

THE OFFICE OF

GOVERNOR GRETCHEN WHITMER

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Executive Directive 2019 - 11

To: State Department Directors and Autonomous Agency Heads

From Governor Gretchen Whitmer

Date: February 1, 2019

Re: Encouraging Transparency in State Government

In Michigan, all political power is inherent in its people and state government has been instituted for their equal benefit, security, and protection. Given this constitutional charge, Michiganders deserve a state government that is more open, transparent, and accountable.

Citizen engagement with state government should be facilitated by regular, timely, and consistent dissemination of public information and data. The public also deserves help in navigating access to information about their state government.

Under section 23 of article 9 of the Michigan Constitution of 1963, all financial records, accountings, audit reports, and other reports of public moneys are public records and must be open to inspection.

Under section 491 of The Michigan Penal Code, 1931 PA 328, as amended, MCL 750.491, all official books, papers, or records created by or received in any state office or agency are public property belonging to the people of the State of Michigan.

In addition, the Freedom of Information Act, 1976 PA 442, as amended, MCL 15.231 to 15.246, gives persons the right to receive copies of or inspect most public records of public bodies upon request. The Freedom of Information Act declares it to be the public policy of the State of Michigan that all persons, except those persons incarcerated in local, state, or federal 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 Freedom of Information Act.

The Open Meetings Act, 1976 PA 267, as amended, MCL 15.261 to 15.275, promotes governmental accountability and fosters openness in government to encourage responsible government decision-making. According to Michigan's judiciary, the primary purpose of the Open Meetings Act is to ensure that public bodies conduct all decision-making in open meetings and not simply hold open meetings where they rubber-stamp decisions that were previously made behind closed doors.

State departments and agencies should embrace the Freedom of Information Act and the Open Meetings Act. Access to public records must be given the broadest possible effect.

This directive is intended to establish the general policy of the executive branch of state government relating to public access to public records and open meetings.

Acting pursuant to sections 1 and 8 of article 5 of the Michigan Constitution of 1963, I direct the following:

1. Freedom of Information

- a.** It is the objective of this administration that a request for a public record under the Freedom of Information Act should be a user-friendly process that makes state government more accessible—not the opposite.
- b.** Each department or autonomous agency subject to supervision by the governor under section 8 of article 5 of the Michigan Constitution of 1963 shall comply with the following:
 - 1.** Any financial record, accounting, audit report, or other report of public money within the possession or control of the department or agency is a public record according to section 23 of article 9 of the Michigan Constitution of 1963. The department or agency shall recognize the general right of free access to, and public inspection of, the public record under the Freedom of Information Act or otherwise, subject only to reasonable restrictions to protect a public record from loss or destruction, or to permit the effective functioning of the department or agency, or as otherwise prohibited by law.
 - 2.** Each department and agency is reminded that section 13(1) of the Freedom of Information Act, MCL 15.243(1) permits, but does not require, a public body to withhold from public disclosure the categories of public records detailed in section 13(1)(a) to section 13(1)(aa) of the Freedom of Information Act.
 - 3.** A department or agency shall not as a matter of policy, routine, or practice, automatically extend the initial response period to a request for a public record.
 - 4.** When providing a best effort estimate under section 5 of the Freedom of Information Act, MCL 15.235, regarding the time frame it will take the department or agency to provide a public record to a requestor, the department or agency shall respond within the time frame provided. If a department or agency can provide a portion of a response early, the department or agency should do so.
 - 5.** The department or agency shall notify a person requesting a public record under the Freedom of Information Act of any delay in fulfilling the request, including any delay caused by extenuating circumstances.
 - 6.** If a department or agency denies a request for public records under the Freedom

of Information Act, the department or agency shall provide the requester with a full explanation in plain language, including a citation of the provision of Michigan law permitting the denial, of the reasons for the denial and the requester's right to submit a written appeal to the head of the department or agency or to seek judicial review.

- c. A department or autonomous agency subject to supervision by the governor under section 8 of article 5 of the Michigan Constitution of 1963 should make staff manuals, final orders or decisions in contested cases as permitted by law, and all written statements that implement or interpret laws, rules, or policies, including guidelines, manuals, and forms with instructions, adopted or used by the department or agency in the discharge of its functions or responsibilities available to the public on its website.

