization that receives more than half of its funding from several public sources is a "public body" subject to FOIA, though private corporations that do not reach the same funding threshold are generally not considered a "public body" covered by the FOIA, even if they are licensed, franchised, or otherwise regulated by the government. Incarcerated prisoners are precluded from making public records request under the FOIA.

Public Records Open to Disclosure

The FOIA applies to any handwriting, typewriting, printing, photostating, photographing, photocopying and every other means of recording, and includes letters, words, pictures, sounds or symbols, or combinations thereof, as well as papers, maps, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

Notably, personnel records consisting solely of performance appraisals, disciplinary actions, and complaints relating to accomplishments in public jobs are disclosable under the FOIA. The FOIA does not include computer software. Requests for public records must be issued to the designated "FOIA coordinator" of the public body.

Public Records Exempt from Disclosure

The exemptions to FOIA include the following:

- (1) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure would do any of the following:
 - interfere with law enforcement proceedings;
 - deprive a person of the right to a fair trial or impartial administrative adjudication;
 - constitute an unwarranted invasion of personal privacy;
 - disclose the identity of a confidential source or, if the record is compiled by a criminal law enforcement agency in the course of an investigation, disclose confidential information by a confidential source;
 - disclose law enforcement investigative techniques or procedures; or
 - endanger the life or physical safety of law enforcement personnel.
- (2) Information or records subject to the attorney-client privilege.
- (3) Personal information, such as gun ownership records.
- (4) Public records which if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.
- (5) Records which if disclosed would violate the Federal (Buckley) Educational Rights and Privacy Act (primarily student records).
- (6) An exempt public record or exempt information which is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the consideration originally giving rise to the exempt nature of the public record remains applicable.

- (7) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy.
- (8) Information subject to attorney-client privilege.
- (9) Information subject to other enunciated privileges such as counselor-client and those recognized by statute or court rule.
- (10) Pending public bids to enter into contracts.
- (11) Appraisals of real property to be acquired by a public body.
- (12) Test questions and answers, scoring keys and other examination instruments.
- (13) Medical counseling or psychological facts which would reveal an individual's identity.
- (14) Internal communications and notes between and within public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action.
- (15) Law enforcement communication codes and deployment plans unless the public interest in disclosure outweighs the public interest in nondisclosure.
- (16) Information that would reveal the location of archeological sites.
- (17) Product testing data developed by agencies buying products where only one bidder meets the agency's specifications.
- (18) A student's college academic transcript where the student is delinquent on university payments.
- (19) Records of any campaign committee including any committee that receives moneys from a state campaign fund.
- (20) Records and information pertaining to an investigation or a compliance conference under Article 15 of the Public Health Code, before a complaint is issued.

Form of Records

The FOIA requires that a public body furnish “a reasonable opportunity for inspection and examination of its public records.” The public body or agency has a responsibility to provide reasonable facilities so that persons making a request may examine and take notes from public records. The facilities must be available during the normal business hours of the public body. One Michigan court found that if a requestor asks to inspect original records, supplying copies does not meet the FOIA’s requirements. *Hubka v. Pennfield Township*, 197 Mich App 117 (1992).

Special Provisions Regarding Electronic Mail

Electronic mail is a public record subject to disclosure under the FOIA.

Trend of Public Records Law Cases Addressing Electronic Mail

No cases directly address electronic mail issues in FOIA context.

Fees for Public Records

A government agency can only charge actual duplication, mailing and clerical labor costs for producing public records. The first \$20 of work must be free for a person who is on welfare or presents facts showing inability to pay due to indigency. A public body may require a good faith deposit at the time of request, but the deposit may not exceed half of the total cost.

Main Areas of Litigation and Typical Outcomes Regarding Public Records

Exempt From Disclosure

Under the FOIA, a public body may exempt records if they are personal in nature and disclosure would constitute a clearly unwarranted invasion of an individual’s privacy. Courts addressing privacy issues have generally advanced transparency by ruling in favor of the disclosure of public records.

For example, in *Penokie v. Michigan Technological University*, 93 Mich. App. 650 (1979), an appellate court held that disclosure of the names and salaries of employees of the defendant university was not a clearly unwarranted invasion of personal privacy. The appellate court in *Kestenbaum v. Michigan State University*, 97 Mich. App. 5 (1980) held that lists of names may be disclosed, while the nature of information associated with those names may be redacted to protect privacy interests. An appellate court also held that public disclosure of performance evaluation of school administrators is not an invasion of privacy because people have a strong interest in public education and because taxpayers are increasingly holding administrators accountable for expenditures of tax money. *Ridenour v. Dearborn Board of Education*, 111 Mich. App. 798 (1981).

Deadline for Production of Public Records

A public body must respond to a FOIA request for a public record within five business days of receiving the request. The public agency may, under unusual circumstances (defined below), notify the requestor in writing and extend the time limit by ten days. If a request for a record is denied, written notice of the denial must be provided to the requestor within five days, or within fifteen days under unusual circumstances. Where a public body timely claims an additional ten business days for a response, the new response deadline is fifteen business days after the receipt of the request, regardless of when the notice of extension is issued.

FOIA defines “unusual circumstances” as one or both of the following circumstances: the need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request; or the need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

Denial of a Record

Written notice of a public body’s FOIA denial must be provided to the requestor within five days, or within fifteen days under unusual circumstances. A failure to respond within the time limits or provide no response also amounts to a denial.

What Must be Included in Denial Letter?

The public body must provide the requestor with a full explanation of the reasons for the denial and the requestor’s right to seek judicial review. The denial letter must also include notification of the right to receive attorneys’ fees and collect damages.

Appeal to Public Body

If a public body makes a final determination to deny all or part of a request, the requestor may submit to the head of the public body. Within ten days after receiving a written appeal, the head of a public body shall reverse the disclosure denial, issue a written notice to the requesting person upholding the disclosure denial, or reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part. Under unusual circumstances, an additional ten days may be taken.

Appeal to State Court

A requestor has the right to commence an action in circuit court to compel disclosure of public records that have been denied. An action must be filed within 180 days after a public body’s final determination to deny a request.

Penalties for Violation

Actual and compensatory damages are available to prevailing plaintiffs in FOIA litigation. Moreover, if the circuit court finds that the public body has arbitrarily and capriciously violated the FOIA statute by refusal or delay in disclosing or providing copies of a public record, it may award punitive damages of up to \$500 to the plaintiff.

Attorneys' Fees

Prevailing plaintiffs in FOIA litigation are statutorily entitled to reasonable attorneys' fees. If the plaintiff prevails only in part, he or she may not be entitled to an award. *Pro se* litigants are not entitled to attorneys' fee awards.

Whether Attorneys' Fees Are Usually Granted

Courts award attorneys' fees fairly consistently in FOIA cases where the plaintiff prevails and is not *pro se*.

General Areas Litigated Most Commonly and Typical Outcomes

Cases addressing whether records are disclosable under FOIA generally extend broad coverage to the statute's reach. In addition, exemptions to FOIA are construed narrowly by Michigan courts in most decisions.

