



Administrative Policies and Procedures

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1. Purpose

To provide access to all public records except those records or portions of records exempt from release under law.

2. Policy

The Michigan Freedom of Information Act (FOIA) only addresses the release of public records that exist at the time of the request. "Public record," as defined by the FOIA, means "a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created." The FOIA defines "writing" to include "handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content."

3. Procedures

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1.0 FOIA Coordinators

- 1.1 The City Administrator designates the Chief of Police as the FOIA Coordinator for Police Services records.
- 1.2 The City Administrator designates the City Clerk as the FOIA Coordinator for all other City records.
- 1.3 The City Clerk and Chief of Police may, in turn, designate specific individuals under their respective supervisions to perform their duties under the FOIA, the Rules, and this Administrative Policy.

2.0 FOIA Coordinator Responsibilities

2.1 Response Processing

Each FOIA Coordinator is responsible for transmitting to the requester the City's official response to each FOIA request within his/her area of responsibility. The FOIA Coordinator shall receive from the applicable service areas originals or copies of requested public records, including all proposed redactions and omissions, and the costs incurred. Each responding service area shall identify and provide the FOIA Coordinator with the reason(s) for all redactions and omissions. The FOIA Coordinator shall review the public records and any proposed redactions or omissions for compliance with this policy and draft the response letter. The FOIA Coordinator shall discuss any modifications with the responding service area and shall consult the City Attorney's Office where appropriate. The responding service area shall immediately provide the FOIA Coordinator with any additional information and/or public records as needed.

2.2 Retention of Requests

The FOIA Coordinator shall maintain a chronological file of all FOIA requests within his/her area of responsibility for one year plus one day after the date the request has been completed by the City, including (1) a copy of the response letter, (2) originals or copies of all public records produced, both with and without redactions, and (3) copies or originals of omitted records that are responsive to the request (omitted records may be maintained in the applicable service area, as appropriate). If the request is for inspection of public records, the FOIA Coordinator shall also retain documentation verifying the date the inspection was completed. The FOIA Coordinator may retain originals or copies of public records electronically. If the requester fails to pay costs due or fails to pick up requested

copies within one year, the request shall be deemed abandoned, any amounts paid by the requester shall be forfeited, and the documents or records may be recycled, destroyed, or returned to the processing service area, as appropriate.

If an action to compel disclosure, whether by administrative appeal or commencement of an action in the circuit court, is commenced regarding the City's response to a FOIA request, the City Attorney's Office shall notify the appropriate FOIA Coordinator to retain the relevant records until such time as the City Attorney's Office informs him/her that the records may be destroyed or otherwise disposed of.

2.3 Payment of Costs

The FOIA Coordinator shall be responsible for collecting costs (including deposits) computed under Section 10 prior to release of requested public records. Upon payment of the required costs, if a service area copied public records and provided them to the FOIA Coordinator for release, the FOIA Coordinator shall process the costs and reimburse the appropriate fund. If public records are to be inspected at the offices of the processing service area, the FOIA Coordinator shall notify the service area when the requester has paid the required costs and verify with the service area the rules governing the inspection of public records.

The FOIA Coordinator is also responsible for making any determination to waive costs in the public interest under Section 10.3.5 or based upon indigency under Section 10.3.3. A request for waiver or reduction of any cost may only be granted by the FOIA Coordinator. An affidavit or other factual substantiation may be required.

2.4 Appeal Processing

The FOIA Coordinator is responsible for coordinating the collection of all public records and supporting information required by the City Administrator to make a decision on a FOIA appeal. Further information on appeal processing is found under Section 8.0.

3.0 Processing Service Area Responsibilities

Each service area under whose control or possession requested public records may be found, if the public records exist, is responsible for retrieving the public records requested under the FOIA. Each service area is responsible for identifying portions that should be redacted or omitted, if any, and the reasons therefor. If a service area is unsure whether redaction or omission is appropriate, the service area shall seek advice from the City Attorney's Office. The service area shall also compute all costs incurred by the service area for duplication,

publication, search, examination, review, and the deletion and separation of exempt from nonexempt information.

4.0 Oral Requests for Public Records

Generally, oral requests for public records do not constitute a valid request under the FOIA. (See “Non-FOIA Requests” below at Section 9.) A person attempting to make an oral FOIA request should be directed to make the request in writing. However, if a person making an oral FOIA request is disabled, either temporarily or permanently, so that he or she is unable to make the request in writing, the FOIA Coordinator must make special accommodations. It is the duty of the City and the FOIA Coordinator, or of the City employee who is contacted by the requester, to make an appropriate accommodation under the Americans with Disabilities Act (for example, writing out the request for the person may be an appropriate accommodation). If a request for public records is made to a City employee and the employee is unable to make an appropriate accommodation, or is unsure how to handle the request, the employee should immediately contact the FOIA Coordinator. Questions concerning equipment and service accommodations should be directed to the City Clerk’s Office.

5.0 Written Requests for Public Records

5.1 Forms

Each FOIA Coordinator may develop appropriate forms for submitting written FOIA requests.

5.2 Sufficiency of Written Requests

The FOIA requires that requests for public records be in writing. Written requests include letters, memos, fax requests, and email. The following procedures are intended to implement this administrative policy in accordance with the requirements of the FOIA and the Rules and Regulations governing the production of public records adopted by City Council.

