

Act 563 of 2014: New Amendment to the FOIA

Anne M. Seuryck
Foster Swift Collins & Smith, P.C.
1700 E Belkline Ave, NE, Suite 200
Grand Rapids, MI 49525
(616) 726-2200
aseuryck@fosterswift.com

Overview

- The new Act does not become effective until July 1, 2015.
- Act 563 contains specific limitations on the fees that may be charged.
- Act 563 also requires detailed accounting of all fees, including estimates.
- The new law requires the public body to develop procedures and summaries.

Overview

- Act 563 provides for an avenue to challenge the assessment of fees.
- The new Act adds new penalties and increases certain existing penalties.
- The Legislature does provide certain relief from requesters who do not pay in certain circumstances.
- The public body may now address documents available on the website differently.

Can the Public Body Charge a Fee?

- || A public body **may charge a fee** for a public record search, for the necessary copying of a public record for inspection, or for providing a copy of a public record ***if it has established, makes publicly available, and follows procedures and guidelines.***
- || The procedures and guidelines are specifically provided in the new Act.
- || No procedures and guidelines = no fees.

FOSTER SWIFT

Act 563
April 21, 2015³

How Much Can the Public Body Charge?

- || Subject to provisions in the amended FOIA, the fee shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information.
- || The fee is broken down into separate categories.

FOSTER SWIFT

Act 563
April 21, 2015⁴

1. Labor Cost – Searching for, Locating and Examining

- || That portion of labor costs directly associated with the necessary ***searching for, locating, and examining*** of public records in conjunction with receiving and fulfilling a ***granted written*** request.
 - What if the public body searches for documents but does not find any that respond to the request? The statute says "granted."
 - What if the request is verbal? The statute says "written."

FOSTER SWIFT

Act 563
April 21, 2015⁵

1. Labor Cost – Searching for, Locating and Examining

- The public body shall not charge more than the hourly wage of its lowest-paid *employee* capable of searching for, locating, and examining the public records in the particular instance.
- This fee is charged regardless of whether that person is available or who actually performs the labor.
 - If the lowest paid person is the deputy clerk, that rate must be charged even if the manager or clerk, who have higher hourly rates, actually performs the job.
 - Also, must use the hourly rate even if that person is not "available."

FOSTER SWIFT
PROFESSIONAL CORPORATION

Act 563
April 21, 2015⁶

1. Labor Cost – Searching for, Locating and Examining

- Labor costs shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.
- So, each public body should determine the hourly rates and train employees to write all time down in advance of the July 1 deadline.

FOSTER SWIFT
PROFESSIONAL CORPORATION

Act 563
April 21, 2015⁷

1. Labor Cost – Searching for, Locating and Examining

- The fee shall be itemized in a manner that expresses both the hourly wage and the number of hours charged.
- Overtime wages shall not be included unless overtime is specifically stipulated by the requester and clearly noted on the detailed itemization.
- Kept "old language" that this fee may not be charged unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular interest and the public body identifies the nature of these unreasonably high costs.

FOSTER SWIFT
PROFESSIONAL CORPORATION

Act 563
April 21, 2015⁸

2. Labor Costs – Separating and Deleting Exempt from Non-Exempt

- That portion of labor costs, including necessary review, if any, directly associated with the separating and deleting of exempt information from non-exempt information as provided in section 14.
 - Includes redacting.
 - Includes removing exempt information.

FOSTER SWIFT
FOUNDER OF THE FOIA REFORM MOVEMENT

Act 563
April 21, 2015_g

2. Labor Costs – Separating and Deleting Exempt from Non-Exempt

- For services performed by an **employee** of the public body, the public body shall not charge more than the hourly wage of its lowest-paid employee capable of separating and deleting exempt information from non-exempt information in the particular instance as provided in section 14.
- Again, this hourly rate must be used regardless of whether that person is available or who actually performs the labor.

FOSTER SWIFT
FOUNDER OF THE FOIA REFORM MOVEMENT

Act 563
April 21, 2015_g

2. Labor Costs – Separating and Deleting Exempt from Non-Exempt

- If a public body does not employ **a person capable** of separating and deleting the information in the particular instance **as determined by the public body's FOIA coordinator on a case-by-case basis**, it may treat necessary **contracted labor costs** in the same manner as employee labor costs when calculating charges under this subdivision:
 - If the public body clearly notes the name of the contracted person or firm on the detailed itemization – section 4 requirements must be met.
 - Total labor costs shall not exceed an amount equal to 6 times the state minimum hourly wage.
 - No current definition of what “capable” means under the new law.

