

Guest column: Senate should promote accountable government with FOIA bill

By Michael J. Reitz

A useful filter for evaluating a public policy idea is to ask whether the idea serves the interests of the public or serves the interests of government.

House Bill 4001 is a good example of a policy that serves the interests of the public while facing opposition from government agencies.



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The bill revises Michigan's Freedom of Information Act, a good-government law that requires public agencies to disclose government records upon request. The law was adopted in the post-Watergate era and it allows taxpayers, public policy advocates and the media to evaluate the decisions and actions of public employees.

The law's stated intent is simple and powerful: "all persons ... 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."

The law, while good, can be strengthened by HB 4001. Individuals who request public records frequently voice two complaints: First, an agency can essentially deny a records request by ignoring the request or dragging its feet when responding. The law requires timely responses but provides few mechanisms for instigating government compliance. Second, agencies can charge exorbitant fees for providing records, thereby dissuading many requesters from pursuing the documents. Examples of these abuses abound:

- The City of Westland illegally charged individuals a gatekeeping fee before it would respond to a request. The city also charged a \$1 per page copying fee (a UPS store directly across the street charged 10 cents per copy) and \$45.61 per hour for the public employee collecting records. These policies were changed after the Mackinac Center successfully challenged them in court.
- Kalamazoo Public Schools attempted to charge \$5,000 for a FOIA request for 12 categories of information. The school later admitted that it failed to adopt and publish FOIA procedures, which is required by law.
- Grandville Public Schools gave the teachers union and school employees the ability to withhold public records

deemed "untimely" or "inappropriate" — exemptions not found in the law.

- The City of Grand Rapids selectively released information about a property tax dispute to a reporter while refusing to give the same information to a nonprofit organization.
- The Michigan State Police attempted to bill the Mackinac Center \$6.8 million for records about homeland security grants.
- Responding to a Mackinac Center request for information on a Michigan State professor accused of plagiarism, MSU provided records that were aggressively redacted with a black marker. A two-page e-mail was completely redacted, along with entire paragraphs of other e-mails. One e-mail read: "Bob, I am concerned about (redacted). It is certainly (redacted). Can we talk about this. I think it will not (redacted). Moreover, (redacted). Moreover, it demonstrates (redacted)."

HB 4001 proposes to modernize FOIA in several meaningful ways. It does little to impose new requirements on government agencies, but strengthens the law so that an agency faces real consequences for ignoring or breaking the law. The bill also provides standards for what agencies can charge to find, review and copy records.

Unfortunately, while HB 4001 was overwhelmingly approved in the House, it is languishing in the Senate Government Operations Committee. Vocal opponents include local government officials and their lobbying groups, who complain that the bill would drive up costs and that they lack the technology to organize and locate records efficiently.

These objections should not delay Senate action. Accountability is a core function of government, and HB 4001 allows agencies to recover the costs of producing records. Additionally, creative solutions to technological hurdles should result in more transparency — not less. For example, Jackson City Councilman Derek Dobies spearheaded an effort to adopt an open data policy in his city.

HB 4001 received careful consideration in the House and earned bipartisan support. The Senate should give it — and the interests of the public — the same thoughtful consideration.

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