5.1.1 For a request to be considered a sufficient writing to satisfy the FOIA, it must:

- a) Include the name of the requester.
- b) Include the mailing address of the requester or other information sufficient to contact and transmit a response to the requester or a statement that the requester will return at the time the response is due to receive the City’s response.
- c) Describe the public record(s) sufficiently to enable the City to find the record.

d) Meet all other applicable legal requirements.

5.1.2 Requesters should, at the time of requesting or otherwise where appropriate, be advised that they may be required to pay costs for receiving public records. Where a requester indicates that they will seek a waiver of costs for indigency or other reasons, the requester shall be asked to provide supporting evidence as soon as possible.

5.2 Specific Types of Public Records

5.2.1 Generally Distributed Public Records

For purposes of this policy, generally distributed public records are public records that are printed and distributed without charge as a matter of course, and may include brochures, questionnaires, activity application forms, voter registration forms, and public meeting agendas. Oral requests for generally distributed public records may be responded to as non-FOIA requests in the normal course of business. (See Section 9.1 below.)

If submitted as a FOIA request, requests for reasonable quantities of generally distributed public records may be responded to without charge. FOIA requests for an unusually high number of generally distributed public records should be charged costs as provided in this policy.

5.2.2 Copyrighted Material

Copyrighted material may be subject to disclosure in response to a FOIA request. If an employee receives a FOIA request that he/she believes may be for copies of copyrighted public records, the employee shall consult with the City Attorney's Office. If copyrighted material is copied for disclosure under the FOIA, the person making the copy shall ensure that any copyright identification in the original is legible on the copy.

5.2.3 Trade Secrets or Commercial or Financial Information

Trade secrets or commercial or financial information may be exempt from disclosure under the FOIA, however information submitted to the City to obtain a contract, license, or some other benefit from the City is generally not exempt. If an employee receives a FOIA request that he/she believes may be for trade secrets or commercial or financial information, the employee shall consult with the City Attorney's Office.

5.2.4 Public Records Governed by Statute

Some public record requests are governed by other statutes that may require specific redactions or processing. For example, public records that disclose the social security number of any individual, a public body's security measures, or conservation plans approved in connection with certain easements require redactions. If an employee receives a FOIA request for any of these records or if the employee is unsure whether a public record is specifically protected from disclosure by statute, the employee shall consult with the City Attorney's Office.

5.2.4.1 Employment Records; Bullard-Plawecki

Employees may obtain access to their personnel files under the Michigan Bullard-Plawecki Employee Right to Know Act. Bullard-Plawecki also imposes other response requirements upon the City, including protecting certain kinds of public records that might be found within personnel files. Requests of this nature should be referred directly to Human Resources. Public record requests in the course of a grievance or other labor arbitration or administrative proceeding may require a response in accordance with the rules and procedures for the proceeding, but may also be subject to disclosure under the FOIA. If an employee receives a FOIA request of this nature, the employee shall consult with the City Attorney's Office.

5.3 Subscriptions

A person has the right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis (for example, board minutes or agendas). Subscription requests are valid for up to six months at the request of the subscriber and can be renewed. Requests of this nature should be promptly forwarded to the FOIA Coordinator for processing. A subscription fee schedule shall be generated by the FOIA Coordinator, taking into account the medium, volume, and frequency.

6.0 FOIA Request Processing

6.1 Overview

The FOIA Coordinator shall forward each FOIA request to all service area(s) and persons that may have records responsive to the request. Where appropriate, the FOIA Coordinator may also request the assistance of the IT Department in locating public records. Each service area shall identify and collect all responsive records and transmit them, with any appropriate redactions, to the FOIA Coordinator along with an itemized statement of costs. The FOIA requires production of the requested records within **five business days** after first receipt of the request by the FOIA Coordinator unless otherwise agreed to in writing by the person making the request. The City may, within those five business days, issue a notice extending for not more than ten business days the period during

which the City shall respond to the request. The FOIA does not permit the City to issue more than one extension for a particular request. The FOIA also permits the City to charge the requester for the costs of searching for, copying, and providing public records. (See Section 10.0 Costs.) The City shall require a deposit for one half of the estimated costs for requests that exceed \$50 in estimated costs.

6.2. Specific Processing Steps

6.2.2 First Day Review Requirements - Service Areas

All FOIA requests that are received by someone other than a FOIA Coordinator must receive immediate, same day attention by the receiving service area. Upon receipt, the receiving service area must **immediately date stamp and hand deliver or transmit electronically** all FOIA requests to the FOIA Coordinator. **Do not use internal mail.**

6.2.3 First Day Review Requirements - FOIA Coordinators

The FOIA Coordinator must do the following:

- a) Verify when the request was received and date stamp the request; evaluate the sufficiency of the request; and make a copy of the request.
- b) Determine the likely location of the requested public records.
- c) If the likely location for the requested public records is within the FOIA Coordinator's service area, initiate the search process.
- d) If the likely location includes another service area, **hand deliver or transmit electronically that day** the request to all such other service areas, including the due date and a request for an estimate of costs. Service areas receiving the referred FOIA request shall actively coordinate their response with the FOIA Coordinator.
- f) Each service area shall review the FOIA request immediately upon receipt. If a service area subsequently determines that another service area also has or may have public records that are responsive, the service area shall notify the FOIA Coordinator promptly, who shall then forward the FOIA request to the other identified service area(s).