FOSTER SWIFT
FOUNDER OF THE FOIA REFORM MOVEMENT

Act 563
April 21, 2015_g

2. Labor Costs – Separating and Deleting Exempt from Non-Exempt

- || Examples of “contracted labor:”
 - Attorneys: This new provision supersedes by statute a prior court ruling that concluded attorneys fees cannot be charged as labor costs under the FOIA.
 - Planning and zoning firms.
 - Engineers.

FOSTER SWIFT
FOIA CONSULTING, TRAINING & SERVICES

Act 563
April 21, 2012

2. Labor Costs – Separating and Deleting Exempt from Non-Exempt

- || Cannot be more than 6 times the current hourly wage.
 - Current minimum wage is \$8.15 per hour.
 - Currently scheduled yearly increases in 2016-2018.

FOSTER SWIFT
FOIA CONSULTING, TRAINING & SERVICES

Act 563
April 21, 2012

2. Labor Costs – Separating and Deleting Exempt from Non-Exempt

- || Labor costs shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.
- || The fee shall be itemized in a manner that expresses both the hourly wage and the number of hours charged.
- || Overtime wages shall not be included unless overtime is specifically stipulated by the requester and clearly noted on the detailed itemization.

FOSTER SWIFT
FOIA CONSULTING, TRAINING & SERVICES

Act 563
April 21, 2012

2. Labor Costs – Separating and Deleting Exempt from Non-Exempt

- ▮ A public body shall not charge for labor directly associated with redaction if it knows or has reason to know that it previously redacted the public record in question and the redacted version is still in the public body’s possession.
 - ▮ Keep this in mind for record retention policies.
 - ▮ Keep in mind past FOIA requests.

FOSTER SWIFT
FOUNDER CONSULTANTS & ASSOCIATES

Act 563
April 21, 2015
16

2. Labor Costs – Separating and Deleting Exempt from Non-Exempt

- ▮ Kept “old language” that this fee may not be charged unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular interest and the public body identifies the nature of these unreasonably high costs.

FOSTER SWIFT
FOUNDER CONSULTANTS & ASSOCIATES

Act 563
April 21, 2015
16

3. Labor Costs – Duplication and Publication

- ▮ The cost of labor directly associated with duplication or publication, including :
 - ▮ Making paper copies,
 - ▮ Making digital copies,
 - ▮ Or transferring digital public records to be given to the requestor on “nonpaper physical media” or through the internet or other electronic means as stipulated by the requestor.
 - Appears to give the requester the choice of media – however, note limitation in section dealing with actual costs of nonpaper physical media. Public body must have the technological capabilities.
 - This would include transferring files to a flash drive or e-mailing them.

FOSTER SWIFT
FOUNDER CONSULTANTS & ASSOCIATES

Act 563
April 21, 2015
17

3. Labor Costs – Duplication and Publication

- || The public body shall not charge more than the hourly wage of its lowest-paid *employee* capable of necessary duplication or publication in the particular instance, regardless of whether that person is available or who actually performs the labor.
- || The fee shall be itemized in a manner that expresses both the hourly wage and the number of hours charged.

FOSTER SWIFT
POLICE OFFICERS LOCAL 1000

Act 563
April 21, 2015⁸

3. Labor Costs – Duplication and Publication

- || Labor costs be estimated and charged in time increments *of the public body's choosing*; however, all partial time increments shall be rounded down.
- || Overtime wages shall not be included unless overtime is specifically stipulated by the requester and clearly noted on the detailed itemization.

FOSTER SWIFT
POLICE OFFICERS LOCAL 1000

Act 563
April 21, 2015⁹

4. Actual Costs – Paper Copies

- || The actual total incremental cost of necessary duplication or publication, not including labor.
- || The cost of paper copies shall be calculated as a total cost per sheet of paper and shall be itemized and noted in a manner that expresses both:
 - The cost per sheet; and
 - The number of sheets provided.

