

Policy No. 5-012
Adopted: September 3, 2019
Council Action

FREEDOM OF INFORMATION ACT (FOIA) POLICY

PREAMBLE – Statement of Principals

It is the policy of the City that all persons, consistent with the Michigan Freedom of Information Act (FOIA), are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.

The City’s policy with respect to FOIA requests is to comply with State law in all respects and to respond to FOIA requests in a consistent, fair, timely and even-handed manner regardless of who makes such a request.

PURPOSE

The purpose of this policy is to identify procedures that City staff is to follow when processing a request pursuant to FOIA.

DEFINITIONS

- Act: Shall mean the Michigan Freedom of Information Act, Act No. 442 of the Public Acts of 1976, as amended.
- City: This includes the City of Ionia and its duly constituted departments, commissions, boards, or committees. The City is also the “public body” as defined in the Act.
- FOIA Coordinator: The City Manager is responsible for accepting and processing requests for public records as outlined in this Policy and the Act and is responsible for issuing approvals or denials of requests. He or she is authorized to designate other City staff to act on his or her behalf to accept and process written requests for the City’s public records and approve denials.
- Policy: This policy adopted by the City Council which is intended to serve as the “Procedures and Guidelines” referenced in Act No. 563 of the Public Acts of 2014.

REQUESTING A PUBLIC RECORD

Sufficient Description: A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the City must do so in writing. The request must sufficiently describe the public record to enable the FOIA Coordinator to identify the requested public record.

Form: No specific form to submit a request for a public record is required. However, the FOIA Coordinator may make available a FOIA Request Form for use by the public, if he or she so desires. Regardless of the method that is utilized to request a public record, the following information is required:

- If the request is from an individual – The individual making the request must include his or her complete name, address, and contact information. The address shall be in a format that complies with United States Postal Service addressing standards. The contact information of the individual must include a valid telephone number or an electronic mail address.
- If the request is from an agents representing a legal entity – If the requestor is the agent of a corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity, then:
 - The request must include the complete name and address of the requesting entity in a format that complies with United States Postal Service addressing standards.
 - The request must include the agent’s complete name, address and contact information and the agent’s contact information must include a valid telephone number or an electronic mail address.

Method of Submitting a Request: Written requests for public records may be submitted in person or by mail to any City office. Requests may also be submitted electronically by facsimile and e-mail. Upon receiving their request, requests for public records shall be promptly forwarded to the FOIA Coordinator, or his or her designee, for processing.

Method of Receipt: A person may request that public records be provided on non-paper physical media, electronically mailed or otherwise provided to him or her in lieu of paper copies. The City shall comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.

Subscription. A person may subscribe to future issues of public records that are created, issued or disseminated by the City on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

On-Line Information. A person who makes a request for information believed to be available on the City’s website shall be informed of the pertinent website address.

Exemption. A person serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinator shall deny all such requests.

PROCESSING A REQUEST

Unless otherwise agreed to in writing by the person making the request, within five (5) business days of receipt of a FOIA request the City shall issue a response. If a request is received by facsimile, e-mail or other electronic transmission, the request is deemed to have been received on the following business day. The City shall respond to the request in one of the following ways:

- Grant the request.
- Issue a written notice denying the request.
- Grant the request in part and issue a written notice denying the request in part.
- Issue a notice indicating that due to the nature of the request the City needs an additional 10 days to respond. Only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on the City's website.

If the request is granted, or granted in part, the FOIA Coordinator shall require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available. The FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request. A copy of this policy shall be provided to the requestor with the response to a written request for public records, provided, however, that if this policy, and the associated written summary are maintained on the City's website, then a website link to those documents may be provided in lieu of providing paper copies.

Processing Cost Equal/Less than \$50.00. If the cost of processing a FOIA request is \$50.00 or less, the requestor shall be notified of the amount due and where the documents may be obtained.

Processing Cost Greater than \$50.00. If based on a calculation by the City, the cost of processing a FOIA request is expected to exceed \$50.00, or if the requestor has not fully paid for a previously granted request, the City shall require a good-faith deposit before processing the request. In making the request for a deposit, the FOIA Coordinator shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred by the City to process the request and also provide an estimate of a time frame it will take the City to provide the records to the requestor. The estimate shall be nonbinding on the City, but will be made in good faith and will strive to be reasonably accurate, given the nature of the request so as to provide the requested records in a manner consistent with this policy. The required deposit must be received (or appealed) within 48 days of the sending of the good faith calculation, otherwise, the FOIA request shall be considered to be abandoned.

Request Denied or Denied in Part. If the request is denied or denied in part, the FOIA Coordinator shall issue a Notice of Denial which shall provide in the applicable circumstance:

- An explanation as to why a requested public record is exempt from disclosure; or,
- A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known to the City; or
- An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and,
- An explanation of the person's right to submit an appeal of the denial to either the Mayor or seek judicial review in the Ionia County Circuit Court; and,
- An explanation of the right of receive attorneys' fees, costs, and disbursements as well as actual or compensatory damages, and punitive damages of \$1,000, should they prevail in Circuit Court.
- The Notice of Denial shall be signed by the FOIA Coordinator.

If the request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial indicating that the request is deficient, seek clarification or amendment of the request by the person making the request. Any clarification or amendment shall be considered a new request subject to the timelines described in this policy.

The City shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinator is authorized to develop rules regulating the manner in which records may be viewed so as to protect City records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal City operations.

The FOIA Coordinator shall, upon written request, furnish a copy of a public record at no additional cost to the person requesting the public record.