6.2.3 Exemptions

The FOIA permits a public body to exempt public records from disclosure under certain statutory criteria. (See Exhibit 1.) The general policy of the City is to not

release information that is exempt from disclosure under the FOIA or other law. Exemptions must be interpreted narrowly and the service area must separate exempt and nonexempt material where feasible and make the nonexempt material available for inspection or release.

If a service area has some or all of the requested public records, those records shall be reviewed by the service area to identify any portions that are or may be exempt from release under the FOIA. Some exemptions require a balancing test. If a service area is unsure whether a public record or a portion of the public record is exempt, the service area should consult with the City Attorney's Office.

6.2.3.1 Exemptions - Process When Copies of Public Records Requested

When a FOIA request is for copies, the service area shall first provide the FOIA Coordinator with an estimate of costs. The service area shall then locate and copy the requested public records and determine whether any exemptions apply. If the service area has searched and found no records responsive to the request, the service area shall affirmatively state this to the FOIA Coordinator.

- a) If no exemptions apply, the service area shall compute the actual labor costs incurred for search, retrieval, and examination of the public records and the actual costs incurred for copying or publication. The service area shall then forward the copies and this itemized cost data to the FOIA Coordinator.
- b) If exemptions may apply, the service area shall identify all public records (or portions thereof) for which it determines an exemption applies and provide the public records to the FOIA Coordinator, citing the applicable exemption. The service area shall compute the actual labor costs incurred for search, retrieval, examination, and redaction of the public records and the actual costs incurred for copying or publication. The service area shall then forward the copies and this itemized cost data to the FOIA Coordinator.

The FOIA Coordinator shall review these initial exemption determinations and shall consult with the City Attorney's Office as necessary. The City Attorney's Office shall advise the FOIA Coordinator and the service area regarding appropriate omissions or redactions and the applicable exemptions for inclusion in the response letter, as appropriate. After final redacting, the FOIA Coordinator shall recompute the costs as necessary.

6.2.3.3 Exemptions - Process When Inspection of Public Records Requested

When an inspection of records is requested, the service area shall first provide the FOIA Coordinator with an estimate of costs. The service area shall then locate the requested public records and determine whether any exemptions

apply. If the service has searched and found no records responsive to the request, the service area shall affirmatively state this to the FOIA Coordinator.

- a) If no exemptions apply, the service area shall compute the actual labor costs incurred for search, retrieval, and examination of the public records and the actual costs incurred for copying or publication. The service area shall then forward the copies and this itemized cost data to the FOIA Coordinator.
- b) If exemptions may apply, the service area shall identify all public records (or portions thereof) for which it determines an exemption applies and provide the public records to the FOIA Coordinator, citing the applicable exemption. The service area shall compute the actual labor costs incurred for search, retrieval, examination, and redaction of the public records and the actual costs incurred for copying or publication necessary to perform the redactions. The service area shall then forward the public records and this itemized cost data to the FOIA Coordinator. The FOIA Coordinator shall consult with the City Attorney's Office regarding the proposed redactions in the same manner as for FOIA requests for copies.

In either of the above cases, the service area shall also provide estimated costs for staff time for monitoring the inspection and costs for copying the records (in case the requester asks for copies). If the service area determines that forwarding the records to the FOIA Coordinator is not feasible or appropriate, then it shall notify the FOIA Coordinator where and when an inspection may be conducted. An inspection shall be permitted within two weeks after the records are ready for inspection unless there is good reason for establishing a later inspection date.

Once the requested records are ready for inspection, the FOIA Coordinator shall prepare and transmit to the requester a response letter that includes the rules for inspection of public records, the estimated cost per hour that will be charged for the inspection, notice of the right to have any public record being inspected copied and the estimated cost of such copies, and a bill of costs incurred to date. The response letter shall contain an acknowledgement provision which shall state at minimum that the requester has read the response letter, understands the rules of inspection, and agrees to them, including the payment of all inspection fees. The requester shall execute the acknowledgement (i.e., sign and date) and provide it to the FOIA Coordinator or the service area representative prior to inspection. The requester shall be entitled to a copy of the letter.

Upon receipt of the signed acknowledgment and payment of the costs incurred to date, the FOIA Coordinator shall arrange reasonable facilities and schedule a time for the requester to inspect the records and make notes from the records. If a person has been granted access to a public record, the FOIA Coordinator or a representative of the applicable service area **shall be present at all times** to

insure that the City's public records are protected from loss, unauthorized alteration, mutilation, or destruction and that nothing is removed from or added to City files. No public record shall be removed from the inspection facility without the prior approval of the FOIA Coordinator.

At the completion of the requester's inspection, the FOIA Coordinator shall calculate the costs incurred and the requester shall be required to present payment in the stated amount.

6.3 Cost Estimate - Deposit Required

The FOIA Coordinator should determine as soon as possible whether a request is likely to exceed \$50 in costs and therefore require a deposit. The best way to process a broad, voluminous, or complex request should be determined by the FOIA Coordinator in consultation with the processing service area and, if appropriate, the City Attorney's Office. Communication with the requester by the FOIA Coordinator explaining the breadth of the request and likely high cost will often result in the requester limiting the request to public records within a single service area or category of file. In this case, the FOIA Coordinator must obtain a **written modification** from the requester. **Oral modifications are of no effect.** If the requester does not wish to narrow the request, the City may prepare an estimate of costs and require a good faith deposit of one half of the estimated costs for requests over \$50 before proceeding with the request.

