



# Alphabet Soup Laws: FOIA and OMA

## Essential Reporting Tools for Journalists

presented at the MIPA Conference October 21, 2013

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### Access to Public Records -- FOIA

Michigan, like the other 49 states, has a law known as the **Freedom of Information Act (FOIA)** which gives the public, including the news media, the right to see documents and records from your school and school district, city, county and some executive government departments and agencies. (MCLA 15.231 et seq.)

The catch is that the state legislature also decided it's sometimes better not to let the public see everything. There are 25 exemptions to the FOIA that give public officials the right to keep some types of records secret (for example test scores and test questions are exempted as are students' grades and GPAs). Some of these exemptions, however, are discretionary, and many times with good sources, you can obtain at least some of the information. As for student grades, a federal law called FERPA (the Family Educational Rights and Privacy Act) bars that from being obtained.

In Michigan's law the legislature made clear that the "public policy" of the state is to provide "full and complete information regarding the affairs of government and the official acts of ...public officials and public employees..." That public policy statement is important, persuasive language and signals legislative intent that openness is preferable to secrecy. This has allowed the courts to rule in favor of disclosure if there is no clear exemption which allows the record to be kept secret.

The law also requires public bodies to have an FOI Coordinator and to respond, in writing, to a written FOIA request within five business days of receipt. But the law also allows for an up to ten business day extension, and many times the extension is routinely requested. The requester does not need to explain why he/she wants the record.

The law also allows a public body to sometimes charge the hourly rate of the lowest paid person capable of retrieving the records. In a school district that could be the superintendent or the district's attorney not the significantly lower paid secretary. This is a problem because sometimes these fees can be outrageously high. However, public bodies are required to have written standards and procedures for charges.

A bill currently in the state House would toughen up the requirement for timely responses by reducing the fees by 20% a day for every day beyond the five or 15 day response time. Public bodies are also required to separate exempt from nonexempt materials (this is often when the charges start piling up) and to design records to keep these two separated.

Most public bodies now routinely require you to make a formal, written FOI request for any record.

**Always keep a copy of any FOI letter you submit and make sure you sign and date it.** The FOI coordinator must keep a copy of all requests and track them for a year. That is always a good story for your paper. How many FOIA requests were made to the school district in the previous calendar year? How many were granted in full, in part and how many denied? And was there a charge? How much?

**Two great online resources to help you write a FOI request letter are:**

- <http://www.splc.org/legalassistance/foiletter.asp>
- <http://www.rcfp.org/foia>

**You can access either site under the MiCOG website's Resources tab**

<http://miopengov.org/resources/>. You can link to full text of the law through the same page.

If a FOIA request is denied, the first step is to appeal to the top boss within the public body (e.g. in a school, the principal or in the school district, the superintendent). The very last step is to file a lawsuit in circuit court. If the public body loses in court, it must pay some, and, at times, all of the attorney fees and court costs of the requester. **This is where the MSU Law College's First Amendment Center and MiCOG can help. If you have questions or an issue, be sure to contact MiCOG as a first step to the at very last step at info@miopengov.org.**

## **Attending Public Meetings – OMA**

**Michigan's Open Meetings Act (OMA)** may be slightly more helpful than the FOIA. The OMA requires that public bodies, like your school board, city council, county board of commissioners, etc., (the list is broader than with FOIA, but it includes many identical groups) meet in sessions which the public can attend. (MCLA 15.261 et seq.) The OMA, like the FOIA, does not cover the court system. But the courts, by law in Michigan, are generally required to be open with very limited exceptions.

To conduct official business a quorum is needed, and that is usually a simple majority (but you should verify this in the school board's manual, city charter, etc.). If a quorum is present and there is discussion, deliberations or voting, it is legally a meeting under OMA. That means a pre-meeting with coffee and doughnuts, retreats, lunches, everything but a purely social gathering or coincidental encounter, is a meeting under the OMA if a quorum is present--and it has to be public.

Public bodies are defined as: State and local legislative and governing bodies including city councils, township boards, **school boards**, commissions, committees, subcommittees, authorities empowered by the state constitution, statute, charter or ordinance to exercise or perform a government or proprietary

function. However, public universities' boards are exempt from the OMA based on a 1993 Michigan Supreme Court decision.

Even if the public body violates the OMA, it can go back into open session and re-vote to reaffirm what it did behind closed doors. That is not considered an admission it violated the law.