FOSTER SWIFT
POLICE OFFICERS LOCAL 1000

Act 563
April 21, 2015²⁰

4. Actual Costs – Paper Copies

- The fee shall not exceed \$.10 per sheet of paper for copies of public records made on 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper.
- Presumably, larger copies are not subject to the \$.10 limitation.
- A public body shall utilize the most economical means available for making copies of public records, including using double-sided printing, if cost saving and available.

FOSTER SWIFT
ATTORNEYS AT LAW

Act 563
April 21, 2015,
21

5. Actual Costs – Nonpaper Physical Media

- The public body may charge the actual and most reasonably economical cost of the computer discs, computer tapes, or other digital or similar media.
- The requester may stipulate that the public records be provided on nonpaper physical media, electronically mailed, or otherwise electronically provided to him or her in lieu of paper copies.

FOSTER SWIFT
ATTORNEYS AT LAW

Act 563
April 21, 2015,
22

5. Actual Costs – Nonpaper Physical Media

- Does not apply if a public body lacks the technological capability necessary to provide records on the particular nonpaper physical media stipulated in the particular instance.
 - Put another way, the public body is not required to purchase material or equipment to respond to requests.
 - Under previous version, the public body only had to provide documents if they were ready in electronic form.
 - However, this provision focuses on the "technological capability."
 - Thus, if the public body has a scanner, likely required to scan paper copies to make electronic ones that can be e-mailed or placed on a flash drive. The public body can also charge for the time.

FOSTER SWIFT
ATTORNEYS AT LAW

Act 563
April 21, 2015,
23

6. Actual Cost -- Mailing

- The actual cost of mailing.
- May not charge more for expedited shipping or insurance unless specifically stipulated by the requester.
- But, may otherwise charge for the least expensive form of postal delivery confirmation when mailing public records.

FOSTER SWIFT

Act 563
April 21, 2015
24

Labor Costs – Fringe Benefits

- The public body may also add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits. Includes labor charges for:
 - Search, location and examination.
 - Separation of exempt from non-exempt (redacting).
 - Duplication and publication.
- However, it must clearly note the percentage multiplier used to account for benefits in the detailed itemization.
- Subject to the 50% limitation, the public body shall not charge more than the actual cost of fringe benefits.
- Overtime wages shall not be used in calculating the cost of fringe benefits.

FOSTER SWIFT

Act 563
April 21, 2015
25

Reduction in Fee -- Indigency

- A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for:
 - An individual who submits an affidavit stating that the individual is indigent and receiving specific public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency.
 - If the requester is eligible for a requested discount, the public body shall fully note the discount on the detailed itemization.
 - If a requester is ineligible for the discount, the public body shall inform the requester specifically of the reason for ineligibility in the public body's written response.

FOSTER SWIFT

Act 563
April 21, 2015
26

Reduction in Fee -- Indigency

- An individual is ineligible for this fee reduction if any of the following apply:
 - The individual has previously received discounted copies of public records under this subsection from the same public body twice during that calendar year.
 - The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. A public body may require a statement by the requester in the affidavit that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.

FOSTER SWIFT
INFORMATION SERVICES CORPORATION

Act 563
April 21, 2015
27

Reduced Fee for Certain Non-Profits

- A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request by a nonprofit organization formally designated by the state to carry out activities under subtitle C of the *developmental disabilities assistance and bill of rights act of 2000*, Public Law 106-402, and the *protection and advocacy for individuals with mental illness act*, Public Law 99-319, or their successors, if the request meets all of the following requirements:
 - Is made directly on behalf of the organization or its clients.
 - Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, 1974 PA 258, MCL 330.1931.
 - Is accompanied by documentation of its designation by the state, if requested by the public body.
- Act does not require an affidavit or other proof unless requested.

FOSTER SWIFT
INFORMATION SERVICES CORPORATION

Act 563
April 21, 2015
28

Procedures, Guideline and Summary

- A public body shall establish procedures and guidelines to implement this Act.
- The public body shall create a written public summary of the specific procedures and guidelines relevant to the general public regarding:
 - How to submit written requests to the public body; and
 - Explaining how to understand a public body's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal.
- The written public summary shall be written in a manner so as to be easily understood by the general public.