The following steps should be followed to estimate costs and calculate the amount of a deposit.

- a) Identify Affected Service Areas. The FOIA Coordinator shall identify service area(s) likely to have public records included within the request.
- b) Identify Costs to Search Each Service Area's Records. For each service area identified as likely to have requested public records, the FOIA Coordinator shall send a copy of the request to that service area. In turn, the service area shall provide the FOIA Coordinator with an estimate of the costs required for search, retrieval, copying, examination, review, and deletion or separation of exempt from nonexempt information regarding the requested public records.
- c) Upon a determination that a request will cost over \$50, the FOIA Coordinator shall prepare a response letter to the requester requiring a deposit of one half of the estimated costs. The response letter requesting a deposit must be made within the statutory five business day (or 10 business day extension) response requirement.

- d) Once the required deposit is received, or the requester has narrowed, in writing, the scope of the request such that the cost to respond is estimated to be less than \$50, the request shall be processed.

6.4 Civil Action Pending/Suspected

If a request relates to a civil action in which the requester and the City both are parties, the City shall deny the FOIA request. If the processing service area suspects that the requested public records are related to a civil action to which the City and the requester are parties, the service area shall advise the FOIA Coordinator and contact the City Attorney's Office immediately.

If a service area suspects that a public record request may be connected to a civil action, the service area shall consult with the City Attorney's Office. For purposes of this section, "civil action" includes, but is not limited to, court cases, arbitrations, grievances, workers' compensation cases, federal or state civil rights complaints, and City Code civil infractions.

7.0 Response

All FOIA requests or FOIA appeals shall receive a written response. It is the responsibility of the FOIA Coordinator to prepare a response to FOIA requests. The FOIA Coordinator shall, on direction from the City Administrator, draft a response for the Administrator's signature.

7.1 Initial Response to FOIA Requests

When the City receives a request for a public record, it must respond to the request in writing. The City must either: (a) grant the request, (b) deny the request, (c) or grant the request in part and notify the requester what portion of the request is being denied and on what grounds. However, as an initial response, the City may also notify the requester that the City is extending the response period for not more than ten business days, or, if the request is estimated to cost over \$50 and therefore requires a deposit, the initial response may be a deposit letter notifying the requester of the amount of the deposit required in order to proceed with processing the request.

Failure to respond to a request constitutes a public body's final determination to deny the request and may subject the City to damages if a Circuit Court determines the City failed to comply with the Act. It is the service area's responsibility to assist the FOIA Coordinator in responding to a FOIA request in a timely manner.

7.2 Final Response Granting or Denying the FOIA Request

The final response letter must either grant or deny the request, in whole or in part, and must contain the following provisions:

- a) A statement specifying the request has been “granted,” “denied” or “granted in part and denied in part.”
- b) If denied, a description of the public records or portions of public records exempted from disclosure (without revealing the contents of the exempt information) and an explanation of the basis for the exemptions. Exemptions are limited to (1) exemptions described in MCL 15.243, and (2) exemptions described in other statutes.
- c) The following statement:

“The City does not warrant or guarantee the accuracy of the information provided, but provides these public records only to comply in good faith with the Michigan Freedom of Information Act, and not for any other purpose.”

- d) A statement specifying the amount of the fee being charged for provision of the public records, the manner of payment required, and information as to how the requested public records may be inspected, picked up, or mailed.
- e) If denied, a statement specifying the requester’s right to appeal (insert the following language as it appears below):

“If you receive written notice that your request has been denied, in whole or in part, under Section 10 of the Freedom of Information Act, you may, at your option, either 1) submit to the City Administrator a written appeal that specifically states the word “appeal” and identifies the reason(s) for reversal of the disclosure denial; or 2) file a lawsuit in the circuit court to compel the City’s disclosure of the record. If, after judicial review, the circuit court determines that the City has not complied with the Act, you may be awarded reasonable attorney’s fees and damages as specified under the Act.”

- f) Signature of the FOIA Coordinator.

7.3 Extension of the Time for a Response

If a response to a FOIA request cannot be completed within the statutory five business days after the request is received, then the processing service area shall notify the FOIA Coordinator that an extension is needed and the basis for the extension. The FOIA Coordinator then shall prepare the extension letter, which shall specify the reasons for the extension and the date by which the City will respond. Only one extension is allowed under the statute and it may not be

for more than 10 business days, unless otherwise agreed to in writing by the requester.

7.4 Deposit Letter

Where a request requires a deposit, the FOIA Coordinator shall send a deposit letter informing the requester of the total estimated cost and the amount required as deposit, which shall be one half of the total estimate. The deposit letter shall state that the request will not be processed until the deposit is received and that after processing the balance of actual costs must be paid before the public records can be released. The response shall also state that the final cost may be greater or less than the estimate. The deposit letter shall be sent within the statutory time required for a response. Once the deposit has been received and the request has been processed, the FOIA Coordinator shall issue a final response letter as described above.

7.5 Consolidated Response to Multiple Requests

Where a requester or associated group of requesters submits two or more simultaneous, proximate, or overlapping requests, the City may, in the interest of efficiently using and conserving City staff and resources, combine its responses to such requests.

