



REQUEST FOR QUALIFICATIONS & PROPOSALS (RFQ/P) FOR PROFESSIONAL EXECUTIVE RECRUITMENT SERVICES

The City of Birmingham, Michigan is accepting sealed qualifications and proposals from qualified professional executive recruitment firms to perform executive recruitment services for the selection of a new Birmingham City Manager upon the projected retirement of the current City Manager in May 2011.

Electronic submissions of Qualifications & Proposals for **Professional Executive Recruitment Services** will be accepted via the Michigan Intergovernmental Trade Network (MITN) website, www.mitn.info, until 3:00 p.m. on Wednesday, August 19, 2009, after which time proposals will be publicly opened and read at 3:30 p.m. in Room #205 at the Birmingham Municipal Building (151 Martin Street). Paper copies of Qualifications & Proposals will not be accepted.

Electronic copies of the RFQ/P, including specifications, may be obtained online from the Michigan Intergovernmental Trade Network at www.mitn.info, or from the Contact Person listed below. No paper copies of the RFQ/P will be made available.

The acceptance of any proposal made pursuant to this invitation shall not be binding upon the City until City approvals have been made and an agreement has been executed.

Submitted to MITN: June 30, 2009

Deadline for Questions: 3:00 p.m. on Tuesday, August 4, 2009

Responses to Questions: To be posted as an addendum on MITN website by 5:00 p.m. on Friday, August 7, 2009.

Deadline for Submissions: 3:00 p.m. on Wednesday, August 19, 2009

Contact Person: Christian Wuerth, Management Analyst
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001
Phone: 248.530.1807
Fax: 248.530.1107
E-mail: cwuerth@ci.birmingham.mi.us



**REQUEST FOR QUALIFICATION & PROPOSALS
PROFESSIONAL EXECUTIVE RECRUITMENT SERVICES**

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Introduction

For the purposes of this proposal, the City of Birmingham will hereby be referred to as “City” and the private firm will hereby be referred to as “Contractor”.

The City of Birmingham, Michigan is accepting sealed qualifications and proposals from qualified professional executive recruitment firms to perform executive recruitment services for the selection of a new Birmingham City Manager upon the projected retirement of the current City Manager in May 2011.

The purpose of this request is to provide assistance to the Birmingham City Commission as they seek to recruit and interview potential candidates for the position of City Manager. It is anticipated that the selection of a new Birmingham City Manager will occur in late 2010 or early 2011 in order to provide for an adequate transition period prior to the projected retirement of the current City Manager in May 2011.

During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarification from contractors, or to allow corrections of errors or omissions. At the discretion of the City, firms submitting proposals may be requested to make oral presentations as part of the evaluation.

It is anticipated the selection of a firm will be completed by mid-Fall 2009. A Service Agreement will be required with the selected Contractor. A copy of the Agreement is contained herein for reference (Attachment A). Contract services will commence upon execution of the Service Agreement by the City.

Request for Qualifications & Proposals

The purpose of this Request for Qualifications & Proposals (RFQ/P) is to request qualifications and proposals from qualified parties presenting their qualifications, capabilities, and costs to provide professional executive recruitment services for the City of Birmingham, Michigan to assist the Birmingham City Commission in the recruitment and selection process for the position of City Manager.

Invitation to Submit Qualifications & Proposal

Qualifications & Proposals are to be submitted electronically via the Michigan Intergovernmental Trade Network (MITN) website, www.mitn.info **no later than 3:00 p.m. on Wednesday, August 19, 2009**. Any proposal received after the due date cannot be accepted and will not be reviewed by the City. Paper copies of Qualifications & Proposals will not be accepted. Questions regarding electronic submissions may be directed to the City's designated Contact Person or to MITN website support personnel at 800.677.1997. Contractors may submit more than one proposal provided each proposal meets the functional requirements.

Instructions to Contractors

1. Any and all forms requesting information from the contractor must be on the attached forms contained herein. If more than one proposal is submitted, a separate proposal form must be used for each.
2. Any request(s) for clarification of this RFQ/P shall be made in writing and delivered to: Christian Wuerth, Management Analyst, City of Birmingham, 151 Martin, P.O. Box 3001, Birmingham, MI 48012-3001 or at cwuerth@ci.birmingham.mi.us. Such request(s) for clarification shall be delivered, in writing, no later than 3:00 p.m. on Tuesday, August 4, 2009.
3. All proposals shall provide the information as requested in this document including the instruction to respondents and general information sections. Additional information may be provided at the contractor's discretion, provided the additional information is consistent with the intent of this document.
4. The contract will be awarded by the City of Birmingham to the most responsive and responsible contractor with the lowest price and the contract will require the completion of the work pursuant to these documents.
5. Each respondent shall include in his or her proposal, in the format requested, the cost of performing the work. Municipalities are exempt from Michigan State Sales and Federal Excise taxes. Do not include such taxes in the proposal figure. The City will furnish the successful company with tax exemption information when requested.
6. Each respondent shall include in their proposal the following information: Firm name, address, city, state, zip code, telephone number, and fax number. The company shall also provide the name, address, telephone number and e-mail address of an individual in their organization to whom notices and inquiries by the City should be directed as part of this proposal.

Evaluation Procedure and Criteria

Birmingham City Commissioners, City Staff, and any other person(s) designated by the City will evaluate the proposals based on, but not limited to, the following criteria:

1. Ability to provide professional executive recruitment services as outlined in the "Contractor's Responsibilities" (p. 5) and "Scope of Work" (p. 8) sections of this document.
2. Related experience recruiting executives for public agencies.
3. Overall costs.
4. References.

Terms and Conditions

1. The City reserves the right to reject any or all proposals received, waive informalities, or accept any proposal, in whole or in part, it deems best. The City reserves the right to award the contract to the next most qualified Contractor if the successful Contractor does not execute a contract within ten (10) days after the award of the proposal.
2. The City reserves the right to request clarification of information submitted and to request additional information of one or more Contractors.
3. The City reserves the right to terminate the contract at its discretion should it be determined that the services provided do not meet the specifications contained herein. The City may terminate this Agreement at any point in the process upon notice to Contractor sufficient to indicate the City's desire to do so. In the case of such a stoppage, the City agrees to pay Contractor for services rendered to the time of notice, subject to the contract maximum amount.
4. Any proposal may be withdrawn up until the date and time set above for the opening of the proposals. Any proposals not so withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days, to provide the services set forth in the proposal.
5. The cost of preparing and submitting a proposal is the responsibility of the Contractor and shall not be chargeable in any manner to the City.
6. Payment will be made within thirty (30) days after invoice has been received and accepted by the City. Acceptance by the City is defined as authorization by the designated City representative to this project that all the criteria requested under the Scope of Work contained herein have been provided. Invoices are to be rendered not more frequently than every 30 days following the date of execution of an Agreement with the City, or at other mutually agreeable intervals. The final invoice or 15% of the total cost, whichever is greater, shall be payable only upon the successful placement of a new Birmingham City Manager.
7. The successful contractor shall enter into and will execute the contract as set forth and included as Attachment A.

