



New Changes to the Freedom of Information Act

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The Legislature has approved major changes to the Freedom of Information Act ("FOIA") that will affect every public body. 2014 PA 563 ("PA 563") becomes effective July 1, 2015. Each public body is required to establish procedures and guidelines to implement PA 563 and charge fees. The public body must also provide a written summary that explains how to understand the response, deposit requirements, fee calculations and avenues for challenge and appeals. Thus, public bodies should start reviewing their policies and make changes before the deadline. Below is a brief summary of the requirements of PA 563:

- **Labor fees:** The new law breaks down the labor charges into several categories. All labor fees must be reported on a detailed itemization sheet with both the hourly rate and the number of hours. The labor fee includes separate charges and requirements for (1) searching for, locating and examining public records for a "granted" request; (2) separating and deleting non-exempt information; (3) copying time or time for complying with digital copy requests; and (4) fringe benefits (most calculations for fringe benefits cannot exceed 50 percent of the labor charge). Certain time must be charged in 15 minute increments. Further, a public body can now charge for contracted labor fees for separating and deleting exempt information in certain circumstances; however, those fees may not exceed six times the hourly minimum wage.
- **Actual costs:** The public body may charge for other costs associated with responding to a FOIA request on "nonpaper physical media." For paper copies, the actual incremental cost may be charged, but may not exceed \$.10 per sheet. For mailing costs, the actual costs of sending the documents may be charged, using the least expensive method.

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- **Procedures, guidelines and summaries:** The public body is required to establish procedures and guidelines and create a written summary to implement PA 563. The public body must post these documents on its website, if it maintains an internet presence, and provide free copies both in the public body's response to a written request (or a link to the documents on the website) and upon requests at the office. The public body must have a standard form for detailed itemization of fees.
 - **Deposit; Estimate of Time for provision of documents:** The public body may require a good faith deposit, not to exceed one-half of the total estimated cost if the total cost is expected to exceed \$50.00. The response shall also contain a "best efforts estimate" (non-binding) regarding when it will provide the documents.
 - **Untimely responses:** If a public body does not respond timely, it must reduce its labor cost permitted by 5 percent for each day with a maximum 50 percent reduction. This reduction would apply if (1) the late response was willful and intentional; or (2) if the written request conveyed that it was a request for information within the first 250 words or the envelope or subject line included certain language identified in PA 563, such as "freedom of information," "FOIA," or "copy."
 - **Additional provisions:**
 - PA 563 contains new requirements related to public records available on the public body's websites and verbal requests.
 - The new law adds new detail regarding requests from individuals who are indigent and receiving specific public assistance.
 - The new law gives public bodies 10 **business** days to respond to an appeal.
 - The public body has additional remedies with respect to subsequent written requests by people who have not paid for prior requests.
 - The PA 563 provides some protection if the request is sent by email and ends up in the spam or junk mail folder.
 - A public body must pay a \$1,000 civil fine if the court determines that it has arbitrarily and capriciously violated the Act by refusal or delay in disclosing the documents, in addition to an increase to \$1,000 for punitive damages.
 - The legislature also added provisions to challenge fees.
 - A public body must pay a civil fine of \$2,500 to \$7,500 for each occurrence if a court finds that a public body has willfully or intentionally violated the FOIA.
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