8.0 Appeals

If the City makes a determination to deny a request or a portion of a request, the requester may, at his/her option, appeal the decision to the City Administrator within 180 days of the date the determination is sent. The FOIA provides that an appeal must be in writing, addressed to the City Administrator, and specifically state the word "appeal" and identify the reason or reasons for reversal of the denial. On receipt, a copy of the appeal request shall be provided to the FOIA Coordinator who shall be responsible for providing the City Administrator with the necessary information to make a determination. On direction of the City Administrator, the FOIA Coordinator shall prepare the determination letter. A determination regarding an appeal must be made within **10 calendar days** after receiving a written appeal. A copy of the appeal request, findings, and determination letter shall be maintained with the original response for one year plus one day from the date of the appeal determination letter.

8.1 Receipt of Appeal

If a service area receives an appeal, it must immediately date stamp and forward the original appeal to the City Administrator and a copy to the FOIA Coordinator. The FOIA Coordinator shall determine if the appeal meets the statutory criteria.

8.2 Sufficiency of Appeal

If the statutory criteria for a valid appeal cited in this section are not met, the appeal may be rejected. The FOIA Coordinator shall prepare a proposed response letter rejecting the appeal as not meeting the statutory criteria and shall forward the letter to the City Administrator for signature.

8.3 Appeal Procedure

If the statutory criteria are met, the FOIA Coordinator shall promptly take the following steps to process the appeal:

- a) Notify the City Administrator's Office of the appeal and the due date.
- b) Obtain unredacted copies of the public records that are the subject of the appeal along with the prior response letter or other statement of the service area's reasons for redaction of all or a portion of the public record.
- c) If appropriate, consult with the City Attorney's Office concerning the grounds for the omission(s) and/or redaction(s).
- d) Prepare an appeal determination letter for review by the City Administrator including notice of the deadline by which the City Administrator must decide the appeal. An appeal findings and determination letter must contain the following:
 - 1) The final result of the appeal. The result may (a) reverse the disclosure denial, (b) uphold the disclosure denial, or (c) reverse the disclosure denial in part and uphold the disclosure denial in part. If the denial is upheld in whole or in part, the reason(s) are to be stated.
 - 2) If the result is a reversal in whole or in part, the determination letter shall include the following statement:

"The City does not warrant or guarantee the accuracy of the information provided, but provides these public records only to comply in good faith with the Michigan Freedom of Information Act, and not for any other purpose."
 - 3) If the result is a reversal in whole or in part, the determination letter shall include a statement specifying any additional costs being assessed for provision of the public records and, the manner of payment required.
 - 4) Signature of the City Administrator.

8.4 Final Decision of the City Administrator

The City Administrator, upon making his/her decision on the appeal, will transmit the decision to the appellant. The City Administrator shall return all public records to the FOIA Coordinator for release to the requester or for return to the service area as appropriate.

8.5 Extension of Time to Respond to an Appeal

The FOIA provides that under unusual circumstances, the deadline for responding to a FOIA appeal may be extended for ten business days. "Unusual circumstances" means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

- (i) The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.
- (ii) The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

If a response to a FOIA appeal cannot be completed within the statutory **ten calendar days** after the appeal is received due to the unusual circumstances described above, then the FOIA Coordinator shall advise the City Administrator and City Attorney's Office as soon as possible that an extension is needed and the basis for the extension under the FOIA. The FOIA Coordinator shall prepare an extension letter. Only one extension is allowed under the statute for a particular written appeal and it may not be for more than **ten business days**, unless otherwise agreed to by the requester in writing.

9.0 Non-FOIA Requests

9.1 Oral Requests for Generally Distributed Public Records

For purposes of this policy, generally distributed public records are public records that are printed and distributed without charge as a matter of course, and may include brochures, questionnaires, activity application forms, voter registration forms, and public meeting agendas. Oral requests for generally distributed public records may be responded to as non-FOIA requests in the normal course of business. (See Section 5.2.1.)

A person attempting to make an oral FOIA request should be directed to submit the FOIA request in writing.

9.2 Subpoenas

A subpoena is generally a court order mandating that an individual produce evidence or appear in court or at a deposition. Any subpoena served on the City, a service area, or City employee **shall immediately be hand-delivered** to the City Attorney's Office.

9.3 Police and Other City Records

At the discretion of the applicable service area, specific categories of police and other City records that are not generally distributed public records may be provided in response to a non-FOIA request for a fee determined by the applicable service area.

9.4 Creation of Public Records

The FOIA does not generally require the City to create public records or compilations of public records in response to a FOIA request. If the City chooses to create records or compilations in response to a request, service areas shall charge a consistent rate for such preparation. The rate for labor shall be the hourly rate including benefits of each employee who participates in the preparation, billed according to how much time each employee spent in such preparation. Charges for discs, tapes, drives, copies, equipment usage, and all other costs incurred in such preparation shall be charged at the City's actual cost. These charges are intended to conserve public resources and staff time and to recover all costs. For security reasons, no outside discs, tapes, drives, or other recording media are to be connected to the City's information systems. Any connection to the City's information systems must be approved by the City's Information Technology department and the respective service area. A deposit of 50% of the total estimated costs may be required before any work is started for any requests with estimated total costs over \$25.00.

10.0 Costs

The FOIA allows the City to be reimbursed for certain costs associated with responding to a document request. Copies of public records shall not be released until the City has received payment of all costs. Where inspection of public records has been requested, the inspection shall not be permitted until the City has received payment for costs incurred in searching for and preparing the public records for inspection. Costs for staff time in monitoring an inspection shall be computed and charged after the inspection is complete.