Contractor's Responsibilities

Responses should be prepared in a format that conveys how the contractor will meet the requirements listed below. Each contractor shall provide the following as part of their qualifications and proposal:

1. Summary of Qualifications

- a. Provide a description of the firm, including the names and resumes of the lead consultant and any other key personnel who are likely to be assigned to this contract.
 - b. Provide a summary of similar recruitments conducted over the previous five (5) years, including names and locations of organizations, titles of position(s) for which recruitment services were conducted, whether or not the position(s) was (were) filled, and the length of tenure for the successful candidate(s).
 - c. Provide at least three (3) references for recent similar projects, including organization name, full address, contact name(s), contact phone number(s), and dates of service. References should be public agencies similar in size and scope to the City.
 - d. If applicable, provide a list of sub-Contractors and their qualifications.
2. Summary of Proposal – this summary should provide a description of how your firm intends to address each of the items detailed in the Scope of Work (p. 8), in addition to the following:
 - a. Complete Contractor's Agreement (p. 17), as requested for completion within this RFQ/P.
 - b. Project Cost - Complete Cost Proposal (p. 18), as requested for completion within this RFQ/P.
 - i. Provide a detailed breakdown of all activities included in proposed costs, including the number of meetings with Birmingham City Commissioners and members of the public.
 - ii. Provide a summary of any related additional services (and associated fees) which may be provided by your firm (i.e. background investigations).
 - iii. If applicable, provide any written guarantee by your firm detailing any recourse on the part of the City, in the event the Birmingham City Manager's position becomes vacant within 12-24 months of the City awarding the City Manager's position to the successful candidate.
 - c. Provide a summary of proposed outreach/recruitment activities.
 - i. Provide a detailed description of your recruitment process, including nationwide efforts to attract a qualified and diverse pool of candidates.
 - ii. Describe your approach toward the development of the position profile.
 - iii. Describe your outreach method/process, including where you intend to seek potential candidates.
 1. Provide a listing of publications, websites, or other media in which the position will be advertised.
 - iv. If you intend to involve members of the public, Department Heads, and/or other City staff, please describe these plans.
 - v. Provide an estimated timeline of proposed events to provide for the same outcome shown in the proposed timeline included as Attachment D.
 - d. Describe any other applicable services included in your proposal, which may include, but are not limited to:
 - i. Screening of Candidates
 - ii. Background Investigations

iii. Reference Checks

City Responsibilities

The City will provide a designated representative to work with the Contractor to coordinate activities and to inspect and verify any work performed by the Contractor. The City shall cover the travel and lodging expenses for any out of town finalist candidates selected for in-person interview by the City Commission and will coordinate these requirements with the Consultant.

Settlement of Disputes

The successful contractor agrees to certain dispute resolution avenues/limitations. Please refer to Paragraph 17 of the Service Agreement (Attachment A) for details of what is required of the successful contractor.

Insurance Requirements

The successful contractor is required to procure and maintain certain types of insurances. Please refer to Paragraph 12 of the Service Agreement (Attachment A) for details of what is required of the successful contractor.

Continuation of Coverage

The Contractor also agrees to provide proof of all insurances as specified. Upon failure of Contractor to obtain or maintain such insurance coverage(s) for the term of the agreement, the City may, at its option, purchase such coverage(s) and subtract the cost of obtaining such coverage(s) from the contract amount. In obtaining such coverage, the City shall have no obligation to procure the most cost-effective coverage, but may contract with any insurer for such coverage.

Execution of Contract

The contractor whose proposal is accepted shall be required to execute the Service Agreement and to furnish proof of all insurance coverages, as specified, within ten (10) days after receiving notice of such acceptance. Any contract awarded pursuant to any proposal shall not be binding upon the City until a written contract has been executed by both parties. Failure or refusal to execute the contract shall be considered an abandonment of all rights and interest in the award and the contract may be awarded to another contractor. The successful contractor agrees to enter into, and will execute, the contract as set forth in Attachment A.

Termination of Contract

The City retains the right to terminate the Service Agreement, with notice to the Contractor sufficient to indicate the City's desire to do so. Should the City become dissatisfied with the quality of performance, it shall serve upon the Contractor by

certified mail, notice of dissatisfaction. If the City remains dissatisfied with the level of performance, it may unilaterally cancel the contract, upon notice similarly served, without cause and without payment of further costs, expenses, or damages.

Indemnification

The successful contractor agrees to indemnify the City and various associated persons. Please refer to Paragraph 13 of the Service Agreement (Attachment A) for details of what is required of the successful contractor.

Conflict of Interest

The successful contractor is subject to certain conflict of interest requirements/restrictions. Please refer to Paragraph 14 of the Service Agreement (Attachment A) for details of what is required of the successful contractor.

Examination of Proposal Materials

The submission of a proposal shall be deemed a representation and warranty by the Contractor that it has investigated all aspects of the RFQ/P, that it is aware of the applicable facts pertaining to the RFQ/P process and its procedures and requirements, and that it has read and understands the RFQ/P. Statistical information which may be contained in the RFQ/P, or any addendum thereto, is for informational purposes only.

Project Timeline

It is expected that the Birmingham City Commission shall, shortly after the November 3, 2009 Municipal Election, retain the services of a separate consultant for the purposes of developing a Strategic Plan. It is anticipated that the successful contractor for Professional Executive Recruitment Services will have access to the results of this process to the extent it assists in the development of recruitment and outreach materials and strategies. Following the completion of the Strategic Planning process, it is anticipated that the successful contractor for Professional Executive Recruitment Services will begin the outreach and recruitment process with the goal of allowing the City Commission to hold public in-person interviews of finalist candidates in late 2010 or early 2011.

Scope of Work

The Contractor will be expected to provide Professional Executive Recruitment Services following the completion of the Strategic Planning process through the selection, successful negotiations, and awarding of a contract to a new Birmingham City Manager in early 2011, subject to, and consistent with, all State and Federal laws, including, but not limited to, the Michigan Open Meetings Act and the Michigan Freedom of Information Act (See Attachment D). In addition to the items outlined under “Contractor Responsibilities” (p. 5), the Scope of Work will include, but is not limited to, the following criteria:

1. Contractor shall hold meetings with the Birmingham City Commission, City Department Heads and Staff, and residents to gain an understanding of the community and the role of the City Manager.
2. The Contractor shall develop a community and position profile which accurately depicts both the community and the City Manager characteristics desired by the community for prospective candidates for the City Manager position. The position profile shall include an appropriate description of qualifications and desired characteristics by which applicants will be evaluated.
3. All recruitment and outreach activities shall be focused on recruiting a qualified and diverse pool of applicants.
 - a. The Contractor shall develop appropriate marketing materials and advertisements for professional publications, websites, and other communication tools to achieve widespread notification of the City Manager position opening.
 - b. The Contractor shall develop an appropriate process for notifying members of the City Manager profession of the Birmingham City Manager position opening and an appropriate recruitment program to encourage candidates that meet the position profile characteristics to apply for the position.
 - c. Throughout the recruitment process, the Contractor shall provide to the City regular written summaries of all recruitment and outreach activities conducted to date, including number and locations of all advertisements placed, number of recruitment contacts made to potential candidates, and any other information deemed appropriate by the Contractor.
 - d. A written summary of the diversity of the applicant pool shall be provided to the City following the close of the recruitment process. This summary shall rigorously maintain the confidentiality of each individual candidate while providing sufficient information for the City to verify the overall diversity of the applicant pool.
 - e. A written summary of the qualifications of the applicant pool shall be provided to the City following the close of the recruitment process. This summary shall rigorously maintain the confidentiality of each individual candidate while providing sufficient information for the City to verify the overall qualifications of the applicant pool.
4. The Contractor shall develop a process to screen & interview candidates, select leading candidates, and negotiate a contract with the successful candidate and to develop a set of goals for the new City Manager during the first year of service, consistent with the intent of the timeline shown in Attachment D. The Contractor shall also create a follow-up mechanism to ensure the new City Manager and the Birmingham City Commission are satisfied with the relationship during the first year of service.
5. Following the closing of the recruitment process, the Contractor shall review the qualifications of all applicants and prepare a written summary of those candidates

meeting the qualifications for review by the Birmingham City Commission. Following a review of this summary, the Contractor shall assist the Birmingham City Commission in the selection of a number of leading candidates to be invited for in-person interviews before the Birmingham City Commission and members of the public.