FOSTER SWIFT
INFORMATION SERVICES CORPORATION

Act 563
April 21, 2015
29

Procedures, Guideline and Summary

- If the public body directly or indirectly administers or maintains an official internet presence, it shall post and maintain the procedures and guidelines and its written public summary on its website.
- A public body shall make the procedures and guidelines publicly available by providing free copies of the procedures and guidelines and its written public summary both:
 - In the public body's response to a written request; and
 - Upon request by visitors at the public body's office.
- A public body that posts and maintains procedures and guidelines and its written public summary on its website may include the website link to the documents in lieu of providing paper copies in its response to a written request.

FOSTER SWIFT
ATTORNEYS AT LAW

Act 563
April 21, 2015
30

Detailed Itemization of Fees

- A public body's procedures and guidelines shall include the use of a standard form for detailed itemization of any fee amount in its responses to written requests under this Act.
- May use a form created by the department of technology, management, and budget or create a form of their own that complies with this subsection.

FOSTER SWIFT
ATTORNEYS AT LAW

Act 563
April 21, 2015
31

Detailed Itemization of Fees

- The detailed itemization shall clearly list and explain the allowable charges for each of the 6 fee components which comprise the total fee used for estimating or charging purposes. Those are numbered 1-6 in this presentation.
- But, the statute also makes references in other areas to the detailed itemization including, but not limited to:
 - Fringe benefit multiplier.
 - Overtime wages if approved.
 - Discounted rates for indigency.
 - Accounting for documents available on the website.
 - Reductions in fees due to late responses.

FOSTER SWIFT
ATTORNEYS AT LAW

Act 563
April 21, 2015
32

Procedures, Guideline and Summary

- A public body that has not
 - Established procedures and guidelines,
 - Created a written public summary, or
 - Made those items publicly available without chargeis not relieved of its duty to comply with any requirement of this Act and shall not require deposits or charge fees otherwise permitted under this Act until it is in compliance with this subsection.

FOSTER SWIFT

Act 563
April 21, 2015
33

Information Available on Website

- If the public body directly or indirectly administers or maintains an official internet presence, any public records available to the general public on that internet site at the time the request is made are exempt from any charges under subsection (1)(b).
 - Subsection (1)(b) relates to charges for separating and deleting records.

FOSTER SWIFT

Act 563
April 21, 2015
34

Information Available on Website

- If the FOIA coordinator *knows or has reason to know* that all or a portion of the requested information is available on its website, the public body *shall* notify the requester in its written response that all or a portion of the requested information is available on its website.
 - The written response, to the degree practicable in the specific instance, shall include a specific webpage address where the requested information is available.

FOSTER SWIFT

Act 563
April 21, 2015
35

Information Available on Website

- On the detailed itemization, the public body shall separate the requested public records that are available on its website from those that are not available on the website.
- The public body shall inform the requester of the additional charge to receive copies of the public records that are available on its website.

FOSTER SWIFT
ATTORNEYS AT LAW

Act 563
April 21, 2015
36

Information Available on Website

- If the public body has included the website address but the requester decides he or she wants a paper copy or a copy in another form, the public body shall provide the public records in the specified format but may use a fringe benefit multiplier greater than the 50% limitation, not to exceed the actual costs of providing the information in the specified format.

FOSTER SWIFT
ATTORNEYS AT LAW

Act 563
April 21, 2015
37

Verbal Requests

- A public body may provide requested information available in public records without receipt of a written request.
 - This is permissive, not mandatory.
- If a verbal request for information is for information that a public body believes is available on the public body's website, **the public employee shall**, where practicable and to the best of the public employee's knowledge, inform the requester about the public body's pertinent website address.
 - On its face, applies to all employees.
 - Recommend that all employees who frequently interact with residents be aware of this provision.

FOSTER SWIFT
ATTORNEYS AT LAW

Act 563
April 21, 2015
38

Deposit

- || In either the public body's initial response or subsequent response as described under section 5(2)(d), the public body may require a good-faith deposit before providing the public records to the requester if the entire fee estimate or charge authorized under this section exceeds \$50.00, based on a good-faith calculation of the total fee described in the detailed itemization sheet.
- || The deposit shall not exceed 1/2 of the total estimated fee.
- || The public body's request for a deposit shall include a detailed itemization.

FOSTER SWIFT
ACT 563
 APRIL 21, 2015
 30

Time Frame For Providing Documents

- || The response shall also contain a best efforts estimate regarding the time frame it will take to comply with the law in providing the public records.
- || The time frame estimate is nonbinding, but the public body shall:
 - Provide the estimate in good faith;
 - Strive to be reasonably accurate; and
 - Provide the public records in a manner based on this state's public policy and the nature of the request in the particular instance.