2. Open Meetings

- a. Each state department and autonomous agency subject to supervision by the governor under section 8 of article 5 of the Michigan Constitution of 1963 shall comply with the following:
 - 1. Encourage advisory bodies located within the department or agency not subject to the Open Meetings Act to voluntarily comply with the Open Meetings Act.
 - 2. Encourage the inclusion of an agenda or a specific statement of the purpose or purposes of a public meeting in any notice of a meeting of a public body under the Open Meetings Act.
 - 3. Prohibit the use of texting, or other forms of electronic communications among members of a public body within the department or agency during an open meeting that constitute deliberations toward decision-making or actual decisions in a manner that violates the Open Meetings Act. The use of electronic communications for discussions or deliberations, that cannot at a minimum be heard by the members of the public attending an open meeting, are contrary to the core purpose of the Open Meetings Act—the promotion of openness in government.
 - 4. Identify opportunities to increase the use of live streaming of meetings of state boards and commissions, as well as make the agenda for the meetings and materials distributed to board or commission members available online using an easily accessible portal that includes archives of prior meetings and materials.
 - 5. Minimize the use of closed sessions whenever possible, with decisions never made in a closed session.
 - 6. Avoid meeting in facilities or areas subject to public access restrictions.

- b. State departments and autonomous agencies subject to supervision by the governor under section 8 of article 5 of the Michigan Constitution of 1963 are reminded that nothing in the Open Meetings Act prohibits a public body from adopting an ordinance, resolution, rule, or provision requiring a greater degree of openness relative to public body meetings than the standards provided for in the Open Meetings Act. In this administration, public bodies within the executive branch of state government are encouraged to do so.
- c. The Department of Technology, Management, and Budget shall recommend proposals for a centralized on-line portal providing notices of public meetings of state departments and agencies, meeting agendas and materials, videos of meetings, and other measures to facilitate transparency and access. The portal proposal should include the ability for future expansion to include meeting information for local governments.

3. Transparency Liaisons

- a. Each department or autonomous agency subject to supervision by the governor under section 8 of article 5 of the Michigan Constitution of 1963 required to designate an individual as a Freedom of Information Act coordinator under section 6 of the Freedom of Information Act, MCL 15.236, shall designate another individual to serve as the transparency liaison for the department or agency (each a "Transparency Liaison"). The department or agency shall include contact information for the Transparency Liaison in the procedures and guidelines and written public summary of the procedures and guidelines for the department under section 4 of the Freedom of Information Act, MCL 15.234.
- b. A Transparency Liaison for a department or agency shall do the following:
 - 1. Assist members of the public seeking a public record from the department or agency in navigating the requirements of the Freedom of Information Act or other law applicable to public records, including by providing educational materials on the website of the department or agency.
 - 2. Assist members of the public seeking to participate in a public meeting held by a board or commission within the department or agency in a manner that complies with the Open Meetings Act, including by providing educational materials on the website.
 - 3. Make recommendations to the department and agency for compliance with this directive, to reduce costs relating to public records requests, and to encourage greater transparency.
 - 4. Advocate for the disclosure of public records quickly and in a cost-efficient manner.
 - 5. Advocate for transparency and procedures that encourage public participation in

public meetings.

6. Consult with the department or agency's Freedom of Information Act coordinator regarding compliance with this directive and the Freedom of Information Act.
7. Recommend changes to the department's or agency's procedures and guidelines and written public summary of the procedures and guidelines for the department under section 4 of the Freedom of Information Act, MCL 15.234.

4. Implementation

- a. Each state department and autonomous agency subject to supervision by the governor under section 8 of article 5 of the Michigan Constitution of 1963 shall update their policies and procedures to be consistent with this directive, including procedures and guidelines and written public summaries required by section 4 of the Freedom of Information Act, MCL 15.234.
- b. A Transparency Liaison shall report any violation of this directive, the Freedom of Information Act, or the Open Meetings Act to the governor's chief compliance officer.
- c. This directive is effective March 10, 2019.

Thank you for your cooperation in implementing this directive.

Gretchen Whitmer
Governor



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