6. The Contractor shall work with the designated City representative to make the necessary arrangements in coordinating the City Commission interviews, and related activities, of finalist candidates. The City shall cover the travel and lodging expenses for any out of town candidates, and their spouses/partners (if invited by the City Commission at this stage), selected for in-person interview by the City Commission.

ATTACHMENT A

SERVICE AGREEMENT

This AGREEMENT, made this _____ day of _____, 2009, by and between CITY OF BIRMINGHAM, having its principal municipal office at 151 Martin Street, Birmingham, MI (hereinafter sometimes called "City"), and _____, having its principal office at _____ (hereinafter called "Contractor"), provides as follows:

WITNESSETH:

WHEREAS, the City of Birmingham, is desirous of securing Professional Executive Recruitment Services to perform executive recruitment services for the selection of a new Birmingham City Manager upon the projected retirement of the current City Manager in May 2011.

WHEREAS, the City has heretofore advertised for proposals for the performance of Professional Executive Recruitment Services and in connection therewith has prepared a request for sealed qualifications and proposals ("RFQ/P"), which includes certain instructions to contractors, specifications, terms and conditions.

WHEREAS, the Contractor has professional qualifications that meet the project requirements and has made a proposal in accordance with such request for qualifications and proposals to perform the Professional Executive Recruitment Services and which proposal has been accepted by the City.

NOW, THEREFORE, for and in consideration of the respective agreements and undertakings herein contained, the parties agree as follows:

1. It is mutually agreed by and between the parties that the documents consisting of the Request for Qualifications and Proposals to provide Professional Executive Recruitment Services and the Contractor's qualifications and proposal dated _____, 2009 shall be incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto. If any of the documents are in conflict with one another, this Agreement shall take precedence, then the Request for Qualifications and Proposals.

2. The Contractor shall perform Professional Executive Recruitment Services in accordance to the Scope of Work outlined in the Request for Qualifications and Proposals.

3. The City shall pay the Contractor for the performance of this Agreement in an amount not to exceed the amount set forth in the Contractor's _____, 2009 proposal. The final invoice or 15% of the total amount, whichever is greater, shall be payable only upon the successful placement of a new Birmingham City Manager.

4. This Agreement shall commence upon execution by both parties, unless the City exercises its option to terminate the Agreement in accordance with the Request for Qualifications and Proposals.

5. The Contractor shall employ personnel of good moral character and fitness in performing all services under this Agreement.

6. The Contractor and the City agree that the Contractor is acting as an independent Contractor with respect to the Contractor's role in providing services to the City pursuant to this Agreement, and as such, shall be liable for its own actions and neither the Contractor nor its employees shall be construed as employees of the City. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the City nor the Contractor shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The Contractor shall not be entitled or eligible to participate in any benefits or privileges given or extended by the City, or be deemed an employee of the City for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the City.

7. The Contractor acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The Contractor recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the City. Therefore, the Contractor agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The Contractor shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The Contractor further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

8. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan. The Contractor

agrees to perform all services provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations. The contractor shall pay particular attention to the Michigan Open Meetings Act and Michigan Freedom of Information Act.

9. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.

10. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by the Contractor without the prior written consent of the City. Any attempt at assignment without prior written consent shall be void and of no effect.

11. The Contractor agrees that neither it nor its sub-contractors will discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight or marital status. The Contractor shall inform the City of all claims or suits asserted against it by the Contractor's employees who work pursuant to this Agreement. The Contractor shall provide the City with periodic status reports concerning all such claims or suits, at intervals established by the City.

12. The Contractor shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required under this paragraph. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with carriers acceptable to the City of Birmingham. Any exceptions to these coverages must be approved by the City prior to accepting the proposal and executing this agreement.

- A. Workers' Compensation Insurance: Contractor shall procure and maintain during the life of this contract, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
- B. Commercial General Liability Insurance: Contractor shall procure and maintain during the life of this contract, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

- C. Motor Vehicle Liability: Contractor shall procure and maintain during the life of this contract Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than \$1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- D. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be *Additional Insureds*: The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any other coverage that may be available to the additional insured, whether any other available coverage by primary, contributing or excess.
- E. Professional Liability: The Contractor shall procure and maintain during the life of this Agreement Professional Liability (errors and omissions) insurance with minimum limits of \$1,000,000 per claim.
- F. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal, shall be sent to: Finance Director, City of Birmingham, PO Box 3001, 151 Martin Street, Birmingham, MI 48012-3001.
- G. Proof of Insurance Coverage: Contractor shall provide the City of Birmingham at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.
- 1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance;
 - 2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
 - 3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
 - 4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance;
 - 5) If so requested, Certified Copies of all policies mentioned above will be furnished.
- H. Coverage Expiration: If any of the above coverages expire during the term of this contract, Contractor shall deliver renewal certificates and/or

policies to the City of Birmingham at least (10) days prior to the expiration date.

- I. **Maintaining Insurance:** The Contractor also agrees to provide all insurance coverage as specified. Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the contract amount. In obtaining such coverage, the City of Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

13. To the fullest extent permitted by law, the Contractor and any entity or person for whom the Contractor is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Birmingham against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from and the City of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this contract. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the City of Birmingham.

14. If, after the effective date of this Agreement, any official of the City, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the Contractor, the City shall have the right to terminate this Agreement without further liability to the Contractor if the disqualification has not been removed within thirty (30) days after the City has given the Contractor notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

15. If Contractor fails to perform its obligations hereunder, the City may take any and all remedial actions provided by the general specifications or otherwise permitted by law.

16. All notices required to be sent pursuant to this Agreement shall be mailed to the following addresses:

City of Birmingham
Attn: Christian Wuerth
151 Martin Street
Birmingham, MI 48012-3001

Contractor
Contact Name
Address
City, ST Zip

17. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds \$1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL§600.5001 et. seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.

IN WITNESS WHEREOF, the said parties have caused this Agreement to be executed as of the date and year above written.

CITY OF BIRMINGHAM:

“Contractor”

By: _____
Stuart Lee Sherman
Its: Mayor

By: _____
First Last Name
Its: Owner/President

By: _____
Nancy Weiss
Its: City Clerk

Approved:

Timothy J. Currier, City Attorney
(Approved as to form)

B. Sharon Ostin, Director of Finance
(Approved as to financial obligation)

Christian Wuerth, Management Analyst
(Approved as to substance)

ATTACHMENT B

CONTRACTOR'S AGREEMENT
PROFESSIONAL EXECUTIVE RECRUITMENT SERVICES

In submitting this proposal, as herein described, the Contractor agrees that:

1. They have carefully examined the specifications, terms and Agreement of the Request for Qualifications and Proposals and all other provisions of this document and understand the meaning, intent, and requirement of it.
2. They will enter into a written contract and furnish the item or items in the time specified in conformance with the specifications and conditions contained therein for the price quoted by the proponent on this proposal.