The issue of whether to award punitive damages for FOIA violations has been considered by several courts. Generally, courts have held that in order to obtain punitive damages, a plaintiff must demonstrate that disclosure of information was the result of a court order and that defendant acted arbitrarily and capriciously in failing to timely comply with the disclosure request in a timely manner.

Ranking in 2007 National Study of 50 States' Freedom of Information Laws

In 2007, the nonpartisan, nonprofit organizations Better Government Association and National Freedom of Information Coalition conducted a 50-state study of FOIA responsiveness.

Three of the criteria—Response Time, Attorneys' Fees & Costs and Sanctions—were worth four points each.

Two of the criteria—Appeals and Expedited Process—were assigned a value of two points each.

Response Time, Attorneys' Fees & Costs and Sanctions were assigned a higher value because of their greater importance. These criteria determine how fast a requestor gets an initial answer, thus starting the process for an appeal if denied, and provide the necessary deterrent element to give public records laws meaning and vitality.

Appeals and Expedited Process, although important, were determined to be less critical in promoting open government access and thus assigned only a two-point value.

The following sets forth Michigan's rankings in this study, which may be found at www.bettergov.org/policy_foia_2008.html.

- For response time (analyzing response times, the process of appealing FOIA denials and expediency, and the means to give a case priority on a court's docket in front of other matters because of time concerns); **4 of 4**.
- For appeals (analyzing choice, cost and time); **2 of 2**.
- For expedited review (if a petitioner's appeal, in a court of law, would be expedited to the front of the docket so that it is heard immediately); **1 of 2**.
- For fees and costs ((1) whether the court is required to award attorneys' fees and court costs to the prevailing requestor; and (2) what sanctions, if any, the agency may be subject to for failing to comply with the law); **4 of 4**.
- For sanctions (whether there was a provision in the statute that levied penalties against an agency found by a court to be in violation of the statute); **1 of 4**.
- Percentage (compared to other 49 states); **75 of 100**.

GRADE: C

CASE IN POINT

As reported by *The Argus-Press*, a local newspaper in Central Michigan, the Shiawassee County Sheriff charged *The Argus-Press* an exorbitant amount of money for a one-page FOIA request denial, in violation of state law. *The Argus-Press* made a FOIA request for information regarding the Law Enforcement Information Network rights of a former police officer.

In the Sheriff's August 18, 2008 two-paragraph denial, he stated, "...internal labor issues are not subject to FOIA. I have no knowledge concerning the details of [the officer's] employment issues." The Sheriff sent *The Argus-Press* an invoice for \$10 for FOIA denial.

"He can't charge you for the response," Dawn Hertz, general council for the Michigan Press Association, accurately assessed. Indeed, a public body may charge only actual duplication, mailing and clerical labor costs for producing public records, not for issuing a denial letter. *The Argus-Press* did not pursue the matter but did try to reach the Sheriff for comment, to no avail.

The full story can be viewed here:

www.argus-press.com/articles/2008/08/25/news/news3.txt

Open Meetings Act

STRENGTHS

of Michigan's Open Meetings Act

The greatest strength of Michigan's OMA is its extensive coverage. As a Michigan appellate court held, the purpose of the OMA "is to promote openness and accountability in government; it is therefore to be interpreted broadly to accomplish this goal." *Booth Newspapers Inc. v. University of Michigan Board of Regents*, 192 Mich. App. 574, 580, 481 N.W.2d 778, 782 (Mich.Ct.App. 1992).

All meetings of public bodies are presumed to be open and subject to the provisions of the OMA, unless the meeting topic falls within a legally identified exemption. Mich. Comp. Laws § 15.268 Sec. 8. The OMA is interpreted liberally in favor of openness and closed-session exceptions are strictly construed. The Michigan Legislature clearly intended to advance government accountability and transparency by creating a strong open government law in the OMA.

The Michigan OMA has a comprehensive penalty scheme that allows individuals to be personally accountable for violating the statute. Individuals, the Attorney General and state prosecuting attorneys have standing to file complaints in the circuit court to compel compliance or to enjoin further noncompliance of public bodies. Violations of the OMA can subject a public body official to both civil and criminal penalties. Mich. Comp. Laws § 15.270 Sec. 10(1).

A public official who intentionally violates the OMA can be found personally liable in a civil action for actual and exemplary damages of not more than \$500 total. Mich. Comp. Laws § 15.273 Sec. 13(1). Moreover, a public official who intentionally violates OMA can be found guilty of a misdemeanor punishable by a fine of not more than \$1,000. In cases of a second intentional violation of

OMA within the same term, there is the possibility of a misdemeanor punishable by a fine of not more than \$2,000 and/or imprisonment for up to 1 year. Mich. Comp. Laws § 15.272 Sec. 12. The stringent penalty structure can act as a deterrent to violations.

In addition to a comprehensive penalty structure, mandatory attorneys' fees are an essential provision that promote government accountability. As such, Michigan's OMA provision that awards fees to a prevailing plaintiff significantly advances open government. Mich. Comp. Laws § 15.271 Sec. 4. Attorneys' fees provisions encourage the filing of lawsuits against offending public bodies. So long as a plaintiff has a valid case against a public body or official and prevails, he or she is statutorily entitled to attorneys' fees. Ohio and Wisconsin also mandate the awarding of attorneys' fees to prevailing plaintiffs.

A significant OMA provision that advances transparency is that Michigan's closed session exemption list *does not* include most employment or personnel matters. This is a substantial departure from other states surveyed in that the OMA requires public bodies to meet openly to discuss nearly all in-house issues concerning employees. Mich. Comp. Laws § 15.268 Sec. 8.

According to the OMA, unless a person subject to an evaluation, dismissal or suspension, disciplinary action, or complaint specifically asks for a closed session, such matters must be handled in an open public meeting. Mich. Comp. Laws § 15.268 Sec. 8(a). In addition, interviews for public employment generally must be open, although a meeting to review the specific contents of an application for employment may be conducted in closed session. *Booth*, 192 Mich. App. 574, 481 N.W.2d 778, 783 (1992).

Paired with the strict construction of closed session exemptions, the OMA's requirements on employment matters effectively make such matters fully public. Michigan has been criticized for not exempting employment matters from closed sessions, but its approach increases transparency tremendously in an area that is often important to the public.

Michigan is the only state surveyed that allows members of the public to comment at open government meetings. The OMA states that a person shall be permitted to address a meeting of a public body under rules established and recorded by the public body. The legislature or a house of the legislature may provide by rule that the right to address may be limited to prescribed times at hearings and committee meetings only. Mich. Comp. Laws § 15.268 Sec. 3(5).

This is a significant provision as it gives a statutory right to members of the public to actively participate in the government decision-making process rather than merely passively observe it. Allowing members of the public to give comment at government meetings advances the policy goal of OMA to promote public participation.

Finally, the Michigan Freedom of Information Committee is essential in promoting compliance with the OMA. As a non-profit organization, the Committee's multitude of educational and training resources provides significant capacity-building opportunities for the general public. Moreover, their government monitoring of, and advocacy for, sunshine legislation is essential to ensuring government accountability.

