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IMPORTANT CLIENT UPDATE

GOVERNOR EXECUTIVE ORDER 2020-38 ON FREEDOM OF INFORMATION ACT

Governor Whitmer's Executive Order No. 2020-38 (4/5/20) temporarily extends the deadlines for a public body to respond to written requests for public records under the Freedom of Information Act (FOIA). The Executive Order is effective through June 4, 2020, and applies notwithstanding any contrary policy adopted by a public body.

During the COVID-19 states of emergency and disaster, public bodies must continue to respond to requests for public records as expeditiously as possible and, to the extent practicable, using electronic means. However, if the FOIA response requires in-person efforts to search, inspect, examine, prepare or produce the records, the response may be deferred to that extent until the expiration of the Executive Order (June 4, 2020) or any further Order that follows from it.

A response to a FOIA request or appeal received by mail, hand delivery or fax must be provided within 10 business days after actual receipt. Actual receipt occurs when an employee physically opens the envelope or removes the fax from the fax machine. A public body is not required to have an employee physically present to receive FOIA requests if the employee is not otherwise required to report to work.

If COVID-19 emergency response efforts, compliance with emergency orders, or other mitigation recommendations relating to COVID-19 interfere with the timely grant or denial of a request, or timely reversal or upholding of an appeal, the public body may issue a notice extending the period of time for a response for as long as the public body deems necessary, but no longer than the expiration of the Executive Order (June 4, 2020) or any further Order that follows from it.

Any deferral of a FOIA request or appeal must contain an explanation of the reason for the deferral, and must notify the requester that the request may be amended to exclude the deferred portion of the request. The requester may amend the request in writing.

Should you have questions concerning this Executive Order, please do not hesitate to contact our Office.

<http://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-38.pdf>

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