PROPOSAL PREPARED BY
(Print Name)

DATE SUBMITTED

AUTHORIZED SIGNATURE

DATE

TITLE

E-MAIL

COMPANY

ADDRESS

PHONE

NAME OF PARENT COMPANY

ADDRESS

PHONE

ATTACHMENT C

COST PROPOSAL

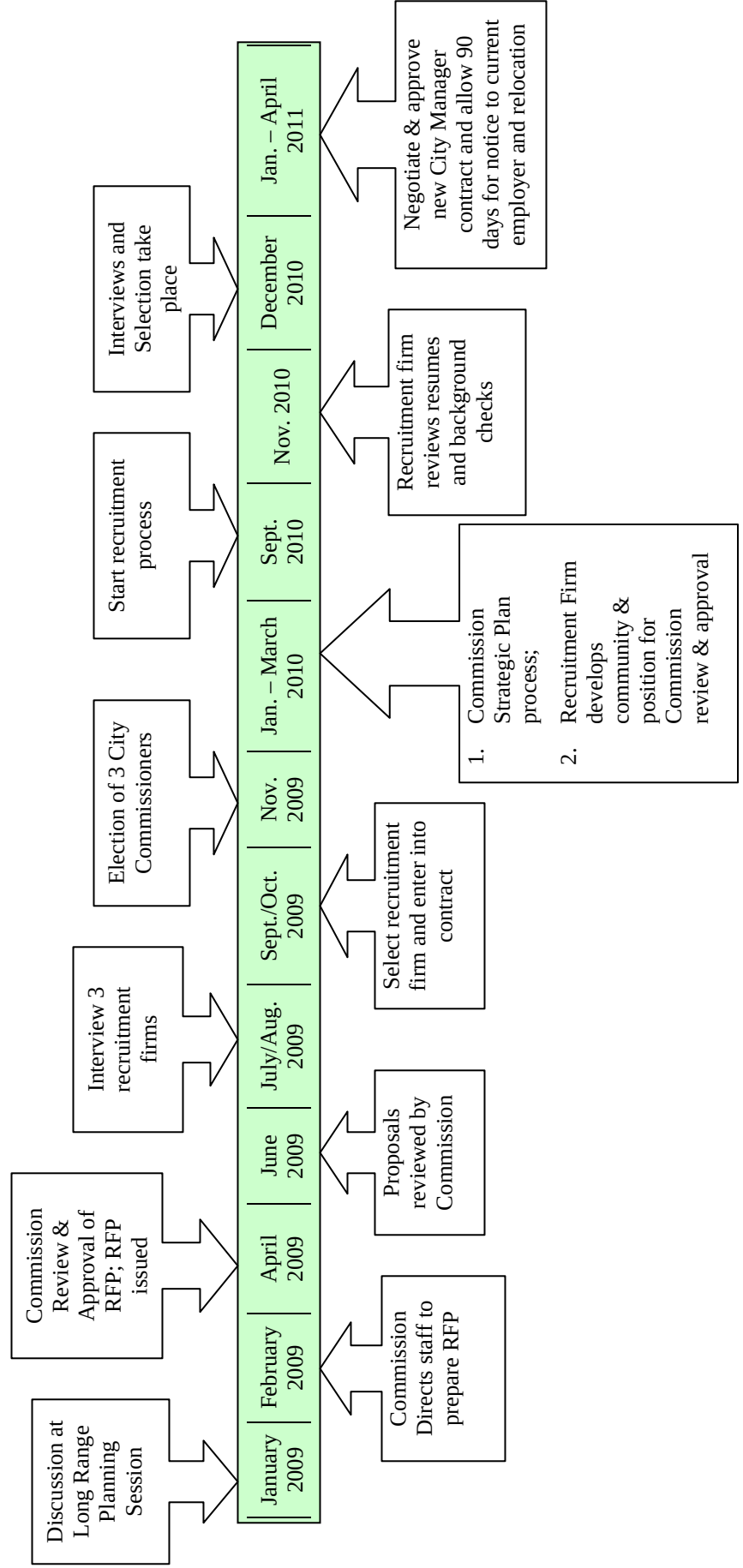
Total Amount to be Billed		\$
<i>Please provide a detailed breakdown of all costs to be included in the total amount to be billed. (ex. Advertising costs) Attach additional pages if necessary.</i>		
Item Description	Total Amount	
	\$	

Firm_____

Authorized Signature_____ Date_____

Possible Steps to Take in Selection Process for a New City Manager & Tentative Timeline

ATTACHMENT D



OPEN MEETINGS ACT
Act 267 of 1976

AN ACT to require certain meetings of certain public bodies to be open to the public; to require notice and the keeping of minutes of meetings; to provide for enforcement; to provide for invalidation of governmental decisions under certain circumstances; to provide penalties; and to repeal certain acts and parts of acts.

History: 1976, Act 267, Eff. Mar. 31, 1977.

The People of the State of Michigan enact:

15.261 Short title; effect of act on certain charter provisions, ordinances, or resolutions.

Sec. 1. (1) This act shall be known and may be cited as the "Open meetings act".

(2) This act 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.

(3) After the effective date of this act, nothing in this act shall prohibit a public body from adopting an ordinance, resolution, rule, or charter provision which would require a greater degree of openness relative to meetings of public bodies than the standards provided for in this act.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.262 Definitions.

Sec. 2. As used in this act:

(a) "Public body" means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function; a lessee of such a body performing an essential public purpose and function pursuant to the lease agreement; or the board of a nonprofit corporation formed by a city under section 40 of the home rule city act, 1909 PA 279, MCL 117.40.

(b) "Meeting" means the convening 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 section 40 of the home rule city act, 1909 PA 279, MCL 117.40.

(c) "Closed session" means a meeting or part of a meeting of a public body that is closed to the public.

(d) "Decision" means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 2001, Act 38, Imd. Eff. July 11, 2001.

15.263 Meetings, decisions, and deliberations of public body; requirements; attending or addressing meeting of public body; tape-recording, videotaping, broadcasting, and telecasting proceedings; rules and regulations; exclusion from meeting; exemptions.

Sec. 3. (1) All meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided in this act. The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right shall not be dependent upon the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.

(2) All decisions of a public body shall be made at a meeting open to the public.

(3) All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public except as provided in this section and sections 7 and 8.

(4) 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.

(5) 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.

(6) A person shall not be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.

(7) This act does not apply to the following public bodies only when deliberating the merits of a case:

(a) The worker's compensation appeal board created under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being sections 418.101 to 418.941 of the Michigan Compiled Laws.

(b) The employment security board of review created under the Michigan employment security act, Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being sections 421.1 to 421.73 of the Michigan Compiled Laws.

(c) The state tenure commission created under Act No. 4 of the Public Acts of the Extra Session of 1937, as amended, being sections 38.71 to 38.191 of the Michigan Compiled Laws, when acting as a board of review from the decision of a controlling board.

(d) An arbitrator or arbitration panel appointed by the employment relations commission under the authority given the commission by Act No. 176 of the Public Acts of 1939, as amended, being sections 423.1 to 423.30 of the Michigan Compiled Laws.

(e) An arbitration panel selected under chapter 50A of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.5040 to 600.5065 of the Michigan Compiled Laws.

(f) The Michigan public service commission created under Act No. 3 of the Public Acts of 1939, being sections 460.1 to 460.8 of the Michigan Compiled Laws.

(8) This act does not apply to an association of insurers created under the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, or other association or facility formed under Act No. 218 of the Public Acts of 1956 as a nonprofit organization of insurer members.

(9) This act does not apply to a committee of a public body which adopts a nonpolicymaking resolution of tribute or memorial which resolution is not adopted at a meeting.

(10) This act does not apply to a meeting which is a social or chance gathering or conference not designed to avoid this act.