WEAKNESSES

of Michigan's Open Meetings Act

While Michigan's OMA is fairly strong in several areas, there are significant provisions in need of reform.

Michigan lacks a state resource to act as an intermediary in OMA disputes.

While Illinois, Ohio, Minnesota, and Wisconsin have state resources to mediate claims regarding OMA and FOIA claims, Michigan has none. The Committee plays a crucial role in filling this void and is tremendously valuable in referring citizens who seek to file a claim with an attorney who has expertise in the OMA.

The availability of a state mechanism to address OMA violations would advance the state's policy goals of promoting a transparent government while saving taxpayer dollars from needlessly being spent on litigation. Wisconsin has the State Programs, Administrative and Review division (SAR); Illinois has the Public Access Counselor; Ohio has the Auditor State Open Government Unit; and Minnesota has the Information Policy Analysis Division. While Wisconsin's SAR program is not exclusively focused on sunshine laws, and the resources from the other Midwestern states are not statutorily created, they are a notable public resource.

REFORM: Statutorily create an Open Government division in Michigan that includes investigative powers and enforcement capacity for violations of the FOIA and OMA.

The OMA, which has aggressive punitive measures, suffers from lack of effective enforcement.

While the statute has aggressive punitive measures for public officials who willfully violate the law, a review of case law indicates those measures are rarely implemented. Prosecuting attorneys throughout Michigan routinely fail to pursue criminal actions for OMA violations. Moreover, the courts never assess criminal penalties regardless of the egregious nature of the violation. The practical adverse effect is that any deterrence provided by the aggressive punitive structure currently within OMA is entirely nullified and rendered meaningless.

REFORM: Mandate implementation of punitive measures and annual OMA training for public officials. Additionally, require public officials to sign a certification form that they have completed the training.

Michigan OMA allows a public body to circumvent accountability by taking subsequent action to cure a violation.

The OMA allows a court to invalidate an improper final action based on a lawsuit by an individual, the Attorney General or a state prosecuting attorney.

During the course of litigation the public body may, without being deemed to make any admission contrary to its interest, take affirmative action to re-adopt the previously illegal action in compliance with OMA. The “re-do” vote is effective from the date of re-enactment and may not be declared invalid by

reason of the initial fault. The capacity of a public body to easily readopt a decision to moot a lawsuit claim allows a public body to circumvent accountability under the statute.

REFORM: Statutorily prohibit a public body from taking remedial action to moot legal claims filed against it for an OMA violation.

Michigan’s short deadline for filing an OMA lawsuit is a disincentive to the public to bring legal action and hold public bodies accountable.

Michigan has the most restrictive statutory deadlines in which to file an OMA civil claims. Minnesota has no time limits to file claims and Wisconsin and Ohio have a two-year statute of limitations. Illinois has a short 60-day statute of limitations.

Michigan, however, is even more restrictive. Michigan’s OMA states that the statute tolls within 60 days after the approved minutes are made available to the public by the public body. Mich. Comp. Laws §15.270 Sec. 10(3)(a). If the decision involves the approval of contracts, the receipt or acceptance of bids, the making of assessments, the procedures pertaining to the issuance of bonds or other evidences of indebtedness, or the submission of a borrowing proposal to the electors, the statute tolls a mere 30 days after the approved minutes are made available to the public. Mich. Comp. Laws §15.268 Sec. 10 (3)(b).

Lastly, Michigan law states that a public official who intentionally violates OMA can be subject to a suit within 180 days after the date of the violation that gives rise to the cause of action. Mich. Comp. Laws §15.273 Sec. 13(2).

Members of the public who identify an OMA violation can attempt to redress it through two options: organizing and speaking out to pressure public officials to address the indiscretion through a re-vote; or filing a complaint with the appropriate State’s Attorney or the Attorney General. However, pursuing these options does not suspend the statute of limitations, and places extraordinary pressure on an individual to quickly decide whether or not to pursue costly litigation.

REFORM: Extend the statute of limitations to two years.

SUMMARY OF LAW

of Michigan's Open Meetings Act

The following section provides a summary of the main components of the Michigan OMA. This summary provides an overview of the nuts and bolts of the OMA, including what types of meetings are covered by the law, the procedures for closed sessions, how to appeal a violation and what relief is available through the courts. Also included are assessments based on a review of the relevant case law of the main issues in OMA litigation and whether attorneys' fees are actually awarded to successful plaintiffs.

Who is Covered Under the Law?

The purpose of the Michigan OMA is to strengthen the right of all Michigan citizens to know what goes on in government by requiring public bodies to conduct nearly all business at open meetings.

Public bodies include any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, which is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function, or a lessee thereof performing an essential public purpose and function pursuant to the lease agreement.

Notably, the OMA provides that it shall supersede all local charter provisions, ordinances, or resolutions which relate to requirements for meetings of local public bodies to be open to the public.

The OMA includes specific exemptions for certain public bodies when they are deliberating on the merits of a case: Worker's Compensation Appeal Board; Employment Security Board of Review; State Tenure Commission; Michigan Public Service Commission; and an arbitrator or arbitration panel appointed by the Employment Relations Committee or selected under Michigan law.

Are Committees, Advisory Groups, Sub-Committees Covered?

Committees and subcommittees are covered by the OMA so long as they exercise governmental authority or perform a governmental function. No clear guidance establishes whether advisory groups are covered by the OMA. The Attorney General has issued an opinion that the OMA does not apply to committees and subcommittees of public bodies which are merely advisory or only capable of making recommendations concerning the exercise of governmental authority, but which are not legally capable of rendering a final decision. 1977-78 Op. Att'y Gen. 21, 40 (1977).

However state appellate courts have taken a broader view of advisory committees and held them subject to OMA coverage in certain cases. *Schmiedicke v. Clare Sch. Bd.*, 228 Mich. App. 259, 577 N.W. 2d 706 (1998) (school board's referral to a committee for a recommendation regarding method of evaluating administrators and length of their contracts was a delegation of authority to perform a public function and meetings are subject to OMA); *Morrison v. City of East Lansing*, 255 Mich. App. 505, 520, 660 N.W.2d 395 (where city council "effectively authorized" committee to perform a governmental function and the committee held public meetings to solicit public input, despite the fact that the committee was not capable of rendering a final decision, it was still a public body subject to OMA).

In sum, a case by case evaluation is required to determine the status of advisory groups under the OMA.

Types of Gatherings Covered

The OMA covers any meeting of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy, or any meeting of the board of a nonprofit corporation formed by a city under the Home Rule City Act. "Meeting" also applies to information-gathering and fact-finding sessions called by the governmental body where a quorum of members are present and the session relates to the body's public business. However, the OMA specifically excludes a gathering that is "a social or chance gathering or conference not designed to avoid this act [OMA]." M.C.L.A. § 15.263(10).