A requester who has previously failed to pay costs for a FOIA request shall not be permitted to make any additional FOIA request until the previous costs have been paid or waived where appropriate. Where the City has received a deposit

and the requester does not pay the remaining costs within one year, the request shall be deemed abandoned, the deposit forfeited, and the requester shall be responsible for paying the remaining costs prior to consideration of any future FOIA request.

Where a requester with outstanding costs due makes a new request, the FOIA Coordinator shall prepare a response letter informing the requester of the amount due and that he/she may not make additional FOIA requests until such amount is paid in full.

10.1 Consolidation of Costs for Multiple Requests

Where a requester or associated group of requesters submits two or more simultaneous, proximate, or overlapping requests, the City may, in the interest of efficiently using and conserving City staff and resources, treat the requests as a single request for purposes of calculating costs.

10.2 Cost Formulas

See Exhibit 2 – Fee Schedule (Non-Police) (attached)
See Exhibit 3 – Fee Schedule (Police) (attached)

10.3 Exceptions

10.3.1 Minimal Request

In the interest of cost effectiveness, FOIA requests that cost \$1.00 or less to process will be provided at no charge.

10.3.2 Costs Set By Law

The FOIA provides that the cost calculations described herein do not apply to public records prepared under an act or statute specifically authorizing the sale of those records to the public or for which a specific fee is authorized by law. Such records shall be sold at the cost provided by law.

10.3.3 Public Assistance/Indigence

As provided by the FOIA Persons receiving public assistance or presenting facts showing an inability to pay due to indigence shall have the first \$20.00 of charges waived. The person must complete and submit an affidavit, the form of which may be provided by the City Clerk. The person may be required to submit a copy of relevant documents showing receipt of public assistance (e.g., a copy of a Medicaid card) or otherwise substantiating a claim of indigence.

10.3.4 Disability

The City may not charge a disabled individual additional costs required to provide the special accommodations required by the Americans With Disabilities Act.

10.3.5 Public Interest Waiver

The FOIA Coordinator may waive some or all of the costs if the FOIA Coordinator determines that it is in the public interest because searching for or furnishing copies of the public record(s) primarily benefits the general public.

Exhibit 1

Information That May Be Exempted From Disclosure under the FOIA

Applicable exemptions are governed by the FOIA. This list is intended to mirror the FOIA for convenience of staff. A public body may exempt from disclosure as a public record under the FOIA any of the following:

- (a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.
- (b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:
 - (i) Interfere with law enforcement proceedings.
 - (ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.
 - (iii) Constitute an unwarranted invasion of personal privacy.
 - (iv) Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.
 - (v) Disclose law enforcement investigative techniques or procedures.
 - (vi) Endanger the life or physical safety of law enforcement personnel.
- (c) A public record that if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.
- (d) Records or information specifically described and exempted from disclosure by statute.
- (e) A public record or information described in this section that is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable.

Exhibit 1 cont.

- (f) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if:
 - (i) The information is submitted upon a promise of confidentiality by the public body.
 - (ii) The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.
 - (iii) A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision does not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.
- (g) Information or records subject to the attorney-client privilege.
- (h) Information or records subject to the physician-patient privilege, the psychologist-patient privilege, the minister, priest, or Christian Science practitioner privilege, or other privilege recognized by statute or court rule.
- (i) A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the deadline for submission of bids or proposals has expired.
- (j) Appraisals of real property to be acquired by the public body until either of the following occurs:
 - (i) An agreement is entered into.
 - (ii) Three years have elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.
- (k) Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment, or academic examination, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

Exhibit 1 cont.

- (l) Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation.
- (m) Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of section 8(h) of the open meetings act, 1976 PA 267, MCL 15.268. As used in this subdivision, "determination of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under 1947 PA 336, MCL 423.201 to 423.217.
- (n) Records of law enforcement communication codes, or plans for deployment of law enforcement personnel, that if disclosed would prejudice a public body's ability to protect the public safety unless the public interest in disclosure under this act outweighs the public interest in nondisclosure in the particular instance.
- (o) Information that would reveal the exact location of archaeological sites. The department of history, arts, and libraries may promulgate rules in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to provide for the disclosure of the location of archaeological sites for purposes relating to the preservation or scientific examination of sites.
- (p) Testing data developed by a public body in determining whether bidders' products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only 1 bidder has met the specifications. This subdivision does not apply after 1 year has elapsed from the time the public body completes the testing.
- (q) Academic transcripts of an institution of higher education established under section 5, 6, or 7 of article VIII of the state constitution of 1963, if the transcript pertains to a student who is delinquent in the payment of financial obligations to the institution.
- (r) Records of a campaign committee including a committee that receives money from a state campaign fund.

Exhibit 1 cont.

- (s) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would do any of the following:
 - (i) Identify or provide a means of identifying an informant.
 - (ii) Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.
 - (iii) Disclose the personal address or telephone number of active or retired law enforcement officers or agents or a special skill that they may have.
 - (iv) Disclose the name, address, or telephone numbers of family members, relatives, children, or parents of active or retired law enforcement officers or agents.
 - (v) Disclose operational instructions for law enforcement officers or agents.
 - (vi) Reveal the contents of staff manuals provided for law enforcement officers or agents.
 - (vii) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies.
 - (viii) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informant.
 - (ix) Disclose personnel records of law enforcement agencies.
 - (x) Identify or provide a means of identifying residences that law enforcement agencies are requested to check in the absence of their owners or tenants.