(11) This act shall not apply to the Michigan veterans' trust fund board of trustees or a county or district committee created under Act No. 9 of the Public Acts of the first extra session of 1946, being sections 35.601 to 35.610 of the Michigan Compiled Laws, when the board of trustees or county or district committee is deliberating the merits of an emergent need. A decision of the board of trustees or county or district committee made under this subsection shall be reconsidered by the board or committee at its next regular or special meeting consistent with the requirements of this act. "Emergent need" means a situation which the board of trustees, by rules promulgated under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, determines requires immediate action.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1981, Act 161, Imd. Eff. Nov. 30, 1981;—Am. 1986, Act 269, Imd. Eff. Dec. 19, 1986;—Am. 1988, Act 158, Imd. Eff. June 14, 1988;—Am. 1988, Act 278, Imd. Eff. July 27, 1988.

Administrative rules: R 35.621 of the Michigan Administrative Code.

15.264 Public notice of meetings generally; contents; places of posting.

Sec. 4. The following provisions shall apply with respect to public notice of meetings:

(a) A public notice shall always contain the name of the public body to which the notice applies, its telephone number if one exists, and its address.

(b) A public notice for a public body shall always be posted at its principal office and any other locations considered appropriate by the public body. Cable television may also be utilized for purposes of posting public notice.

(c) If a public body is a part of a state department, part of the legislative or judicial branch of state government, part of an institution of higher education, or part of a political subdivision or school district, a public notice shall also be posted in the respective principal office of the state department, the institution of higher education, clerk of the house of representatives, secretary of the state senate, clerk of the supreme court, or political subdivision or school district.

(d) If a public body does not have a principal office, the required public notice for a local public body shall be posted in the office of the county clerk in which the public body serves and the required public notice for a state public body shall be posted in the office of the secretary of state.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1984, Act 87, Imd. Eff. Apr. 19, 1984.

15.265 Public notice of regular meetings, change in schedule of regular meetings, rescheduled regular meetings, or special meetings; time for posting; statement of date, time, and place; applicability of subsection (4); recess or adjournment; emergency sessions; meeting in residential dwelling; notice.

Sec. 5. (1) A meeting of a public body shall not be held unless public notice is given as provided in this section by a person designated by the public body.

(2) For regular meetings of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar or fiscal year a public notice stating the dates, times, and places of its regular meetings.

(3) If there is a change in the schedule of regular meetings of a public body, there shall be posted within 3 days after the meeting at which the change is made, a public notice stating the new dates, times, and places of its regular meetings.

(4) Except as provided in this subsection or in subsection (6), for a rescheduled regular or a special meeting of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting. The requirement of 18-hour notice shall not apply to special meetings of subcommittees of a public body or conference committees of the state legislature. A conference committee shall give a 6-hour notice. A second conference committee shall give a 1-hour notice. Notice of a conference committee meeting shall include written notice to each member of the conference committee and the majority and minority leader of each house indicating time and place of the meeting. This subsection does not apply to a public meeting held pursuant to section 4(2) to (5) of Act No. 239 of the Public Acts of 1955, as amended, being section 200.304 of the Michigan Compiled Laws.

(5) A meeting of a public body which is recessed for more than 36 hours shall be reconvened only after public notice, which is equivalent to that required under subsection (4), has been posted. If either house of the state legislature is adjourned or recessed for less than 18 hours, the notice provisions of subsection (4) are not applicable. Nothing in this section shall bar a public body from meeting in emergency session in the event of a severe and imminent threat to the health, safety, or welfare of the public when 2/3 of the members serving on the body decide that delay would be detrimental to efforts to lessen or respond to the threat.

(6) A meeting of a public body may only take place in a residential dwelling if a nonresidential building within the boundary of the local governmental unit or school system is not available without cost to the public body. For a meeting of a public body which is held in a residential dwelling, notice of the meeting shall be published as a display advertisement in a newspaper of general circulation in the city or township in which the meeting is to be held. The notice shall be published not less than 2 days before the day on which the meeting is held, and shall state the date, time, and place of the meeting. The notice, which shall be at the bottom of the display advertisement and which shall be set off in a conspicuous manner, shall include the following language: "This meeting is open to all members of the public under Michigan's open meetings act".

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1978, Act 256, Imd. Eff. June 21, 1978;—Am. 1982, Act 134, Imd. Eff. Apr. 22, 1982;—Am. 1984, Act 167, Imd. Eff. June 29, 1984.

15.266 Providing copies of public notice on written request; fee.

Sec. 6. (1) Upon the written request of an individual, organization, firm, or corporation, and upon the requesting party's payment of a yearly fee of not more than the reasonable estimated cost for printing and postage of such notices, a public body shall send to the requesting party by first class mail a copy of any notice required to be posted pursuant to section 5(2) to (5).

(2) Upon written request, a public body, at the same time a public notice of a meeting is posted pursuant to section 5, shall provide a copy of the public notice of that meeting to any newspaper published in the state and to any radio and television station located in the state, free of charge.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.267 Closed sessions; roll call vote; separate set of minutes.

Sec. 7. (1) A 2/3 roll call vote of members elected or appointed and serving is required to call a closed session, except for the closed sessions permitted under section 8(a), (b), (c), (g), (i), and (j). The roll call vote and the purpose or purposes for calling the closed session shall be entered into the minutes of the meeting at which the vote is taken.

(2) A separate set of minutes shall be taken by the clerk or the designated secretary of the public body at the closed session. These minutes shall be retained by the clerk of the public body, are not available to the public, and shall only be disclosed if required by a civil action filed under section 10, 11, or 13. These minutes may be destroyed 1 year and 1 day after approval of the minutes of the regular meeting at which the closed session was approved.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1993, Act 81, Eff. Apr. 1, 1994;—Am. 1996, Act 464, Imd. Eff. Dec. 26, 1996.

15.268 Closed sessions; permissible purposes.

Sec. 8. A public body may meet in a closed session only for the following purposes:

(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. 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.

(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.

(d) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.

(e) 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.

(f) 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. This subdivision does not apply to a public office described in subdivision (j).

(g) Partisan caucuses of members of the state legislature.

(h) To consider material exempt from discussion or disclosure by state or federal statute.

(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, being section 333.16231 of the Michigan Compiled Laws, before a complaint is issued.

(j) In the process of searching for and selecting a president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, to review the specific contents of an application, to conduct an interview with a candidate, or to discuss the specific qualifications of a candidate if the particular process of searching for and selecting a president of an institution of higher education meets all of the following requirements:

(i) The search committee in the process, appointed by the governing board, consists of at least 1 student of the institution, 1 faculty member of the institution, 1 administrator of the institution, 1 alumnus of the institution, and 1 representative of the general public. The search committee also may include 1 or more members of the governing board of the institution, but the number shall not constitute a quorum of the governing board. However, the search committee shall not be constituted in such a way that any 1 of the groups described in this subparagraph constitutes a majority of the search committee.

(ii) After the search committee recommends the 5 final candidates, the governing board does not take a vote on a final selection for the president until at least 30 days after the 5 final candidates have been publicly identified by the search committee.

(iii) The deliberations and vote of the governing board of the institution on selecting the president take place in an open session of the governing board.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1984, Act 202, Imd. Eff. July 3, 1984;—Am. 1993, Act 81, Eff. Apr. 1, 1994;—Am. 1996, Act 464, Imd. Eff. Dec. 26, 1996.

15.269 Minutes.

Sec. 9. (1) Each public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes shall include all roll call votes taken at the meeting. The public body shall make any corrections in the minutes at the next meeting after the meeting to which the minutes refer. The public body shall make corrected minutes available at or before the next subsequent meeting after correction. The corrected minutes shall show both the original entry and the correction.

(2) Minutes are public records open to public inspection, and a public body shall make the minutes available at the address designated on posted public notices pursuant to section 4. The public body shall make copies of the minutes available to the public at the reasonable estimated cost for printing and copying.