The Attorney General stated in an opinion that the legislature included this exception so that members of a public body, despite constituting a quorum, could listen to the concerns of members of the public or persons with special knowledge in the presence of other interested persons. 1979-80 Op. Att'y Gen. 29 (1979).

Governmental bodies may hold meetings through written, telephonic, electronic, wireless, or other virtual means. However, an electronic meeting is still subject to the notice requirements described below and must be held at a designated place and time.

What Meetings Must Be Open?

Under the OMA, all meetings of a public body must be open to the public and held in a place available to the general public. All decisions made by a public body must be at a meeting open to the public and all deliberations of a quorum of the public body must take place at a meeting open to the public.

Importantly, the OMA explicitly provides the right to any member of the public to speak or comment during a meeting, subject to rules established by the public body for maintaining order. The OMA also specifically provides that “A person shall not be required as a condition of attendance at a meeting of a public body to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance.” M.C.L.A. § 15.263(4).

Exceptions: Closed Meetings

There are several types of authorized closed meetings. A public body may close a meeting under any of the following conditions:

- (1) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of a public officer, employee, staff member, or individual agent, if the named person requests a closed hearing. A person requesting a closed hearing may rescind the request at any time, in which case the matter at issue shall be considered after the rescission only in open sessions.
- (2) To consider the dismissal, suspension, or disciplining of a student if the public body is part of the school district, intermediate school district, or institution of higher education that the student is attending, and if the student or the student’s parent or guardian requests a closed hearing.
- (3) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.
- (4) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.
- (5) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.
- (6) To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, except as otherwise provided in this subdivision, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act.
- (7) Partisan caucuses of members of the state legislature.

- (8) To consider material exempt from discussion or disclosure by state or federal statute.
- (9) For a compliance conference conducted by the Department of Commerce under section 16231 of the Public Health Code, Act No. 368 of the Public Acts of 1978, or Section 333.16231 of the Michigan Compiled Laws, before a complaint is issued.
- (10) In the process of searching for and selecting a president of an institution of higher education.

In practice, courts have upheld the “exempt-material” exemption to the OMA. This exemption provides that when a document is exempt from disclosure under the FOIA, the meeting or correspondence producing the document is also not subject to OMA. Section 8(h). The OMA authorizes closed sessions to discuss matters which are exempt from disclosure or discussion by a statute (such as the FOIA), or which are reasonably related thereto.

To advance the Legislature’s intent of promoting openness and accountability, the scope of the discussion in closed session must legitimately relate to legal matters, and not bargaining, economics, or other tangential non-legal matters.

Procedures for Closed Meetings

According to the OMA, a two-thirds roll call vote of public body members is required to call a closed session, except for the closed sessions permitted under OMA Sections 8(a), (b), (c), (g), (i), and (j). (Such closed sessions include the following: (a) to consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named person requests a closed hearing; (b) to consider the dismissal, suspension, or disciplining of a student if the public body is part of the school district, intermediate school district, or institution of higher education that the student is attending, and if the student or the student’s parent or guardian requests a closed hearing; (c) for strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing; (g) partisan caucuses of members of the state legislature; and (i) for a compliance conference conducted by the Department of commerce under section 16231 of the Public Health Code, Act No. 368 of the Public Acts of 1978, or Section 333.16231 of the Michigan Compiled Laws, before a complaint is issued.)

The roll call vote and the purpose for calling the closed session must be entered into the minutes of the meeting at which the vote is taken. In addition, a separate set of minutes must be taken by the clerk or the designated secretary at the closed session. These minutes must be retained by the clerk, are not available to the public, and shall only be disclosed if required by an appropriate civil action.

Closed session minutes may be destroyed one year and one day after approval of the minutes of the regular meeting at which the closed session was approved.

Recordkeeping for Meetings: Minutes Requirements

Meeting minutes must be kept for government meetings showing the date, time, place, members present or absent, any decisions made, the purpose for which a closed session is held and all roll call votes taken. It is required that the public body make any corrections in the minutes at the next meeting after the meeting to which the minutes refer. Corrected minutes must be available at or before the next subsequent meeting.

Notably, the OMA establishes a set deadline for the publication of minutes. Proposed minutes must be made available for public inspection within eight business days after the meeting to which the minutes refer. Approved minutes must be available for public inspection within five business days after the meeting at which the minutes are approved by the public body. Michigan courts have allowed for many exceptions regarding the release of minutes.

Taping or Filming Meetings

Taping, recording, and filming meetings are allowed. Michigan courts have determined that a public body may reasonably regulate press coverage that involves television and other technologies, so the coverage does not disrupt the meeting.

Are Electronic Mail Communications a Meeting?

The statute is silent and no cases directly address whether electronic mail communications constitute a meeting.

Public Notice of Time and Place for Meetings: Requirements for Agendas

The OMA requires public bodies to publish notice of their regularly scheduled meetings within ten days of the first meeting in each calendar or fiscal year. The required notice must contain the dates, times, and places of the public body's regular meetings, as well as the name of the public body, its telephone number and its address. It is required that public bodies post this notice at their principal office and any other location deemed appropriate.

Public bodies may also hold "special" meetings for meetings not on the regular schedule. Such special meetings require the public body to post notice at least 18 hours prior to the meeting. In addition, a meeting recessed for more than 36 hours can be reconvened only after a public notice is posted which meets the requirements above.

Summary of Pivotal State Supreme Court OMA Decisions

Most relevant decisions in the Michigan courts have been issued in the appellate courts, as described below.

Regents of Univ. of Mich. v. Washtenaw County Coalition Against Apartheid, 97 Mich App 532, 296 N.W.2d 94 (Mich. Ct. App. 1980)

Procedure of University Board of Regents in recessing meeting that was disrupted by an association opposing racial policies of South Africa, followed by removal of the meeting to a new location and the announcement of new location and time of reconvening to all who were present at the original place, did not violate the OMA since the meeting was reconvened within 36 hours from commencement of the recess, and change of location occurring did not convert the meeting from “recess” to “rescheduled” such as would require 18 hours’ notice under the OMA.

Ridenour v Board of Education, 111 Mich. App. 798, 314 N.W. 2d 760 (1981)

Information may be discussed at a closed meeting if it is exempt from disclosure under the section of the FOIA permitting a public body to exempt from disclosure information of personal nature, where public disclosure of information would constitute a clearly unwarranted invasion of individual’s privacy.

Ryant v Cleveland Twp., 239 Mich. App. 430, 608 N.W.2d 101 (2000)

Meetings during which board members who are present do not exchange any affirmative or opposing views, debate an amendment or engage in any discussion are not “meetings” of a public body subject to the requirements of the OMA.

Stablein v Schuster, 183 Mich. App. 477, 455 N.W.2d 315 (1990)

There is no restriction of the “public and official proceedings” privilege to judicial proceedings.

St. Aubin v Ishpeming City Council, 197 Mich. App. 100 (1992)

Gatherings where decisions and public policy are made will not be deemed “chance gatherings,” and should always be open to the public. Chance gatherings are valid, but when decisions are rendered, it crosses the line of an unplanned meeting and must be open.