Just like under FOIA, there are exemptions (nine in Michigan's OMA, the 10th doesn't count any more) that permit public bodies to hold secret closed sessions though all decisions must be made at meetings open to the public.

The good news for citizens is that violations of the OMA can be challenged in court by the county prosecutor or the state Attorney General's office, as well as an ordinary citizen. It will take a really bad, high profile violation to get either of these public officials to act, however. Citizens, just like under the FOIA, can file suit in circuit court for relief, and their attorney fees and court costs are recoverable. Again, MiCOG and the MSU Law College's First Amendment Center can help. Just contact us!

For further information, please read the Michigan OMA. The Michigan Office of the Attorney General has also published a reference guide to OMA. A link for both is on the MiCOG website (<http://www.miopengov.org>) under the Resources tab.

**Businesses, Corporations, private and religious schools and other private entities are not covered by either the FOIA or the OMA.**

## **Great Stories Using FOIA and OMA**

Knowing the law can help you get great stories for your school and provide valuable information to your readers, viewers and listeners.

### **Cover school board meetings and board committee meetings:**

To get started, assign an editor or staff member to regularly cover school board meetings and report on what is ongoing. The board meetings are generally held on Monday nights once a month in most districts. Contact the school district office, in writing, to formally request, in advance, copies of the agenda and supplementary materials. You may have to pay a copying fee for documents though many districts now make this accessible online for board members and administrators. That should not cost you anything, just your email address. Your request should be renewed every six months.

Depending on your publication dates, you can preview meetings that come after your publication date. If a meeting comes before, cover it and report on it. Either way this lets the elected school board members and school administrators know that you are watching what they do. You should consider doing profiles of board members to get to know them and they you and also introduce them to your student body while asking important questions that relate to the school and its students. Questions on issues like bus schedules, cafeteria menus, team uniforms, teacher salaries are just a few ideas. You will also get story ideas from what's under discussion at the meetings.

## Records to FOIA for Great Stories

When seeking records, first ask for them. Only formally file a written FOIA request when required. However, the advantage of a formal FOIA is the clock starts ticking for five business days then up to ten more. If you just ask with no FOIA, your requests could take months to fill--right through the end of the school year!

Here are some stories ideas:

- **School Budget.** Budgets are usually in an electronic format--that is much easier to review and check with some basic Microsoft Excel skills than a paper copy. If you ask for the budget in a particular format--paper or electronic, the district has to provide it in that format if it exists.
- **Michigan Merit Exam Results.** ([http://www.michigan.gov/mde/0,1607,7-140-22709\\_35150---,00.html](http://www.michigan.gov/mde/0,1607,7-140-22709_35150---,00.html)) (How did your school compare to others in your district, county or statewide. What is the reaction of board members, the superintendent, principal, teachers, teacher union rep, parents, etc.)
- **Salaries** of administrators, teachers, counselors, the nurse and coaches.
- If "**Pay to Play**" fees are charged at your school, how much was collected for each activity and records for how those fees were spent--did they all go to the specific activity??
- What do **team activities** like football, basketball, cross country, track, gymnastics, cheer team, dance team, etc., cost your school? (Team uniforms, drinks, equipment, transportation, coaches and assistant coaches salaries, food, etc.)
- What do **plays** cost? (Copyright royalty or licensing fee, costumes, drama teacher, printing tickets, facility usage, etc.)
- **Cafeteria health inspection records** from the County Health Department. (When was the most recent inspection? What does the report say? How does this compare to earlier inspections or other schools in the district?)
- **Cafeteria menus.** (How do the food offerings in the cafeteria compare to the recommended government school menus? Check out <http://www.fns.usda.gov/cnd/governance/regulations.htm> for background and guidance then interview nutrition experts at universities like Harvard, Stanford, U-M, MSU, etc.)
- **Cafeteria budgets.** (How much is spent, and how much is collected? How much food is thrown out? etc.)
- **After school and weekend non-school related events and activities** (e.g. continuing education courses, craft shows, community meetings, blood drives, etc. What resources and costs are associated and is the school reimbursed, and if it is, by how much?)
- **School bus inspection reports.** (How well maintained is the school district fleet? What is their annual, average mileage? How old is the bus fleet? How often are buses replaced? How often do they break down? What is the safety and accident records of the fleet and drivers?)
- **Conference costs** for the principal, superintendent, teachers. (What and how many do they attend? What does it cost the district? Any in an exotic locale? Get the expense report for reimbursement.)