- (t) Except as otherwise provided in this subdivision, records and information pertaining to an investigation or a compliance conference conducted by the department of consumer and industry services under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, before a complaint is issued. This subdivision does not apply to records or information pertaining to 1 or more of the following:

Exhibit 1 cont.

- (i) The fact that an allegation has been received and an investigation is being conducted, and the date the allegation was received.
- (ii) The fact that an allegation was received by the department of consumer and industry services; the fact that the department of consumer and industry services did not issue a complaint for the allegation; and the fact that the allegation was dismissed.

- (u) Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body.

- (v) Records or information relating to a civil action in which the requesting party and the public body are parties.

- (w) Information or records that would disclose the social security number of an individual.

- (x) Except as otherwise provided in this subdivision, an application for the position of president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, materials submitted with such an application, letters of recommendation or references concerning an applicant, and records or information relating to the process of searching for and selecting an individual for a position described in this subdivision, if the records or information could be used to identify a candidate for the position. However, after 1 or more individuals have been identified as finalists for a position described in this subdivision, this subdivision does not apply to a public record described in this subdivision, except a letter of recommendation or reference, to the extent that the public record relates to an individual identified as a finalist for the position.

- (y) Records or information of measures designed to protect the security or safety of persons or property, whether public or private, including, but not limited to, building, public works, and public water supply designs to the extent that those designs relate to the ongoing security measures of a public body, capabilities and plans for responding to a violation of the Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.543a to 750.543z, emergency response plans, risk planning public records, threat assessments, and domestic preparedness strategies, unless disclosure would not impair a public body's ability to protect the security or safety of persons or property or unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance.

Exhibit 2

**FREEDOM OF INFORMATION ACT REQUESTS
FEE SCHEDULE (NON-POLICE)**

Pursuant to the Michigan Freedom of Information Act (FOIA) (MCL 15.243(3)), the City of Ann Arbor may charge for the actual mailing costs and actual incremental cost of duplication or publication, including labor, incurred in responding to FOIA requests. The City is also entitled to establish a policy providing for reimbursement to the City of unreasonably high costs incurred in the search, examination, review, and the deletion and separation of exempt from nonexempt information in responding to FOIA requests. Based on the volume and complexity of requests that the City of Ann Arbor receives, the implementation of a cost recovery policy is appropriate. The following costs incurred in responding to a FOIA request shall be chargeable to each FOIA requester:

1. Actual duplication and publication costs. If the public record is duplicated or published by outside sources, the cost shall be that charged by the outside source. The following list of costs is not exhaustive:

Copies (Paper)	\$.05 per 8½ x 11 page
\$.07 per 8½ x 14 page	
\$.25 per 11 x 17 page	
\$3.00 per 8½ x 11 GIS print	
\$12.50 per 30"x30" GIS print	
Blueprint	Copied off-site; cost equal to that charged to the City
Compact Disc or DVD	\$1.00 per disc provided by City
Photographs, maps, plans, microforms, other media	Copied off-site; cost equal to that charged to the City
Subscriptions	Actual costs

2. Actual labor costs incurred by the City in duplication or publication. Labor costs shall be calculated based on the hourly wage including benefits of the lowest-paid employee capable of performing the work multiplied by the hours (including fractions of an hour) worked.

For basic copying that does not require specialized skills, the hourly rate shall be that of the lowest paid full-time position for the City of Ann Arbor, regardless of who actually does the copying. However, if the FOIA Coordinator or service area responding to the request determines that a higher-paid employee is required to adequately perform the work, the rate shall be that of the higher-paid employee.

Exhibit 2 cont.

3. Actual mailing costs. Postage costs shall be waived for up to 8 pages that fit into a business envelope.
4. Costs incurred in the search, examination, review, and the deletion and separation of exempt from nonexempt information shall be charged where the nature of the request or combination of concurrent requests in the particular instance would result in an unreasonably high cost to the City. Unreasonably high cost means any one or a combination of the following: (1) where the total City labor expended in search, examination, review, or the deletion or separation of exempt from nonexempt information is greater than one hour; (2) any costs expended by the IT department in performing a search or retrieval of electronic information from another department; or (3) where any other cost exceeds \$50. All City labor costs shall be charged based on the hourly wage including benefits of the lowest-paid City employee capable of performing the work. In order to implement this policy uniformly and in consideration of the primary benefit to the general public of the release of public records through the FOIA, the following formula will be applied for City labor and IT costs:

1 hour or less of labor	No charge*
Over 1 hour of labor	Number of hours, including fractions of an hour, of each employee who worked on the request multiplied by the respective hourly rate of the lowest paid employee(s) capable of doing the work, regardless of who actually did the work; subtract from this total one hour's worth of time from the highest-paid employee involved; plus
Any amount of IT labor or costs for search or retrieval of information from another department	Number of hours, including fractions of an hour, of each IT employee who worked on the request multiplied by the hourly rate of the lowest paid IT employee(s) capable of performing the search/retrieval; plus any other IT costs incurred.

* Does not apply to IT labor for search/retrieval of electronic records from another department, which is calculated as described.