Enforcement

Civil and criminal penalties are available for OMA violations. The Attorney General, the county prosecuting attorney where the offending public body is located and individuals may enforce the OMA through court action. A civil action may be filed in the circuit court to compel compliance or to enjoin further noncompliance.

Final actions made in violation of OMA may be invalidated by a court. Litigation which seeks to invalidate a decision of a public body must be initiated within 60 days of the approved minutes, or within 30 days for decisions involving property, money, contracts or bond issuance.

Where the decision of a public body is challenged on the ground that it was not made in compliance with the requirements of the OMA, the public body may, without being deemed to make any admission contrary to its interest, re-adopt the decision in compliance with OMA. Decisions re-adopted in such a manner are effective from the date of re-enactment and may not be declared invalid by reason of the initial fault.

Penalties for Violation

The state may bring criminal penalties in an OMA matter. The following penalties may be assessed against public officials for OMA violations:

- *Damages* (§ 15.273): A public official who intentionally violates OMA shall be personally liable for actual and exemplary damages of not more than \$500 total in a civil action.
- *Fines* (§ 15.272): A public official who intentionally violates OMA is guilty of a misdemeanor or punishable by a fine of not more than \$1,000; a second intentional offense within the official's same term results in a misdemeanor punishable by a fine of not more than \$2,000, or imprisoned for not more than 1 year, or both.

In addition, the OMA provides for substantial fines against universities under certain conditions. If a university violates the OMA with respect to the process of selecting the institution's president at any time after the recommendation of final candidates to the governing board, the institution is responsible for a maximum civil fine of \$500,000, in addition to any other remedy under the OMA. Funds from the financial penalty are intended to pay for the travel and expenses of the members of the governing board.

Are Criminal Penalties Assessed Regularly?

Criminal penalties are generally not assessed for OMA violations.

Availability of Attorneys' Fees for OMA Litigation

Michigan's OMA allows for attorneys' fees and costs where the violation was intentional and the plaintiff's suit is successful. Attorneys' fees will not be awarded for pro se litigants. In addition, Michigan courts will typically not grant attorneys' fees unless injunctive or declaratory relief is granted.

An interesting distinction in Michigan's open government statutes is that while attorneys' fee awards under the state FOIA are discretionary, under OMA they are mandatory. M.C.L.A. § 15.240(4), 15.271(4).

Whether Attorneys' Fees Are Usually Granted

Michigan courts generally award attorneys' fees when declaratory or injunctive relief is granted. However, no consistent standards have been established for when attorneys' fees are appropriate.

General Areas Litigated Most Commonly and Typical Outcomes

What constitutes proper notice of meetings has been heavily litigated under the OMA. Michigan courts have held the following with respect to notice issues:

- A meeting held by a public body may be recessed for subcommittees to meet. Subcommittees do not have to issue notice for the meeting provided that no quorum is present, and the subcommittees does not discuss the same issue;
- When providing notice of a meeting, a public body must also provide notice of the items of business to be conducted at the meeting. Using the word "discuss" on the agenda does not preclude the committee from acting on an issue;
- The OMA only requires that a meeting be held in a place available to the general public; it does not dictate that the meeting be held within the geographical limits of the public body's jurisdiction. If a meeting is held so far from the public which it serves that it would be difficult or inconvenient for citizens residing in the area served by the public body to attend, the meeting could be considered as being held at a place unavailable to the general public. Whenever possible, the meeting should be held within the geographical boundaries served by the public body;
- A meeting that has been properly closed to the public can change locations (due to the attendance of an unwanted official) without reissuing notice provided that the reconvened session occurs within 36 hours; and
- New notice does not need to be provided when a closed meeting has to move locations as long as the reconvened meeting happens within 36 hours.

CASE IN POINT

As reported by the Clare Sentinel, within a period of 15 months, four public bodies located within Claire County clearly violated provisions of the OMA.

First, the Farwell school board voted on February 11, 2008 to meet in closed session to discuss a personnel issue. Second, the Clare County Board of Commissioners voted on January 16, 2008 to meet in closed session to discuss the sale of property near the local airport. Third, the Harrison school board voted on December 11, 2006, to meet in closed session to discuss the sale of the district's early childhood building. Fourth, the Clare City Commission voted on November 20, 2006 to meet in closed session to discuss the sale of the city's old library building.

The full story can be viewed at: www.clarecountyonline.com/?p=129.

MI

OMA

COMPARE AND CONTRAST

Freedom of Information Act

CATEGORIES OF CONCERN	ILLINOIS	MICHIGAN
Coverage	All public bodies, including legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of the state.	All public bodies, including state agencies, county and other local governments, school boards, other boards, departments, commissions, councils, and public colleges and universities. If an entity receives more than half of its funding through a state or local authority, it is considered a public body.
Public Records Open to Disclosure	Any handwriting, typewriting, printing, photostating, photographing, photocopying and every other means of recording, including letters, words, pictures, sounds or symbols, or combinations thereof, as well as papers, maps, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.	A writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function.
Form of Records	Requestor's choice; can be paper or other medium if public body normally maintains records in that form.	Requestor's choice; can be paper or other medium.
Electronic Mail	E-mails are covered.	E-mails are covered.
Fees for Public Records	Only for actual cost of reproduction and certification; not for cost of labor.	Fees may be charged for the necessary copying of a public record for inspection or providing a copy of a public record to a requestor. Fees also may be imposed for search, examination and review and the separation of exempt information in those instances where failure to charge a fee would result in unreasonably high costs to the public body. The fee must be limited to actual duplication, mailing and labor costs.

MINNESOTA	OHIO	WISCONSIN
<p>All government entities, including state agencies, record-keeping systems, political subdivisions, corporations or non-profits under contract, state university system and school districts, and any officer, board, or authority appointed for an agency or ordinance or any level of local government (counties, districts, charter cities, towns, etc.).</p>	<p>All public bodies, including state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by any alternative school in the state of Ohio kept by a non-profit or for profit entity.</p>	<p>All government “authorities,” including a state or local office, elected official, agency, board, commission, committee, council, department, or public body corporate and politic created by constitution, law, ordinance, rule, or order, and any governmental or quasi-governmental corporation (except for the Bradley Center sports and entertainment corporation).</p>
<p>Regardless of physical form, all information collected, created, received, maintained, or disseminated by the government.</p>	<p>Regardless of physical form, any document, device, or item which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.</p>	<p>Regardless of physical form, all material on which written, drawn, printed, spoken, visual, or electromagnetic information is recorded or preserved and has been created or is being kept by an authority.</p>
<p>Must be “easily accessible for convenient use.”</p>	<p>Requestor’s choice; can be paper or other medium if public body normally maintains records in that form.</p>	<p>Requestor’s choice; can be paper or other medium.</p>
<p>E-mails are covered.</p>	<p>E-mails relating to office functioning are covered.</p>	<p>E-mails are covered.</p>
<p>If copied amount is less than 100 pages, the fee is limited to 25 cents per page. If over 100 pages, charge can cover actual costs of searching for, compiling, or electronically transmitting the data (including employee time under certain conditions).</p>	<p>Only for actual cost of reproduction and mailing; not for cost of labor.</p>	<p>Only for the “actual, necessary, and direct cost” of reproducing records; not for the cost of labor. Costs associated with locating records may be assessed when more than \$50 is required to locate records.</p>