FEE DEPOSITS

If the fee estimate is expected to exceed \$50.00 based on the calculation by the City, the requestor will be asked to provide a deposit not exceeding one-half of the total estimated fee.

If a request for public records is from a person who has not fully paid the City for copies of public records previously granted, the FOIA Coordinator shall require a deposit of 100% of the estimated processing fee before beginning to search for a public record for any subsequent written request by that person when all of the following conditions exist:

- the final fee for the prior written request is not more than 100% of the estimated fee;
- the public records made available contained the information sought in the prior written request and remain the City's possession;

- the public records were made available to the individual, subject to payment, within the time frame estimated by the City to provide the records;
- 90 days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pick-up or mailing;
- the individual is unable to show proof of prior payment to the City; and,
- the FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

The FOIA Coordinator shall not require an increased estimated fee deposit if any of the following apply:

- the person making the request is able to show proof of prior payment in full to the City;
- the City is subsequently paid in full for the applicable prior written request;
- 365 days have passed since the person made the request for which full payment was not remitted to the City.

FEE CALCULATION

A fee will not be charged for the cost of search, examination, review and the deletion and separation of exempt from non-exempt information unless failure to charge a fee would result in unreasonably high costs to the City because of the nature of the request in the particular instance, and the City specifically identifies the nature of the unreasonably high cost.

The following factors shall be used to determine an unreasonably high cost to the City:

- The particular request incurs costs greater than incurred from the typical or usual request received by the City.
- Volume of the public record requested.
- Amount of time spent to search for, examine, review and separate exempt and non-exempt information in the record requested.
- Whether public records from more than one City department or various City offices is necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

The City may charge for the following costs associated with processing a FOIA request:

- Labor costs directly associated with searching for, locating and examining a requested public record.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed.
- The actual cost of computer discs, computer tapes or other digital or similar media.

- The cost of duplication of publication, not including labor, of paper copies of public records.
- The cost of labor associated with duplication or publication, including making paper copies, making digital copies or transferring digital public records to non-paper physical media or through the Internet or other electronic means.
- The actual cost of mailing or sending a public record.

Labor costs will be calculated based on the following requirements:

- All labor costs will be estimated and charged in 15 minute increments with all partial time increments rounded down.
- Labor costs will be charged at the hourly wage rate of the lowest-paid City employee capable of doing the work in the specific fee category, regardless of who actually performs the work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. The City may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
- Overtime wages will not be included in labor costs until agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.

The cost to provide records on non-paper physical media when so requested will be based on the actual and most reasonably economical cost for the non-paper media.

The cost to provide paper copies of records will be based on standard or legal sized paper at \$.10 per sheet of paper. The City will determine if it is practical to copy double-sided.

The cost to mail records to a requestor will be based on the actual cost to mail, with the City typically using the least expensive form of postal delivery.

WAIVER OF FEES

The cost of the search for and copying of a public record may be waived or reduced if in the judgement of the FOIA Coordinator a waiver or reduced fee is in the public interest because such can be considered as primarily benefiting the general public.

The FOIA Coordinator will waive the first \$20.00 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are indigent and receiving public assistance OR if not receiving public assistance, stating facts demonstrating an inability to pay because of being indigent. The discount is limited to twice during a calendar year.

APPEALS

Denial of a Public Record

When a requestor believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may file an appeal of the denial with the Mayor. The appeal must be in writing, specifically state the word “appeal” and identify the reason or reasons the requestor is seeking a reversal of the denial.

- A. Within 10 business days of receiving the appeal the Mayor will respond in writing by:
 - Reversing the disclosure denial;
 - Upholding the disclosure denial; or
 - Reverse the disclosure in part and uphold the disclosure denial in part.
 - Under unusual circumstances, such as the need to examine or review a voluminous amount of separate and distinct public records or the need to collect the request records from numerous City offices/departments, the Mayor may issue not more than 1 notice of extension for not more than 10 business days to respond to the appeal.
- B. The appellant may choose to commence an action in the Circuit Court to compel the City’s disclosure of the public records within 180 days after the Mayor’s determination to deny a request.

Excessive FOIA Processing Fee

If a requestor believes that the fee charged by the City to process a FOIA request exceeds the amount permitted by state law, he or she must first submit a written appeal for a fee reduction to the Mayor. The appeal must be in writing, specifically state the word “appeal” and identify how the required fee exceeds the amount permitted.

- A. Within 10 business days of receiving the appeal the Mayor will respond in writing by:
 1. Waive the fee;
 2. Reduce the fee and issue a written determination indicating the specific basis that supports the remaining fee, accompanied by a certification by the Mayor that the statements in the determination are accurate and the reduced fee amount complies with this policy;
 3. Uphold the fee and issue a written determination indicating the specific basis of the FOIA that supports the required fee, accompanied by a certification by the Mayor that the statements in the determination are accurate and the fee amount complies with this policy; or,
 4. Issue a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Mayor will respond to the written appeal.
- B. Within 45 days after receiving notice of the Mayor’s determination of a fee appeal, the appellant may commence action in Ionia County Circuit Court for a fee reduction. If a civil infraction is filed appealing the fee, the City is not obligated to process the request for the public record until the Court resolves the fee dispute.

If the Court determines that the City required a fee that exceeds the amount permitted, it shall reduce the fee to a permissible amount. If the appellant in the civil action prevails by receiving a reduction of 50% or more of the total fee, the court may award all or appropriate amount of reasonable attorneys' fees, costs and disbursements.

If the Court determines that the City has acted arbitrarily and capriciously by charging an excessive fee, the Court shall also award the appellant punitive damages in the amount of \$500.

Adopted by the City Council – July 7, 2015

Revised by the City Council – September 3, 2019