

Freedom of Information: Expanding Democratic Access and Government Accountability in Michigan through Transparency Laws

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THESIS

Michigan should remedy its noncompliance with freedom of information laws, especially by eliminating FOIA exemptions for the offices of the governor, lieutenant governor, and state legislators, to enhance government transparency and accountability for the actions of elected officials.

BACKGROUND & ANALYSIS

The Freedom of Information Act (FOIA) was created to ensure an open government. An open government creates trust between itself and its citizens and, according to the US Department of Justice's 2009 FOIA guidelines, needs participation, transparency, and collaboration.¹ In 2015, the Center for Public Integrity conducted a comprehensive assessment of state government accountability and transparency. Its State Integrity Investigation found that, compared to all other states, Michigan ranked last in terms of protective, anti-corruption laws and transparency.² In part, this is because the offices of the governor, lieutenant governor, and legislators are FOIA-exempt under current legislation. This means that citizens do not have the right to request and obtain records from any of these elected officials.

Since the completion of the State Integrity Investigation, the Michigan House of Representatives has attempted to improve government transparency. In 2017, House legislators introduced a series of consecutive bills, H.B. 4148–4157, to strengthen and expand Michigan's FOIA laws.³ These bills were passed in the House unanimously. However, these bills never made it to the Senate floor.

It required immense public pressure to get the former governor, Rick Snyder, to voluntarily release heavily redacted documents related to the Flint water crisis, one of the most salient failures of government in Michigan's history.⁵ Creating a legal framework to force the governor and legislature to release documents will enable Michiganders to know more about the actions of elected officials and bring Michigan in line with national standards of transparency and open government.

KEY FACTS

- Michigan ranks dead last of the 50 states in terms of legislation that ensures government transparency and accountability.²
- The offices of the governor, lieutenant governor, and legislators are FOIA-exempt under current legislation. This means that citizens do not have the right to request and obtain records from any of these elected officials.³
- Research has shown that open government and record-sharing practices foster a sense of trust between citizens and their government.⁴
- The Michigan House of Representatives passed 10 related bills intending to implement transparency regulations, but these all failed to pass in the Senate.³

TALKING POINTS

- Michigan's FOIA exemptions are a barrier to democratic access and should be eliminated.
- The benefits of greater transparency far outweigh the costs associated with expanding the scope of FOIA laws.
- Eliminating the exemptions would align Michigan with the majority of other states and federal FOIA regulations.

THE POLICY IDEA

The Michigan legislature should pass legislation that enforces compliance with federal FOIA regulations. This legislation would make government agencies more accountable for fulfilling FOIA requests and limiting needless exemptions. The new legislation would mandate stricter, definite deadlines for the state to honor FOIA requests. In addition, the law would obligate the offices of the governor, lieutenant governor, and the state legislators to have open-records policies in regards to FOIA requests.

POLICY ANALYSIS

Enforcing expanded compliance with FOIA requests would incentivize elected officials to act in the best interests of their constituents, and it would enable voters to make more informed decisions in elections. Ultimately, the policy would expand democratic access for the voters of Michigan.

The law would encompass a greater number of officials and a higher volume of information would fall under the law's jurisdiction. The total amount spent by Michigan to process FOIA requests will therefore increase, but under existing FOIA laws, much of the cost of FOIA requests is borne by the individual or entity filing the request. New government infrastructure would not be required because most governmental entities have been processing FOIA requests for decades, including much of the executive branch and agencies of the state legislature.⁶ However, additional resources would be needed to hire FOIA coordinators, who process FOIA requests, for the legislative chambers and the offices of the governor and lieutenant governor.⁷ Resources would need to be budgeted according to the expected volume of requests for each office. The state has no practical argument against these expenses; the benefits of greater democratic access and the increased visibility into how taxpayer dollars are managed are worth these additional costs.

NEXT STEPS

To expand Michigan's FOIA laws, we need to reach out to legislators who support increased government transparency. Representative Yousef Rabhi of Ann Arbor has expressed support for such measures. He has also worked quite extensively with his student constituents and will most likely be our closest ally in the advocacy process. We will also need support from legislators on the House and Senate Government Operations Committees for the measure to be passed legislatively. Current Governor Gretchen Whitmer has issued executive orders to increase transparency measures within her own office and could be a powerful ally in the process to lastingly expand democratic access as encoded in Michigan's laws. Language must be drafted that would address the current exemptions without creating unwanted loopholes. Once written, the draft bill must be petitioned to the legislature or introduced by a sitting representative or senator.⁸ From there, it would need to be approved by both chambers of the legislature and the governor.

However, because this measure would directly circumscribe liberties presently enjoyed by legislative and executive officials, securing those officials' support may be difficult. It may therefore be necessary for the policy to be implemented via ballot initiative, which would require support from a majority of the electorate. If the measure is petitioned and the state legislature does not approve it, it will be placed on the next general election ballot to be considered by the electorate. This process will require support from advocacy groups, elected officials, and the public. There are many statewide groups that advocate for increased democratic access, such as the League of Women Voters of Michigan. We hope to find support from local media during the advocacy process, because the media are large proponents of government transparency and frequent submitters of FOIA requests. News organizations such as MLive, the Detroit Free Press, the Detroit News, and the Lansing State Journal can be powerful allies in advocating for the removal of current FOIA exemptions. In addition, we can reach out to advocacy groups such as the ACLU of Michigan and the League of Women Voters of Michigan, both of which are proponents of expanded democratic access and would be supportive of these measures. These groups can all help provide awareness of this issue and require greater public interest in legislative action.

ENDNOTES

1. “DOJ Stresses Importance of FOIA and Open Government Through Performance Standards for Employees,” The United States Department of Justice, Accessed November 28, 2018, <https://www.justice.gov/oip/blog/doj-stresses-importance-foia-and-open-government-through-performance-standards-employees>.
2. Erik Lincoln, Yue Qiu, and Chris Zubak-Skees, “How Does Your State Rank for Integrity?” The Center for Public Integrity, Accessed November 28, 2018, <https://www.publicintegrity.org/2015/11/03/18822/how-does-your-state-rank-integrity>.
3. Jane Briggs-Bunting, “Sunshine Week Would Be Brighter in Michigan with Stronger FOIA Laws,” Michigan Coalition for Open Government, Accessed November 28, 2018, <https://miopengov.org/2018/03/20/sunshine-week-michigan-stronger-foia-laws-lora/>.
4. John Blenkinsopp and Heungsik Park, “The Roles of Transparency and Trust in the Relationship between Corruption and Citizen Satisfaction,” *International Review of Administrative Sciences* 77, no. 2 (June 2011): 254-274, doi: <http://dx.doi.org/10.1177/0020852311399230>
5. Ryan Felton, “Flint Water Crisis: Rick Snyder’s Emails Leave More Questions than Answers,” The Guardian, Accessed November 28, 2018, <https://www.theguardian.com/us-news/2016/jan/21/flint-water-crisis-michigan-governor-rick-snyder-emails-redacted>.
6. “Frequently Asked Freedom of Information (FOIA) Questions,” Michigan Department of the Attorney General, Accessed November 28, 2018, https://www.michigan.gov/ag/0,4534,7-359-81903_20988_18160_18272-350101--,00.html.
7. “Freedom of Information Act Policies and Procedures,” Michigan Economic Development Corporation, Accessed November 28, 2018, <https://www.michiganbusiness.org/49c052/globalassets/documents/foia-docs/medc-foia-policy-and-procedure.pdf>.
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