COMPARE AND CONTRAST

Freedom of Information Act

CATEGORIES OF CONCERN	ILLINOIS	MICHIGAN
<p>Public Records Exempt from Disclosure</p>	<p>Key specific exemptions include:</p> <ul style="list-style-type: none"> - records related to litigation - medical records - personnel records - tax assessments 	<p>Key specific exemptions include:</p> <ul style="list-style-type: none"> - information or records subject to the attorney-client privilege - law enforcement information - trade secrets
<p>Deadline for Production of Public Records</p>	<p>Seven business days, additional seven business days with extension.</p>	<p>Five business days, additional ten business days with extension for unusual circumstances.</p>
<p>Denial of a Records Request</p>	<p>Public body must, in writing, provide explanation, identify responsible parties, and explain appellate process.</p>	<p>Public body must provide written explanation and inform requestor of right to seek judicial review within five days, or within fifteen days under unusual circumstances.</p>
<p>What Information Must a Requestor Provide</p>	<p>None. Requestor may provide identification and purpose for a waiver of fees in the “public interest.”</p>	<p>None. Reason for request may be disclosed but cannot constitute effective denial.</p>
<p>Appeal Process (Administrative or State)</p>	<p>Requestor must appeal denial to the head of the public body in writing. If such administrative appeal is denied or ignored, requestor may file action in circuit court for injunctive or declaratory relief.</p>	<p>Requestor must appeal denial to the head of the public body in writing. If such administrative appeal is denied or ignored, requestor may try to compel disclosure in circuit court.</p>

MINNESOTA	OHIO	WISCONSIN
<p>Key specific exemptions include:</p> <ul style="list-style-type: none"> - law enforcement information - proprietary information and trade secrets - personnel data - private, confidential, nonpublic and protected nonpublic data 	<p>Key specific exemptions include:</p> <ul style="list-style-type: none"> - medical records - trial preparation records - records pertaining to adoption hearings - trade secrets 	<p>Key specific exemptions include:</p> <ul style="list-style-type: none"> - law enforcement information - proprietary information and trade secrets - patient health care records - personnel records
<p>“As soon as reasonably possible,” but no exact time period. Ten days for private and summary data.</p>	<p>“Promptly prepared,” but no exact time period.</p>	<p>“As soon as practicable and without delay,” but no exact time period.</p>
<p>Requestor has right to be informed of the specific law or classification that justifies the denial.</p>	<p>Public body must provide explanation, including legal authority. The explanation is not required to be written, unless the requestor so requests.</p>	<p>If oral request, the government authority may deny the request orally unless the requestor asks for a written statement of the reasons for denial within five business days of the oral denial. If written request, a denial or partial denial must be in writing. Reasons for the denial must be specific and sufficient.</p>
<p>None for public and summary data. Specifications vary regarding access to private data and confidential data.</p>	<p>None. Public body may ask for written request, requestor’s identification and reason, but must disclose non-mandatory nature.</p>	<p>None. A requestor does not need to provide his or her identity or the reason why the requestor wants particular records.</p>
<p>No administrative appeal process exists. Requestor may try to compel disclosure in district court. Personally affected individuals have the right to appeal to the government authority administratively regarding their personally identifiable information.</p>	<p>No administrative appeal process exists. Requestor may file a mandamus action to compel disclosure in the court of common pleas.</p>	<p>No administrative appeal process exists. Requestor may bring a mandamus action asking a court to order release of the record or submit a written request to the district attorney of the county where the record is located or to the Attorney General requesting that a mandamus action be brought. Personally affected individuals have the right to appeal to the government authority administratively regarding their personally identifiable information.</p>

COMPARE AND CONTRAST

Freedom of Information Act

CATEGORIES OF CONCERN	ILLINOIS	MICHIGAN
<p>Penalties for Violation</p>	<p>None.</p>	<p><i>Punitive damages:</i> Up to \$500. <i>Actual or compensatory damages:</i> awarded by courts.</p>
<p>Availability of Attorneys’ Fees for Prevailing Plaintiffs in Litigation</p>	<p>Yes, but not for <i>pro se</i> plaintiffs.</p>	<p>Yes, but not for <i>pro se</i> plaintiffs.</p>
<p>Typical Outcome of Request for Attorneys’ Fees by Prevailing Plaintiffs in Litigation</p>	<p>Not often awarded.</p>	<p>Not often awarded.</p>
<p>Statute of Limitations to File Administrative Appeal or to File Action in Circuit Court</p>	<p>None.</p>	<p>FOIA requestors who face a full or partial denial of their records requests may submit a written appeal to the head of the appropriate public body, or may directly file a claim in court within 180 days of the purported denial.</p>

MINNESOTA	OHIO	WISCONSIN
<p><i>Exemplary damages:</i> Between \$1,000 and \$10,000. Civil penalties: Up to \$1,000 awarded by courts, payable to the state general fund.</p>	<p><i>Statutory damages:</i> \$100 per business day, up to \$1,000.</p>	<p><i>Statutory damages:</i> minimum \$100 and other actual costs (except no such recovery by committed or incarcerated persons). <i>Punitive damages:</i> up to \$1,000 for a government authority's custodian who is responsible for an arbitrary and capricious delay or denial.</p>
<p>Yes, but not for <i>pro se</i> plaintiffs.</p>	<p>Yes, but not for <i>pro se</i> plaintiffs.</p>	<p>Yes, but not for <i>pro se</i> plaintiffs.</p>
<p>Not often awarded.</p>	<p>Not often awarded.</p>	<p>Usually awarded.</p>
<p>None.</p>	<p>None.</p>	<p>When the request comes from a committed or incarcerated person, the claim must be filed within 90 days after the request is denied.</p>

COMPARE AND CONTRAST

Open Meetings Act

CATEGORIES OF CONCERN	ILLINOIS	MICHIGAN
<p>Coverage</p>	<p>Any public body, including any legislative, executive, administrative, or advisory bodies of the state, counties, townships, cities, villages, incorporated towns, school districts, and all other municipal corporations, boards, bureaus, committees, or commissions, and any subsidiary bodies of any of the foregoing. Does not apply to private, non-profit corporations under any conditions.</p>	<p>Any public body, including any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, which is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform such a function, or a lessee thereof performing an essential public purpose and function pursuant to the lease agreement. A board of a nonprofit corporation formed by a city under the Home Rule City Act is a public body, however, courts have found no coverage for a nonstock, nonprofit corporation created independent of state or local authority without the assistance of public funds or generally for private non-profit corporations.</p>
<p>Are Committees, Advisory Groups, Sub-Committees Covered?</p>	<p>Committees and sub-committees are covered by the law. Advisory committees that are supported in any part by tax revenue or which expend tax revenue are covered by the law pursuant to a balancing test.</p>	<p>Committees and sub-committees are covered by the law so long as they exercise governmental authority or perform a governmental function. Advisory groups are not expressly covered under the law. The Attorney General has suggested there is no coverage, however state appellate courts have found advisory committees subject to coverage in certain cases.</p>
<p>Types of Gatherings Covered</p>	<p>Coverage extends to a gathering of a majority of a quorum to discuss public business.</p>	<p>Coverage extends to any meeting of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy, or any meeting of the board of a nonprofit corporation formed by a city under the Home Rule City Act. Also covered are information-gathering and fact-finding sessions called by the governmental body where a quorum of members are present and the session relates to the body's public business.</p>

