Executive Order 2020-38 (COVID-19)

EXECUTIVE ORDER

No. 2020-38

Temporary extensions of certain FOIA deadlines to facilitate

COVID-19 emergency response efforts

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401-.421, and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31-.33.

In the three weeks that followed, the virus spread across Michigan, bringing deaths in the hundreds, confirmed cases in the thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. In response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33 on April 1, 2020. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945.

The Emergency Management Act vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).

To mitigate the spread of COVID-19, protect the public health, and provide essential protections to vulnerable Michiganders, it is crucial that all Michiganders limit in-person contact to the fullest extent possible. This includes practicing social distancing and restricting in-person work and interaction to only that which is strictly necessary. At the same time, and as memorialized by Michigan's Freedom of Information Act ("FOIA"), 1976 PA 442, as amended, MCL 15.231 et seq., it remains the public policy of this state—and a priority of my administration—that Michiganders have access 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," so that they "may fully participate in the democratic process." MCL 15.231(2). To balance this core priority with the steep and urgent demands posed by the COVID-19 pandemic, it is reasonable and necessary to provide limited and temporary extensions of certain FOIA deadlines, so that Michiganders may remain informed and involved in their government during this unprecedented crisis without unduly compromising the health and safety of this state and its residents.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. Strict compliance with the required response periods set forth under sections 5(2), 10(2), and 10a(2) of the Freedom of Information Act ("FOIA"), 1976 PA 442, as amended, MCL 15.235(2), 15.240(2), and 15.240a(2), is temporarily suspended, as follows:

a. A public body must respond in writing to a request or an appeal received at its physical office via mail, hand delivery, or facsimile within 10 business days after actual receipt of the request or appeal. For purposes of this order, actual receipt of a request or appeal occurs when an employee of the public body physically opens the envelope containing the request or physically takes the faxed request from the fax machine. Nothing in this order requires an employee to report to the office to open mail or check the fax machine if the employee would not otherwise be permitted to report to the office in person and required to perform those tasks.

b. If COVID-19 or any accompanying response efforts, including but not limited to compliance with any emergency order or mitigation recommendations related to COVID-19, interferes with the timely grant or denial of a request or the timely reversal or upholding of a denial on appeal, a public body may issue a notice under section 5(2)(d), 10(2)(d), or 10a(2)(d) of the FOIA, MCL 15.235(2)(d), 15.240(2)(d), or 15.240a(2)(d), as applicable, extending the period of time in which to respond for as long as the public body deems necessary but no longer than until the expiration of this order or any order that follows from it.

2. Strict compliance with the requirements relating to in-person efforts in connection with a public records request set forth under sections 3 and 4 of the FOIA, MCL 15.233 and 15.234, is temporarily suspended, as follows:

a. If a public records request requires in-person efforts, such as an in-person search, inspection, examination, preparation, or production of public records, by the requestor or the public body, a public body may defer that portion of the request until the expiration of this order or any order that follows from it.

b. If a public body defers a portion of a public records request pursuant to section 2(a) of this order, it must explain this deferral and its reason in the public body's response to the requestor under section 5(2) or 10(2) of the FOIA, MCL 15.235(2) and 15.240(2), as applicable.

c. If a public body defers a portion of a public records request pursuant to section 2(a) of this order, the requestor may inform the public body in writing that the requestor is amending its request to exclude the deferred portion of the request so that the public body may more promptly process the request. The public body must notify the requestor of its ability to amend its request in the response required under section 2(b) of this order.

3. It is the public policy of this state that, during the COVID-19 states of emergency and disaster, public bodies continue to respond to requests for public records as expeditiously as possible and, to the extent practicable, by using electronic means.

4. The provisions of this order apply notwithstanding any contrary policy adopted by a public body.

5. For purposes of this order, the terms “public body” and “public record” mean those terms as defined under section 2 of the FOIA, MCL 15.232.

6. This order is effective immediately and continues through June 4, 2020 at 11:59 pm.

Given under my hand and the Great Seal of the State of Michigan.

COPYRIGHT 2020 STATE OF MICHIGAN