(3) A public body shall make proposed minutes available for public inspection within 8 business days after the meeting to which the minutes refer. The public body shall make approved minutes available for public inspection within 5 business days after the meeting at which the minutes are approved by the public body.

(4) A public body shall not include in or with its minutes any personally identifiable information that, if

released, would prevent the public body from complying with section 444 of subpart 4 of part C of the general education provisions act, 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1982, Act 130, Imd. Eff. Apr. 20, 1982;—Am. 2004, Act 305, Imd. Eff. Aug. 11, 2004.

15.270 Decisions of public body; presumption; civil action to invalidate; jurisdiction; venue; reenactment of disputed decision.

Sec. 10. (1) Decisions of a public body shall be presumed to have been adopted in compliance with the requirements of this act. The attorney general, the prosecuting attorney of the county in which the public body serves, or any person may commence a civil action in the circuit court to challenge the validity of a decision of a public body made in violation of this act.

(2) A decision made by a public body may be invalidated if the public body has not complied with the requirements of section 3(1), (2), and (3) in making the decision or if failure to give notice in accordance with section 5 has interfered with substantial compliance with section 3(1), (2), and (3) and the court finds that the noncompliance or failure has impaired the rights of the public under this act.

(3) The circuit court shall not have jurisdiction to invalidate a decision of a public body for a violation of this act unless an action is commenced pursuant to this section within the following specified period of time:

(a) Within 60 days after the approved minutes are made available to the public by the public body except as otherwise provided in subdivision (b).

(b) 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, within 30 days after the approved minutes are made available to the public pursuant to that decision.

(4) Venue for an action under this section shall be any county in which a local public body serves or, if the decision of a state public body is at issue, in Ingham county.

(5) In any case where an action has been initiated to invalidate a decision of a public body on the ground that it was not taken in conformity with the requirements of this act, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with this act. A decision reenacted in this manner shall be effective from the date of reenactment and shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.271 Civil action to compel compliance or enjoin noncompliance; commencement; venue; security not required; commencement of action for mandamus; court costs and attorney fees.

Sec. 11. (1) If a public body is not complying with this act, the attorney general, prosecuting attorney of the county in which the public body serves, or a person may commence a civil action to compel compliance or to enjoin further noncompliance with this act.

(2) An action for injunctive relief against a local public body shall be commenced in the circuit court, and venue is proper in any county in which the public body serves. An action for an injunction against a state public body shall be commenced in the circuit court and venue is proper in any county in which the public body has its principal office, or in Ingham county. If a person commences an action for injunctive relief, that person shall not be required to post security as a condition for obtaining a preliminary injunction or a temporary restraining order.

(3) An action for mandamus against a public body under this act shall be commenced in the court of appeals.

(4) If a public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act and succeeds in obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.272 Violation as misdemeanor; penalty.

Sec. 12. (1) A public official who intentionally violates this act is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00.

(2) A public official who is convicted of intentionally violating a provision of this act for a second time within the same term shall be guilty of a misdemeanor and shall be fined not more than \$2,000.00, or

imprisoned for not more than 1 year, or both.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.273 Violation; liability.

Sec. 13. (1) A public official who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than \$500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action.

(2) Not more than 1 action under this section shall be brought against a public official for a single meeting. An action under this section shall be commenced within 180 days after the date of the violation which gives rise to the cause of action.

(3) An action for damages under this section may be joined with an action for injunctive or exemplary relief under section 11.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.273a Selection of president by governing board of higher education institution; violation; civil fine.

Sec. 13a. If the governing board of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963 violates this act with respect to the process of selecting a president of the institution at any time after the recommendation of final candidates to the governing board, as described in section 8(j), the institution is responsible for the payment of a civil fine of not more than \$500,000.00. This civil fine is in addition to any other remedy or penalty under this act. To the extent possible, any payment of fines imposed under this section shall be paid from funds allocated by the institution of higher education to pay for the travel and expenses of the members of the governing board.

History: Add. 1996, Act 464, Imd. Eff. Dec. 26, 1996.

15.274 Repeal of MCL 15.251 to 15.253.

Sec. 14. Act No. 261 of the Public Acts of 1968, being sections 15.251 to 15.253 of the Compiled Laws of 1970, is repealed.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.275 Effective date.

Sec. 15. This act shall take effect January 1, 1977.

History: 1976, Act 267, Eff. Mar. 31, 1977.

FREEDOM OF INFORMATION ACT

Act 442 of 1976

AN ACT to provide for public access to certain public records of public bodies; to permit certain fees; to prescribe the powers and duties of certain public officers and public bodies; to provide remedies and penalties; and to repeal certain acts and parts of acts.

History: 1976, Act 442, Eff. Apr. 13, 1977.

Popular name: Act 442

Popular name: FOIA

The People of the State of Michigan enact:

15.231 Short title; public policy.

Sec. 1. (1) This act shall be known and may be cited as the “freedom of information act”.

(2) It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1994, Act 131, Imd. Eff. May 19, 1994;—Am. 1996, Act 553, Eff. Mar. 31, 1997;—Am. 1997, Act 6, Imd. Eff. May 16, 1997.

Popular name: Act 442

Popular name: FOIA

15.232 Definitions.

Sec. 2. As used in this act:

(a) “Field name” means the label or identification of an element of a computer data base that contains a specific item of information, and includes but is not limited to a subject heading such as a column header, data dictionary, or record layout.

(b) “FOIA coordinator” means either of the following:

(i) An individual who is a public body.

(ii) An individual designated by a public body in accordance with section 6 to accept and process requests for public records under this act.

(c) “Person” means an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.

(d) “Public body” means any of the following:

(i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof.

(ii) An agency, board, commission, or council in the legislative branch of the state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.

(iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

(v) The judiciary, including the office of the county clerk and employees thereof when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.

(e) “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, from the time it is created. Public record does not include computer software. This act separates public records into the following 2 classes:

(i) Those that are exempt from disclosure under section 13.

(ii) All public records that are not exempt from disclosure under section 13 and which are subject to disclosure under this act.

(f) “Software” means a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result. Software does not include computer-stored

information or data, or a field name if disclosure of that field name does not violate a software license.

(g) "Unusual circumstances" means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

(i) 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.

(ii) 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.

(h) "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

(i) "Written request" means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1994, Act 131, Imd. Eff. May 19, 1994;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

Popular name: Act 442

Popular name: FOIA

15.233 Public records; right to inspect, copy, or receive; subscriptions; forwarding requests; file; inspection and examination; memoranda or abstracts; rules; compilation, summary, or report of information; creation of new public record; certified copies.

Sec. 3. (1) Except as expressly provided in section 13, upon providing a public body's FOIA coordinator with a written request that describes a public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy, or receive copies of the requested public record of the public body. A person has a right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to 6 months, at the request of the subscriber, and shall be renewable. An employee of a public body who receives a request for a public record shall promptly forward that request to the freedom of information act coordinator.

(2) A freedom of information act coordinator shall keep a copy of all written requests for public records on file for no less than 1 year.

(3) A public body shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions. A public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction.

(4) This act does not require a public body to make a compilation, summary, or report of information, except as required in section 11.

(5) This act does not require a public body to create a new public record, except as required in section 11, and to the extent required by this act for the furnishing of copies, or edited copies pursuant to section 14(1), of an already existing public record.

(6) The custodian of a public record shall, upon written request, furnish a requesting person a certified copy of a public record.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

Popular name: Act 442

Popular name: FOIA

15.234 Fee; waiver or reduction; affidavit; deposit; calculation of costs; limitation; provisions inapplicable to certain public records.