MINNESOTA	OHIO	WISCONSIN
<p>Any public body, including any state agency, board, commission, or department when it is required or permitted by law to transact public business in a meeting, the governing body of any school district, unorganized territory, county, city, town, or other public body, and a committee, subcommittee, board, department, or commission of a public body subject to the law. A 2000 amendment established that corporations created by political subdivisions are subject to coverage.</p>	<p>Any public body, including any board, commission, committee, council, or similar decision-making body of a state agency, any county, township, municipal corporation, school district, or other political subdivision. Coverage can be trumped by individual city charters due to the home rule provision in the State Constitution.</p>	<p>Any public body, including state or local agencies, commissions, departments, and councils. The law also applies to the state Legislature, but not to a partisan caucus of the Senate or Assembly. Governmental or quasi-governmental corporations are also covered by the law. The statute does not address coverage for non-profit corporations, though Attorney General opinions lean toward coverage for non-profits as quasi-governmental entities.</p>
<p>Committees and sub-committees are covered by the law. Advisory groups are not expressly covered under the law, but courts have held that an advisory committee may be covered depending on the number of members of the governing body involved and on the form of the delegation of authority from the governing body to the members.</p>	<p>Committees and sub-committees are covered by the law. Advisory groups are not expressly covered under the law and Ohio courts are split on whether advisory groups constitute public bodies.</p>	<p>Committees and sub-committees are covered by the law. Bodies created by a directive and advisory bodies created by a constitution, statute, ordinance, rule, or order and bodies created by a directive are also covered.</p>
<p>Coverage extends to gatherings of a governing body reaching a quorum, or a quorum of a committee, subcommittee board, department or commission at which members discuss, decide or receive information as a group on issues relating to the official business of that governing body.</p>	<p>Coverage extends to a prearranged meeting of a public body in which a majority of its members attend and discuss public business.</p>	<p>Coverage extends to gatherings of a majority of the public body where the body meets to engage in business, including discussion, decision, or information-gathering on issues within the body's responsibilities. A negative quorum (sufficient number of members to determine a public body's course of action if the group votes as a block) or walking quorum (series of meetings, telephone conferences, or some other means of communication such that groups of less than a quorum are effectively meeting) can satisfy the majority requirement.</p>

Open Meetings Act

CATEGORIES OF CONCERN	ILLINOIS	MICHIGAN
<p>Exemptions: Closed Meetings</p>	<p>A meeting may be closed under 24 exemptions. Examples include personnel matters, purchase of property, probable or imminent litigation and collective bargaining.</p>	<p>A meeting may be closed under 10 exemptions. Examples include personnel matters, purchase of property, pending litigation and collective bargaining.</p>
<p>Public Notice of Time and Place for Meetings: Requirements for Agendas</p>	<p>Public bodies must post an agenda for each regular meeting at least 48 hours in advance at both the principal office of the public body and at the meeting location. A schedule listing the times and places of regular meetings must be available at the office of the public body. A public body that has a website maintained by the full time staff of the public body must post all agendas and notices on its website regarding all public body meetings.</p>	<p>Public bodies must post a notice containing the dates, times, and places of the public body’s regular meetings, as well as the name of the public body, its telephone number and its address at least 18 hours before a meeting. It is required that public bodies post this notice at their principal office and any other location deemed appropriate.</p>
<p>Procedures for Closed Meetings</p>	<p>A majority of a quorum of the public body must vote to hold a closed meeting. The vote of each member and the citation to the specific closed session exemption must be publicly disclosed and entered into the minutes of the meeting.</p>	<p>A 2/3 roll call of members of the public body is required, except for the closed sessions permitted. The roll call vote and the purpose for calling the closed session must be entered into the minutes of the meeting where the vote takes place.</p>

MINNESOTA	OHIO	WISCONSIN
<p>A meeting <i>must</i> be closed for a limited range of subjects, for instance if data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults, to discuss data regarding educational data, health data, medical data, welfare data, or mental health data that are not public data or for preliminary consideration of allegations against an individual subject to the government's authority. A meeting may be closed under limited conditions, for instance if disclosure of the information discussed would pose a danger to public safety or compromise security, for labor negotiations purposes, purchase of property or attorney-client privileged matters.</p>	<p>A meeting <i>may</i> be closed under 8 exemptions. Examples include personnel matters, purchase of property and collective bargaining.</p>	<p>A meeting <i>may</i> be closed under 11 exemptions. Exemptions include personnel matters, purchase of property, pending litigation and collective bargaining.</p>
<p>Public bodies must keep schedules of regular meetings on file at their offices. The law fails to specify agenda requirements for meetings covered by the statute. However, if printed materials relating to agenda items are prepared by or at the direction of the governing body, and are distributed or available to those members, one copy of these same materials must be available in the meeting room for inspection by the public. No time limit is provided in the statute for posting notices for regular meetings, though special meetings require at least three days' notice.</p>	<p>Public bodies must establish at least one reasonable method of informing the public of meetings (sign on the front door of town hall, published information in a general circulation). News media must be informed at least 24 hours before meetings (exempting emergency meetings).</p>	<p>Public notice must contain the time, date, place, and subject matter of the meeting, including issues that will be considered in a closed session. No detailed agenda is required. The public body must provide 24-hour notice of a meeting, which may be accomplished by posting in places likely to be seen by the public. The Wisconsin Attorney General has suggested a minimum of three locations.</p>
<p>A public body must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed. Special provisions apply to close a meeting to discuss labor negotiations or to evaluate the performance of an individual subject to the government's authority.</p>	<p>The public body must hold a roll call vote and have a majority of the quorum vote to enter executive session. The motion and vote must state which one or more of the closed session exemptions will be considered at the executive session.</p>	<p>The chief presiding officer must announce and record the nature of the business to be discussed and the closed session exemption that allows for the closed session. Then, the public body must pass a motion, by recorded majority vote, to meet in closed session.</p>

