

# Regaining the public's trust

## Citing need for greater transparency, lawmakers in Michigan plan sweeping reform of Freedom of Information Act

by Michigan House Speaker Pro Tempore Lee Chatfield

Trust in government continues to be at all-time lows. According to the Pew Research Center, only 19 percent of Americans today trust the federal government to do what is right “just about always” (3 percent) or “most of the time” (16 percent).

Michigan-specific data is no different. According to Michigan State University’s most recent State of the State Survey, trust in state government ranks only a few percentage points higher than trust in the federal government. [Editor’s note: The rate is somewhat higher in a national poll conducted by Gallup; see map.]

I believe that a significant portion of the widespread distrust in government, other than the typical partisan distrust, stems from a lack of accountability to the people we are elected to serve.

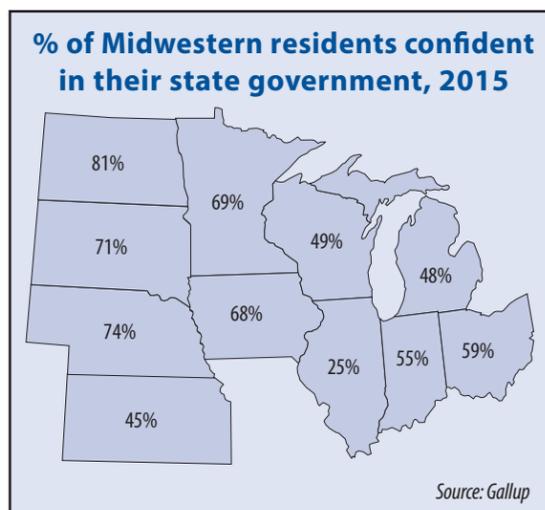
One way to decrease the distrust is to increase public access to government information.

### Michigan’s lack of transparency

In November 2015, the Center for Public Integrity published a survey that slapped Michigan with an “F” grade for transparency and ethics in government. The survey’s authors stated that “dead-last Michigan” has failed to adopt the types of ethics and open-records laws common in many other states.

While all 50 states have some form of an open-records law, Michigan is the only state to statutorily exempt its governor’s office (Massachusetts has done so through court and administrative rulings). Six other states provide blanket exemptions for their legislatures (Alaska, Georgia, Massachusetts, Minnesota, Oklahoma and Oregon), but many states exempt specific legislative records from disclosure (for instance, California exempts caucus records).

Since joining the Michigan House of Representatives in 2015, I have been part of a group of Republicans and Democrats working together to craft a package of bills that reform Michigan’s Freedom of Information Act.



The proposed plan, which unanimously passed the Michigan House again this session, includes two parts. First, the plan amends FOIA to subject the offices of governor and lieutenant governor, and their employees, to the act beginning on Jan. 1, 2019. The remaining bills in this legislative package create the new Legislative Open Records Act under FOIA to provide for the public inspection of nonexempt legislative records created after Jan. 1, 2019.

This proposed Legislative Open Records Act mostly contains sections that correspond to existing sections in our state’s FOIA, including the same provisions relating to the format of the request, response requirements, labor and material fees, security deposits and grounds for appeal.

Under our proposal, only records that are at least 15 days old will apply to this act, in order to minimize politically driven requests that are intended to derail specific bills moving through the legislative process. In addition, incoming communications from constituents who contact their legislator for assistance or to voice their opinions would be protected to safeguard private information and the personal nature of their cases.

The Michigan Constitution prohibits legislators from being “questioned” by the executive or judicial branches over communications made in the performance of their duties. It also prohibits legislators from being liable in civil actions for acts done in the performance of their duties. This means that a court might not enforce a judgment or penalty against an offending legislator, as FOIA would ordinarily require.

Even if a court could generally force compliance on the legislative branch, a strong argument can be made that the legislature cannot waive the speech and debate protections for individual legislators in the future. Thus, while there is no constitutional issue with subjecting the governor to FOIA, it is unlikely that FOIA could constitutionally be enforced against violating legislators. The result would likely be increased costs and administrative burdens, without any real increase in transparency.

But our proposed Legislative Open Records Act, a stand-alone act that largely mirrors FOIA, assures a more open government. Aggrieved requesters could appeal to a nonpartisan entity within the Michigan

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Legislature, the Legislative Council administrator, instead of allowing judicial review of fee determinations and denials. This benefits citizens and the media because instead of hiring an attorney and paying filing fees in court, they simply need to appeal to the administrator for a fee of between \$50 and \$75.

This method preserves legislative immunity and prevents separation-of-powers issues, while also expanding our Legislature’s self-policing powers and reinforcing its independence.

### Inspect vs. expect

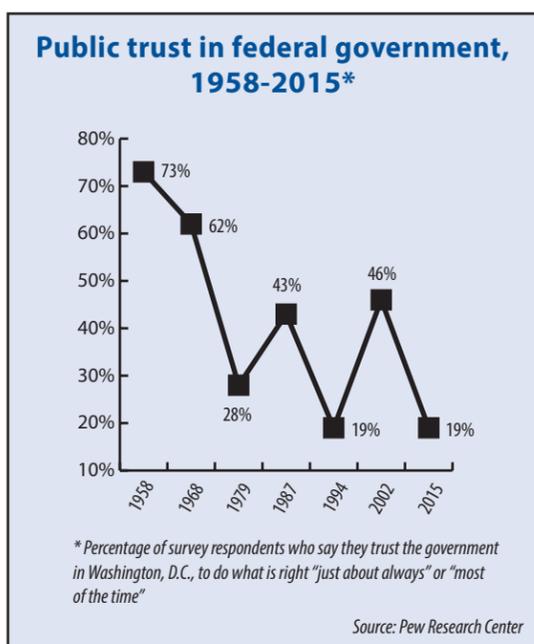
Those of us elected to serve are trusted to use resources that don’t belong to us. Taxpayers, therefore, have a right to know exactly how their money is being spent, and who we are spending our time with while working through the budget process or while making public policy.

I am reminded of my grandfather’s cautionary advice growing up: “People do what you inspect — not what you expect.” With this legislation, Michigan will finally allow inspection of its policymakers, because no government, at any level, should operate in secrecy.

Transparency is about people, and I don’t believe people can have faith in their government if it fails to set an example for honesty and openness. I am very thankful to be part of this push for much-needed transparency reform that is long overdue.

It’s time that we set a new standard for future legislators and future administrations. ★

Speaker Pro Tempore Lee Chatfield, a Republican from Levering, was first elected to the Michigan House of Representatives in 2014.



### Submissions welcome

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