Sec. 4. (1) A public body may charge a fee for a public record search, the necessary copying of a public record for inspection, or for providing a copy of a public record. Subject to subsections (3) and (4), the fee shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14. A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public. A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request to an

individual who is entitled to information under this act and who submits an affidavit stating that the individual is then receiving public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency.

(2) A public body may require at the time a request is made a good faith deposit from the person requesting the public record or series of public records, if the fee authorized under this section exceeds \$50.00. The deposit shall not exceed 1/2 of the total fee.

(3) In calculating the cost of labor incurred in duplication and mailing and the cost of examination, review, separation, and deletion under subsection (1), a public body may not charge more than the hourly wage of the lowest paid public body employee capable of retrieving the information necessary to comply with a request under this act. Fees shall be uniform and not dependent upon the identity of the requesting person. A public body shall utilize the most economical means available for making copies of public records. A fee shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14 unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs. A public body shall establish and publish procedures and guidelines to implement this subsection.

(4) This section does not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1988, Act 99, Imd. Eff. Apr. 11, 1988;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

Constitutionality: The disclosure of public records under the freedom of information act impartially to the general public for the incremental cost of creating the record is not a granting of credit by the state in aid of private persons and does not justify nondisclosure on the theory that the information is proprietary information belonging to a public body. *Kestenbaum v Michigan State University*, 414 Mich 510; 417 NW2d 1102 (1982).

Popular name: Act 442

Popular name: FOIA

15.235 Request to inspect or receive copy of public record; response to request; failure to respond; damages; contents of notice denying request; signing notice of denial; notice extending period of response; action by requesting person.

Sec. 5. (1) Except as provided in section 3, a person desiring to inspect or receive a copy of a public record shall make a written request for the public record to the FOIA coordinator of a public body. A written request made by facsimile, electronic mail, or other electronic transmission is not received by a public body's FOIA coordinator until 1 business day after the electronic transmission is made.

(2) Unless otherwise agreed to in writing by the person making the request, a public body shall respond to a request for a public record within 5 business days after the public body receives the request by doing 1 of the following:

(a) Granting the request.

(b) Issuing a written notice to the requesting person denying the request.

(c) Granting the request in part and issuing a written notice to the requesting person denying the request in part.

(d) Issuing a notice extending for not more than 10 business days the period during which the public body shall respond to the request. A public body shall not issue more than 1 notice of extension for a particular request.

(3) Failure to respond to a request pursuant to subsection (2) constitutes a public body's final determination to deny the request. In a circuit court action to compel a public body's disclosure of a public record under section 10, the circuit court shall assess damages against the public body pursuant to section 10(8) if the circuit court has done both of the following:

(a) Determined that the public body has not complied with subsection (2).

(b) Ordered the public body to disclose or provide copies of all or a portion of the public record.

(4) A written notice denying a request for a public record in whole or in part is a public body's final determination to deny the request or portion of that request. The written notice shall contain:

(a) An explanation of the basis under this act or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.

(b) A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion of the request.

(c) A description of a public record or information on a public record that is separated or deleted pursuant to section 14, if a separation or deletion is made.

(d) A full explanation of the requesting person's right to do either of the following:

(i) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial.

(ii) Seek judicial review of the denial under section 10.

(e) Notice of the right to receive attorneys' fees and damages as provided in section 10 if, after judicial review, the circuit court determines that the public body has not complied with this section and orders disclosure of all or a portion of a public record.

(5) The individual designated in section 6 as responsible for the denial of the request shall sign the written notice of denial.

(6) If a public body issues a notice extending the period for a response to the request, the notice shall specify the reasons for the extension and the date by which the public body will do 1 of the following:

(a) Grant the request.

(b) Issue a written notice to the requesting person denying the request.

(c) Grant the request in part and issue a written notice to the requesting person denying the request in part.

(7) If a public body makes a final determination to deny in whole or in part a request to inspect or receive a copy of a public record or portion of that public record, the requesting person may do either of the following:

(a) Appeal the denial to the head of the public body pursuant to section 10.

(b) Commence an action in circuit court, pursuant to section 10.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1978, Act 329, Imd. Eff. July 11, 1978;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

Compiler's note: In subsection (3), the reference to "section 10(8)" evidently should be a reference to "section 10(7)."

Popular name: Act 442

Popular name: FOIA

15.236 FOIA coordinator.

Sec. 6. (1) A public body that is a city, village, township, county, or state department, or under the control of a city, village, township, county, or state department, shall designate an individual as the public body's FOIA coordinator. The FOIA coordinator shall be responsible for accepting and processing requests for the public body's public records under this act and shall be responsible for approving a denial under section 5(4) and (5). In a county not having an executive form of government, the chairperson of the county board of commissioners is designated the FOIA coordinator for that county.

(2) For all other public bodies, the chief administrative officer of the respective public body is designated the public body's FOIA coordinator.

(3) An FOIA coordinator may designate another individual to act on his or her behalf in accepting and processing requests for the public body's public records, and in approving a denial under section 5(4) and (5).

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

Popular name: Act 442

Popular name: FOIA

15.240 Options by requesting person; appeal; orders; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.

Sec. 10. (1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(b) Commence an action in the circuit court to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Reverse the disclosure denial.

(b) Issue a written notice to the requesting person upholding the disclosure denial.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period

during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing an action in circuit court under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. The circuit court for the county in which the complainant resides or has his or her principal place of business, or the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the circuit court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1978, Act 329, Imd. Eff. July 11, 1978;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

Popular name: Act 442

Popular name: FOIA

15.241 Matters required to be published and made available by state agencies; form of publications; effect on person of matter not published and made available; exception; action to compel compliance by state agency; order; attorneys' fees, costs, and disbursements; jurisdiction; definitions.

Sec. 11. (1) A state agency shall publish and make available to the public all of the following:

(a) Final orders or decisions in contested cases and the records on which they were made.

(b) Promulgated rules.

(c) Other written statements which implement or interpret laws, rules, or policy, including but not limited to guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions.

(2) Publications may be in pamphlet, loose-leaf, or other appropriate form in printed, mimeographed, or other written matter.

(3) Except to the extent that a person has actual and timely notice of the terms thereof, a person shall not in any manner be required to resort to, or be adversely affected by, a matter required to be published and made available, if the matter is not so published and made available.

(4) This section does not apply to public records which are exempt from disclosure under section 13.

(5) A person may commence an action in the circuit court to compel a state agency to comply with this section. If the court determines that the state agency has failed to comply, the court shall order the state agency to comply and shall award reasonable attorneys' fees, costs, and disbursements to the person commencing the action. The circuit court for the county in which the state agency is located shall have jurisdiction to issue the order.

(6) As used in this section, "state agency", "contested case", and "rules" shall have the same meanings as ascribed to those terms in Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to

24.315 of the Michigan Compiled Laws.

History: 1976, Act 442, Eff. Apr. 13, 1977.

Popular name: Act 442

Popular name: FOIA

15.243 Exemptions from disclosure; public body as school district or public school academy; withholding of information required by law or in possession of executive office.

Sec. 13. (1) A public body may exempt from disclosure as a public record under this act any of the following:

(a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.

(b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

(i) Interfere with law enforcement proceedings.

(ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.

(iii) Constitute an unwarranted invasion of personal privacy.

(iv) Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.

(v) Disclose law enforcement investigative techniques or procedures.

(vi) Endanger the life or physical safety of law enforcement personnel.

(c) A public record that 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.

(d) Records or information specifically described and exempted from disclosure by statute.

(e) A public record or information described in this section that 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 considerations originally giving rise to the exempt nature of the public record remain applicable.

(f) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if:

(i) The information is submitted upon a promise of confidentiality by the public body.