FOSTER SWIFT
ACT 563
 APRIL 21, 2015
 40

Time Frame For Providing Documents

- || If a public body does not respond in a timely manner as described under section 5(2), it is not relieved ***from its requirements*** to provide ***proper fee calculations*** and ***time frame estimates*** in any tardy responses.
- || Providing an estimated time frame does not relieve a public body from any of the other requirements of this Act.

FOSTER SWIFT
ACT 563
 APRIL 21, 2015
 21

Untimely Responses – Fee Reduction

- If a public body does not respond to a written request in a timely manner, the public body shall reduce the charges for labor costs by 5% for each day the public body exceeds the time permitted, with a maximum 50% reduction, if either of the following applies:

FOSTER SWIFT
PUBLIC RECORDS CONSULTANTS & TRAINERS

Act 563
April 21, 2015
22

Untimely Responses – Fee Reduction

- The late response was willful and intentional.
- The written request included language that conveyed a request for information within the first 250 words of the body of a letter, facsimile, electronic mail, or electronic mail attachment, or specifically included the words, characters, or abbreviations for "freedom of information", "information", "FOIA", "copy", or a recognizable misspelling of such, or appropriate legal code reference for this Act, on the front of an envelope, or in the subject line of an electronic mail, letter, or facsimile cover page.
- If a charge reduction is required, the public body shall fully note the charge reduction on the detailed itemization.

FOSTER SWIFT
PUBLIC RECORDS CONSULTANTS & TRAINERS

Act 563
April 21, 2015
23

Increased Estimated Fee Deposits

- After a public body has granted and fulfilled a written request, if the public body has not been paid in full for the copies of public records that the public body made available, the public body may require a deposit of up to 100% of the estimated fee *before it begins a full public record search for any subsequent written request* from that individual if *all of the following apply*:
 - The final fee for the prior written request was not more than 105% of the estimated fee.
 - But, the law provides that the public body may provide an estimate, not shall.
 - The public records made available contained the information being sought in the prior written request and are still in the public body's possession.

FOSTER SWIFT
PUBLIC RECORDS CONSULTANTS & TRAINERS

Act 563
April 21, 2015
24

Increased Estimated Fee Deposits

- The public records were made available to the individual, subject to payment, within the time frame estimate described under subsection (7)
 - Section 7 refers to the good faith estimate .
 - Supposed to be nonbinding.
- Ninety days have passed since the public body notified the individual in writing that the public records were available for pickup or mailing.
- The individual is unable to show proof of prior payment to the public body.
- The public body calculates a detailed itemization, that is the basis for the current written request's increased estimated fee deposit.

FOSTER SWIFT
ATTORNEYS AT LAW

Act 563
April 21, 2015
26

Increased Estimated Fee – No Longer Required

- A public body shall no longer require an increased estimated fee deposit from an individual if any of the following apply:
 - The individual is able to show proof of prior payment in full to the public body.
 - The public body is subsequently paid in full for the applicable prior written request.
 - Three hundred sixty-five days have passed since the individual made the written request for which full payment was not remitted to the public body.

FOSTER SWIFT
ATTORNEYS AT LAW

Act 563
April 21, 2015
26

Response Times

- The time frame for initial responses (5 business days) and for extensions (10 business days) has not changed.
- However, if a written request is sent by electronic mail and delivered to the public body's spam or junk-mail folder, the request is not received until 1 day after the public body first becomes aware of the written request.
- The public body shall note in its records both the time a written request is delivered to its spam or junk-mail folder and the time the public body first becomes aware of that request.
 - Note: This is a new mandatory record retention issue.

FOSTER SWIFT
ATTORNEYS AT LAW

Act 563
April 21, 2015
27

Final Determination

- Failure to respond to a request pursuant to subsection (2) constitutes a public body's final determination to deny the request if either of the following applies:
 - The failure was willful and intentional.
 - The written request included language that conveyed a request for information within the first 250 words of the body of a letter, facsimile, electronic mail, or electronic mail attachment, or specifically included the words, characters, or abbreviations for "freedom of information", "information", "FOIA", "copy", or a recognizable misspelling of such, or appropriate legal code reference to this Act, on the front of an envelope or in the subject line of an electronic mail, letter, or facsimile cover page.