5. Inspection Costs. City FOIA rules require that inspection and examination of public records be conducted by the requesting person in the presence of an employee of the City and under conditions which protect the public records and prevent excessive and unreasonable interference with the discharge of municipal functions. The fees set forth in this policy and permitted under the FOIA for copying, publication, search, examination, review, and the deletion and separation of exempt from nonexempt information may be charged for preparing a public record for inspection. Additional fees may be charged for the presence of necessary staff during any inspection under the following formula:

Labor (necessary staff presence during review)

Number of hours, including fractions of an hour, of each employee present multiplied by the respective hourly rate of the lowest paid employee(s) capable of doing the work, regardless of who actually did the work; subtract from this total one hour's worth of time from the highest-paid employee involved.

This cost policy does not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.

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 to an individual who is entitled to information under the Act and who submits an affidavit that the individual is then receiving public assistance, or if not receiving public assistance, stating facts showing inability to pay the cost because of indigency.

Exhibit 3

**FREEDOM OF INFORMATION ACT REQUESTS
FEE SCHEDULE (POLICE)**

Pursuant to the Michigan Freedom of Information Act (FOIA) (MCL 15.243(3)), the City of Ann Arbor may charge for the actual mailing costs and actual incremental cost of duplication or publication, including labor, incurred in responding to FOIA requests. The City is also entitled to establish a policy providing for reimbursement to the City of unreasonably high costs incurred in the search, examination, review, and the deletion and separation of exempt from nonexempt information in responding to FOIA requests. Based on the volume and complexity of requests that the City of Ann Arbor receives, the implementation of a cost recovery policy is appropriate. The following costs incurred in responding to a FOIA request shall be chargeable to each FOIA requester:

1. Actual duplication and publication costs. If the public record is duplicated or published by outside sources, the cost shall be that charged by the outside source. The following list of costs is not exhaustive:

Copies (Paper)	\$.05 per 8½ x 11 page \$.07 per 8½ x 14 page \$.25 per 11 x 17 page \$3.00 per 8½ x 11 GIS print \$12.50 per 30" x 30 GIS print
Blueprint	Copied off-site; cost equal to that charged to the City
Compact Disc or DVD	\$1.00 per disc provided by City
Videotape	\$2.50 for tape provided by City
In-car video/WAV audio files	\$1.00 per disc provided by City
Mini-tape	\$1.00 per tape provided by City
Photographs, maps, plans, microforms, other media	Copied off-site; cost equal to that charged to the City
UD-10	\$5.00 for non-FOIA (e.g. oral) requests
Theft/property damage report requested by the victim (no suspect identified)*	\$5.00 for non-FOIA (e.g. oral) requests
Subscriptions	Actual costs

* A request for a theft report in which a suspect is identified must be processed as a FOIA request.

2. Actual labor costs incurred by the City in duplication or publication. Labor costs shall be calculated based on the hourly wage including benefits of the lowest-paid employee capable of performing the work multiplied by the hours (including fractions of an hour) worked.

For basic copying that does not require specialized skills, the hourly rate shall be that of the lowest paid full-time position for the City of Ann Arbor Police Department, regardless of who actually does the copying. However, if the FOIA Coordinator or service area responding to the request determines that a higher-paid employee is required to adequately perform the work, the rate shall be that of the higher-paid employee.

3. Actual mailing costs. Postage costs shall be waived for up to 8 pages that fit into a business envelope.
4. Costs incurred in the search, examination, review, and the deletion and separation of exempt from nonexempt information shall be charged where the nature of the request or combination of concurrent requests in the particular instance would result in an unreasonably high cost to the City. Unreasonably high cost means any one or a combination of the following: (1) where the total City labor expended in search, examination, review, or the deletion or separation of exempt from nonexempt information is greater than one hour; (2) any costs expended by the IT department in performing a search or retrieval of electronic information from another department; or (3) where any other cost exceeds \$50. All City labor costs shall be charged based on the hourly wage including benefits of the lowest-paid City employee capable of performing the work. In order to implement this policy uniformly and in consideration of the primary benefit to the general public of the release of public records through the FOIA, the following formula will be applied for City labor and IT costs:

1 hour or less of labor	No charge*
Over 1 hour of labor	Number of hours, including fractions of an hour, of each employee who worked on the request multiplied by the respective hourly rate of the lowest paid employee(s) capable of doing the work, regardless of who actually did the work; subtract from this total one hour's worth of time from the highest-paid employee involved; plus
Any amount of IT labor or costs for search or retrieval of information from another department	Number of hours, including fractions of an hour, of each IT employee who worked on the request multiplied by the hourly rate of the lowest paid IT employee(s) capable of performing the search/retrieval; plus any other IT costs incurred.

* Does not apply to IT labor for search/retrieval of electronic records from another department, which is calculated as described.

5. Inspection Costs. City FOIA rules require that inspection of public records be conducted by the requesting person in the presence of an employee of the City and under conditions which protect the public records and prevent excessive and unreasonable interference with the discharge of municipal functions. The fees set forth in this policy and permitted under the FOIA for copying, publication, search, examination, review, and the deletion and separation of exempt from nonexempt information may be charged for preparing a public record for inspection. Additional fees may be charged for the presence of necessary staff during any inspection under the following formula:

Labor (necessary staff presence during review)

Number of hours, including fractions of an hour, of each employee present multiplied by the respective hourly rate of the lowest paid employee(s) capable of doing the work, regardless of who actually did the work; subtract from this total one hour's worth of time from the highest-paid employee involved.

This cost policy does not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.

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 to an individual who is entitled to information under the Act and who submits an affidavit that the individual is then receiving public assistance, or if not receiving public assistance, stating facts showing inability to pay the cost because of indigency.