COMPARE AND CONTRAST

Open Meetings Act

CATEGORIES OF CONCERN	ILLINOIS	MICHIGAN
<p>Recordkeeping for Meetings: Minutes Requirements</p>	<p>Minutes must include the date, time and place of the meeting, the members of the body recorded as present or absent and a summary of discussion on all matters proposed, deliberated or decided, and a record of any votes taken.</p>	<p>Meeting minutes must be kept for each meeting showing the date, time, place, members present or absent, any decisions made, the purpose for which a closed session is held and all roll call votes taken at the meeting. Proposed minutes must be made available for public inspection within 8 business days after the meeting to which the minutes refer, and approved minutes must be available for public inspection within 5 business days after the meeting at which the minutes are approved by the public body.</p>
<p>Taping of Filming Meetings</p>	<p>Taping or filming meetings is permissible so long as it does not interfere with the meeting.</p>	<p>Taping or filming meetings is permissible so long as it does not interfere with the meeting.</p>
<p>Are Electronic Mail Communications a Meeting?</p>	<p>Email and Internet chat room communications are considered communications for meeting purposes under the law.</p>	<p>The law does not address whether electronic mail communications are meetings.</p>
<p>Enforcement</p>	<p>State's Attorneys and individuals may sue to enforce the law in the circuit court. The Public Access Counselor's Office has no punitive authority but may respond to citizen's complaints and occasionally refers potential violations to the State's Attorney for investigation.</p>	<p>Individuals, the Attorney General, and the prosecuting attorney of the appropriate county all have the authority to enforce the law by filing a civil action in the circuit court to compel compliance or to enjoin further noncompliance.</p>

MINNESOTA	OHIO	WISCONSIN
<p>The law does not specifically require that minutes be taken at a regular meeting. The only statutory requirement is that votes taken at a meeting required to be public will be recorded in a journal kept for that purpose, which must be open to the public during normal business hours.</p>	<p>Minutes of regular or special meetings of any public body need to be prepared promptly, filed, and maintained so that they are available to public inspection.</p>	<p>Governmental bodies do not need to keep detailed minutes of their meetings. The body must keep a record of the motions and roll call votes at each meeting. Statutes outside the Open Meetings Law require the county, village, and city clerks to keep a record of proceedings of their governing bodies.</p>
<p>The law does not specifically address, however, a Minnesota Attorney General's Opinion states that taping is permissible if it does not have a significantly adverse effect on the order of the proceedings or impinge on constitutionally protected rights.</p>	<p>The law does not specifically address, however, an Ohio Attorney General's Opinion states that taping or filming meetings is permissible if it does not unduly interfere with a meeting.</p>	<p>Taping or filming meetings is permissible so long as it does not interfere with the meeting.</p>
<p>The law does not address whether electronic mail communications are meetings.</p>	<p>The law does not address whether electronic mail communications are meetings.</p>	<p>The law does not address whether electronic mail communications are meetings, but the state Public Records Law lists "electromagnetic information" in its definition of a record and courts interpreting that law have held that e-mail and other electronic records must be released on request.</p>
<p>Only individuals may sue to enforce the law in a district court.</p>	<p>Only individuals may sue to enforce the law in a court of common pleas. However, if a citizen suit results in an injunction against a public body, the attorney general or prosecuting attorney is responsible for bringing an action against officials who violate the injunction.</p>	<p>Individuals, the Attorney General and the district attorney have the authority to enforce the law in circuit court (though an individual must first file a verified complaint with the district attorney for his or her office to prosecute the case).</p>

Open Meetings Act

CATEGORIES OF CONCERN	ILLINOIS	MICHIGAN
Relief/Penalties for Violation	Available relief and penalties include mandamus, invalidation, injunction, costs and attorneys' fees. Criminal penalties include a fine of up to \$1,500 and imprisonment of up to 30 days.	Available relief and penalties include injunction, invalidation, damages up to \$500, criminal fines, costs and attorneys' fees. Criminal penalties for an intentional violation by a public official include a misdemeanor punishable by a fine of up to \$1,000, and a second intentional offense subject to a misdemeanor punishable by a fine of up to \$2,000 and/or imprisonment for up to 1 year.
Are Criminal Penalties Assessed Regularly?	Criminal penalties are rarely imposed for violations.	Criminal penalties are rarely imposed for violations.
Availability of Attorneys' Fees for OMA Litigation	Attorneys' fees are available for a prevailing party, but not for <i>pro se</i> plaintiffs.	Attorneys' fees are available where a violation was intentional and the plaintiff is successful, but not for <i>pro se</i> plaintiffs. Attorneys' fees will not be granted unless injunctive or declaratory relief is granted.
Whether Attorneys' Fees are Usually Granted	Attorneys' fees are usually not granted to prevailing parties.	Attorneys' fees are generally awarded when declaratory or injunctive relief is granted to a plaintiff.
Public Comment Mandated at Public Meetings?	No public comment required	Public comment <i>required</i>
Statute of Limitation to File Lawsuit	60 days	An action for injunctive relief must be filed within 180 days of the alleged violation. Litigation which seeks to invalidate a decision of a public body must be initiated within 60 days of the approved minutes, or within 30 days for decisions involving property, money, contracts or bond issuance.

MINNESOTA	OHIO	WISCONSIN
<p>Available relief and penalties include injunction, damages up to \$300, costs, attorneys' fees and removal from office. In addition, if a person is found to have intentionally violated the statute in three or more actions involving the same governing body, that person must forfeit any further right to serve on the governing body for a period of time equal to the term of office such person had served.</p>	<p>Available relief and penalties include injunction, \$500 civil forfeiture fine, costs, attorneys' fees, invalidation and removal from office. If the court deems the plaintiff's action was frivolous, the court may award all court costs and reasonable attorneys' fees to the public body.</p>	<p>Available relief and penalties include declaratory relief, injunction, mandamus, invalidation, damages from \$25 to \$300, costs and attorneys' fees.</p>
<p>Criminal penalties are not available for violations.</p>	<p>Criminal penalties are not available for violations.</p>	<p>Criminal penalties are not available for violations.</p>
<p>The court may award reasonable costs, disbursements, and attorneys' fees of up to \$13,000 to any prevailing party, but attorneys' fees may not be awarded against a member of the public body unless the court finds there was an intent to violate the law. Public bodies may recover attorneys' fees for frivolous lawsuits brought by plaintiffs without merit.</p>	<p>Attorneys' fees are available for a prevailing party if the court issues an injunction, but not for <i>pro se</i> plaintiffs. Public bodies may recover attorneys' fees for frivolous lawsuits brought by plaintiffs.</p>	<p>Attorneys' fees are available for a prevailing party, but not for <i>pro se</i> plaintiffs.</p>
<p>Attorneys' fees are usually granted to prevailing plaintiffs.</p>	<p>Attorneys' fees are generally granted to plaintiffs who prevail in winning injunctive relief. However, they are rarely awarded to defendant public bodies for frivolous lawsuits.</p>	<p>Attorneys' fees are usually granted to prevailing plaintiffs.</p>
<p>No public comment required</p>	<p>No public comment required</p>	<p>No public comment required</p>
<p>No time line</p>	<p>Two years</p>	<p>Once an individual files a verified complaint, the District Attorney has 20 days to enforce the law. After 20 days, if the District Attorney does not begin an enforcement action, the individual can bring the action in the name of the state for up to two years.</p>