

Michigan Municipal Treasurers Association 2019 Fall Conference

CONTROLLING ACCESS TO CONFIDENTIAL DATA

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**Fahey Schultz
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EXPERT COUNSEL



REAL SOLUTIONS



Cost

Communication and Public Relations

Investigative Cost

Reputation and Integrity

Position Changes and Training

Fines

Individual Cost

Lawsuits and Settlements

Legal Costs

Rising Insurance Premiums

Security Overkill



Legal Perspectives

Responsibility to provide to data...



Open Meetings Act (“OMA”)

- All meetings of public body must be open to the public
- All decisions of public body must be made at open meeting
- Deliberations of quorum must be at open meeting.
- Cannot require registration or sign-ins.
- Cannot exclude except for breach of peace at the meeting.
- Cannot prohibit audio or video taping.
- Must allow opportunity for public comment.



Common Open Meeting Issues

- Conferences and informal gatherings.
- “Round robin” deliberations.
- E-mail and internet meetings.
- Unintentional meetings.
- One-way presentations.
- Informal “canvass” of members.



Open vs. Closed Sessions

- Open meetings are generally required, and exceptions are narrow.
- Closed sessions must be part of an open meeting, and can only happen:
 - For specific, narrow statutory reasons; and
 - With a 2/3 roll call vote of entire body (some exceptions); and
 - If the purpose of the closed session is recorded in open meeting minutes; and
 - If separate closed meeting minutes are kept; and
 - If no decisions are made in the closed session.



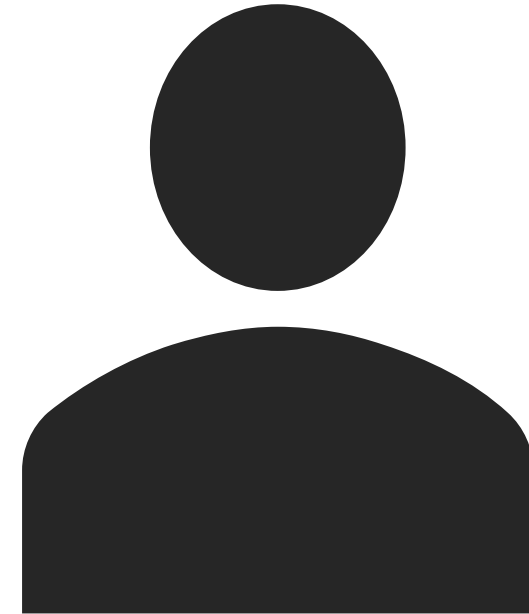
Freedom of Information Act (FOIA)

- The Michigan Freedom of Information Act is designed to provide citizens with access to public records
- The goal is transparency and ability to obtain information on a public body's official activities
- It is a pro-disclosure statute
- MCL 15.231 *et seq.*, effective April 13, 1977



FOIA Coordinator

- The FOIA Coordinator is the individual in charge of responding to FOIA requests
- Designated by the Board:
 - Can be a Board member
 - Can be a Municipality employee
- Typical duties:
 - Drafting responses to requests
 - Locating responsive records
 - Redacting exempt information
 - Arranging the copying of responsive records





A written request that describes a public record sufficiently to enable the public body to find the public record



All public records are subject to disclosure under FOIA, unless the public record is exempt

What is considered a “FOIA Request?”





What is a “public record” under FOIA?

“Public record” means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function

Common Examples:

- Email
- Text Messages (personal vs employer issued cell phones)
- Handwritten Notes
- Video
- Training
- Surveillance
- In-Car
- Body-Worn

GRANTING THE REQUEST

- FOIA request is granted if the Municipality:
 - Chooses to release the requested documents, or
 - Issues written notice granting the request
- **Please note:** A request is only considered “granted” if the requested documents are produced in full, without any editing.
 - You cannot grant a FOIA request with redactions

DENYING THE REQUEST

- Denial may occur by:
 - Sending a written denial, or
 - Failing to timely respond to the request
- Denial is permitted if:
 - The request is for exempt records, or
 - No responsive records exist
- Denial requirements:
 - Description of the record, or portion of the record, that is separated or redacted
 - Basis for an exemption (if applicable)
 - Certification that the public record does not exist (if that is the reason for denial)
 - Explanation of remedial rights





FOIA Exemptions

Four general categories of exemptions

1. Records of a personal nature, the release of which would constitute a clearly unwarranted invasion of an individual's privacy
2. Records, the release of which would impair the safety or security of a public institution or the safe and efficient operation of a police or military authority
3. Public policy
4. Records exempt by statute

Exemptions are permissive, meaning the Municipality may freely waive them (usually)



Controls

Responsibility to protect to confidential data...



Payroll and Human Resources

Confidential –

- Health and medical information
- Withholdings
- Personal contact information
- Bank accounts
- Social security numbers
- Drivers license numbers
- Emergency contact information





Disbursements and Contracts

Confidential –

- Bids and contracts prior to selection
- Vendor trade secrets
- Appraisal of real property to be acquired





Overall Considerations

- Shredding and disposal
- Physical security
- Virtual security
- Attorney-client privilege
- Investigation
- Signature



Questions and War Stories

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