FOSTER SWIFT
ATTORNEYS AT LAW

Act 563
April 21, 2015

Final Determination

- New law does not contain any "magic language" required for the request.
- So, the public body should be careful to make sure to respond to all requests in writing.

FOSTER SWIFT
ATTORNEYS AT LAW

Act 563
April 21, 2015

Timing for Appeal

- Within 10 **business** days after receiving a written appeal, the head of a public body must respond.

FOSTER SWIFT
ATTORNEYS AT LAW

Act 563
April 21, 2015

Civil Action – Arbitrary and Capricious

- If the court determines that the public body has arbitrarily and capriciously violated this Act by refusal or delay in disclosing or providing copies of a public record, the court shall order the public body to pay a civil fine of \$1,000.00, which shall be deposited into the general fund of the state treasury.
- The new Act increased punitive damages from \$500.00 to \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record.

FOSTER SWIFT
ATTORNEYS AT LAW

Act 563
April 21, 2015

Challenging Fees

- If a public body requires a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4 of the FOIA, the requesting person may do any of the following:
 - Appeal as detailed more fully below.
 - File a circuit court action as detailed more fully below.

FOSTER SWIFT
ATTORNEYS AT LAW

Act 563
April 21, 2015

Fee Appeal

- If the public body provides for fee appeals to the head of the public body in its publicly available procedures and guidelines, submit to the head of the public body a written appeal for a fee reduction that:
 - Specifically states the word "appeal"; and
 - Identifies how the required fee exceeds the amount permitted under the public body's available procedures and guidelines.
- A board or commission that is the head of a public body is not considered to have received a written appeal until the first regularly scheduled meeting of that board or commission following submission of the written appeal.

FOSTER SWIFT
ATTORNEYS AT LAW

Act 563
April 21, 2015

Civil Action Regarding Fees

- An action shall not be filed unless one of the following applies:
 - The public body does not provide for appeals of fees.
 - The head of the public body failed to respond to a written appeal as required by law.
 - The head of the public body issued a determination to a written appeal.

FOSTER SWIFT
POLICE AND PROSECUTION CONSULTANTS

Act 563
April 21, 2015⁰⁹

Civil Action Regarding Fees

- A court that determines the public body required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4 of the FOIA shall reduce the fee to a permissible amount.
- Failure to comply with an order of the court may be punished as contempt of court.

FOSTER SWIFT
POLICE AND PROSECUTION CONSULTANTS

Act 563
April 21, 2015⁰⁹

Fee Challenges/Attorney Fees

- An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.
- If the requesting person prevails in an action commenced under this section by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.

FOSTER SWIFT
POLICE AND PROSECUTION CONSULTANTS

Act 563
April 21, 2015⁰⁹

Penalties for Fee Challenges

- If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this Act by charging an excessive fee, the court shall order the public body to pay a civil fine of \$500.00, which shall be deposited in the general fund of the state treasury.
- The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the fee reduction.
- "Fee" means the total fee or any component of the total fee calculated under section 4, including any deposit.

FOSTER SWIFT
FOSTER SWIFT | FIDELITY & SECURITY | ATTORNEYS

Act 563
April 21, 2015
00

New Penalty for Willful, Intentional or Bad Faith

- If the court determines, in an action commenced under this Act, that a public body willfully and intentionally failed to comply with this Act or otherwise acted in bad faith, the court shall order the public body to pay, in addition to any other award or sanction, a civil fine of not less than \$2,500.00 or more than \$7,500.00 for each occurrence.
- In determining the amount of the civil fine, the court shall consider the budget of the public body and whether the public body has previously been assessed penalties for violations of this Act.
- The civil fine shall be deposited in the general fund of the state treasury.

FOSTER SWIFT
FOSTER SWIFT | FIDELITY & SECURITY | ATTORNEYS

Act 563
April 21, 2015
01

FOSTER SWIFT
FOSTER SWIFT | FIDELITY & SECURITY | ATTORNEYS

Questions?

Anne M. Seurync
616.726.2240 | aseurync@fosterswift.com

FOSTER SWIFT
FOSTER SWIFT | FIDELITY & SECURITY | ATTORNEYS

FOSTERSWIFT.COM