(ii) The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.

(iii) A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision does not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.

(g) Information or records subject to the attorney-client privilege.

(h) Information or records subject to the physician-patient privilege, the psychologist-patient privilege, the minister, priest, or Christian Science practitioner privilege, or other privilege recognized by statute or court rule.

(i) A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the deadline for submission of bids or proposals has expired.

(j) Appraisals of real property to be acquired by the public body until either of the following occurs:

(i) An agreement is entered into.

(ii) Three years have elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.

(k) Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment, or academic examination, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

(l) Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation, including protected health information, as defined in 45 CFR 160.103.

(m) Communications and notes within a public body or between 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. This exemption does not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of section 8(h) of the open meetings act, 1976 PA 267, MCL 15.268. As used in this subdivision, "determination of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under 1947 PA 336, MCL 423.201 to 423.217.

(n) Records of law enforcement communication codes, or plans for deployment of law enforcement personnel, that if disclosed would prejudice a public body's ability to protect the public safety unless the public interest in disclosure under this act outweighs the public interest in nondisclosure in the particular instance.

(o) Information that would reveal the exact location of archaeological sites. The department of history, arts, and libraries may promulgate rules in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to provide for the disclosure of the location of archaeological sites for purposes relating to the preservation or scientific examination of sites.

(p) Testing data developed by a public body in determining whether bidders' products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only 1 bidder has met the specifications. This subdivision does not apply after 1 year has elapsed from the time the public body completes the testing.

(q) Academic transcripts of an institution of higher education established under section 5, 6, or 7 of article VIII of the state constitution of 1963, if the transcript pertains to a student who is delinquent in the payment of financial obligations to the institution.

(r) Records of a campaign committee including a committee that receives money from a state campaign fund.

(s) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would do any of the following:

(i) Identify or provide a means of identifying an informant.

(ii) Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.

(iii) Disclose the personal address or telephone number of active or retired law enforcement officers or agents or a special skill that they may have.

(iv) Disclose the name, address, or telephone numbers of family members, relatives, children, or parents of active or retired law enforcement officers or agents.

(v) Disclose operational instructions for law enforcement officers or agents.

(vi) Reveal the contents of staff manuals provided for law enforcement officers or agents.

(vii) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies.

(viii) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informant.

(ix) Disclose personnel records of law enforcement agencies.

(x) Identify or provide a means of identifying residences that law enforcement agencies are requested to check in the absence of their owners or tenants.

(t) Except as otherwise provided in this subdivision, records and information pertaining to an investigation or a compliance conference conducted by the department under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, before a complaint is issued. This subdivision does not apply to records or information pertaining to 1 or more of the following:

(i) The fact that an allegation has been received and an investigation is being conducted, and the date the allegation was received.

(ii) The fact that an allegation was received by the department; the fact that the department did not issue a complaint for the allegation; and the fact that the allegation was dismissed.

(u) Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body.

(v) Records or information relating to a civil action in which the requesting party and the public body are parties.

(w) Information or records that would disclose the social security number of an individual.

(x) Except as otherwise provided in this subdivision, an application for the position of president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, materials submitted with such an application, letters of recommendation or references concerning an

applicant, and records or information relating to the process of searching for and selecting an individual for a position described in this subdivision, if the records or information could be used to identify a candidate for the position. However, after 1 or more individuals have been identified as finalists for a position described in this subdivision, this subdivision does not apply to a public record described in this subdivision, except a letter of recommendation or reference, to the extent that the public record relates to an individual identified as a finalist for the position.

(y) Records or information of measures designed to protect the security or safety of persons or property, whether public or private, including, but not limited to, building, public works, and public water supply designs to the extent that those designs relate to the ongoing security measures of a public body, capabilities and plans for responding to a violation of the Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.543a to 750.543z, emergency response plans, risk planning documents, threat assessments, and domestic preparedness strategies, unless disclosure would not impair a public body's ability to protect the security or safety of persons or property or unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance.

(2) A public body shall exempt from disclosure information that, if released, would prevent the public body from complying with 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974. A public body that is a local or intermediate school district or a public school academy shall exempt from disclosure directory information, as defined by 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974, requested for the purpose of surveys, marketing, or solicitation, unless that public body determines that the use is consistent with the educational mission of the public body and beneficial to the affected students. A public body that is a local or intermediate school district or a public school academy may take steps to ensure that directory information disclosed under this subsection shall not be used, rented, or sold for the purpose of surveys, marketing, or solicitation. Before disclosing the directory information, a public body that is a local or intermediate school district or a public school academy may require the requester to execute an affidavit stating that directory information provided under this subsection shall not be used, rented, or sold for the purpose of surveys, marketing, or solicitation.

(3) This act does not authorize the withholding of information otherwise required by law to be made available to the public or to a party in a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) Except as otherwise exempt under subsection (1), this act does not authorize the withholding of a public record in the possession of the executive office of the governor or lieutenant governor, or an employee of either executive office, if the public record is transferred to the executive office of the governor or lieutenant governor, or an employee of either executive office, after a request for the public record has been received by a state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of government that is subject to this act.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1978, Act 329, Imd. Eff. July 11, 1978;—Am. 1993, Act 82, Eff. Apr. 1, 1994;—Am. 1996, Act 553, Eff. Mar. 31, 1997;—Am. 2000, Act 88, Imd. Eff. May 1, 2000;—Am. 2001, Act 74, Imd. Eff. July 24, 2001;—Am. 2002, Act 130, Eff. May 1, 2002;—Am. 2002, Act 437, Eff. Aug. 1, 2002;—Am. 2006, Act 482, Imd. Eff. Dec. 22, 2006.

Popular name: Act 442

Popular name: FOIA

15.243a Salary records of employee or other official of institution of higher education, school district, intermediate school district, or community college available to public on request.

Sec. 13a. Notwithstanding section 13, an institution of higher education established under section 5, 6, or 7 of article 8 of the state constitution of 1963; a school district as defined in section 6 of Act No. 451 of the Public Acts of 1976, being section 380.6 of the Michigan Compiled Laws; an intermediate school district as defined in section 4 of Act No. 451 of the Public Acts of 1976, being section 380.4 of the Michigan Compiled Laws; or a community college established under Act No. 331 of the Public Acts of 1966, as amended, being sections 389.1 to 389.195 of the Michigan Compiled Laws shall upon request make available to the public the salary records of an employee or other official of the institution of higher education, school district, intermediate school district, or community college.

History: Add. 1979, Act 130, Imd. Eff. Oct. 26, 1979.

Popular name: Act 442

Popular name: FOIA

15.244 Separation of exempt and nonexempt material; design of public record; description of material exempted.

Sec. 14. (1) If a public record contains material which is not exempt under section 13, as well as material which is exempt from disclosure under section 13, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

(2) When designing a public record, a public body shall, to the extent practicable, facilitate a separation of exempt from nonexempt information. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, the public body shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

History: 1976, Act 442, Eff. Apr. 13, 1977.

Popular name: Act 442

Popular name: FOIA

15.245 Repeal of MCL 24.221, 24.222, and 24.223.

Sec. 15. Sections 21, 22 and 23 of Act No. 306 of the Public Acts of 1969, as amended, being sections 24.221, 24.222 and 24.223 of the Michigan Compiled Laws, are repealed.

History: 1976, Act 442, Eff. Apr. 13, 1977.

Popular name: Act 442

Popular name: FOIA

15.246 Effective date.

Sec. 16. This act shall take effect 90 days after being signed by the governor.

History: 1976, Act 442, Eff. Apr. 13, 1977.

Popular name: Act 442

Popular name: FOIA