



## Administrative Policies and Procedures

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Approval: <i>Roger W. Fray</i>	Page 1 of 30

### 1. Purpose

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

### 2. Policy

The Freedom of Information Act (FOIA) only addresses the release of **public records** that exist at the time of the request. "Public records" as defined by Michigan law mean 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. "Writing" is not limited to paper but is defined 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

For purposes of requirements of the FOIA, the Administrator is designated as the head of the City of Ann Arbor for FOIA appeals.

- 1.1 The Administrator designates the Chief of Police as the FOIA Coordinator for Police Services records.
- 1.2 The 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 supervision to perform their duties under the FOIA, the Rules, and this Administrative Policy.
- 1.4 Each designated FOIA Coordinator shall maintain the records related to requests processed by that Coordinator for one year plus one day. If litigation arises regarding the City's response to a FOIA request, the City Attorney or his/her designee will notify the appropriate FOIA Coordinator to retain the relevant records until such time as the City Attorney or designee informs him/her that the records may be destroyed or otherwise disposed of.

2.0 FOIA Coordinator Responsibilities

2.1 Response Processing

2.1.1 Response Preparation

The 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 service areas the copies of requested public records, including all redactions and omissions based on applicable law, and computed costs. The service area shall provide the FOIA Coordinator with the reason(s) for each of the redactions and omissions. The FOIA Coordinator shall review the public records for compliance with this policy and will draft the

response letter, including the reason(s) for any redactions and omissions. The FOIA Coordinator shall contact the City Attorney or designee to verify compliance when necessary or appropriate. The FOIA Coordinator shall discuss any required changes with the responding service area and, if appropriate, the City Attorney or designee. The responding service area shall immediately provide the FOIA Coordinator with any additional information and/or public records as needed.

### 2.1.2 Public Record Storage

Public records to be released directly by the FOIA Coordinator as well as the request and the response letter shall be held for one year plus one day. If the requester fails to pay the amount due the City or fails to pick up the public records (where pickup is requested), the public records may be recycled, destroyed or returned to the processing service area. 'Original' public records (usually preprinted reports or information brochures) shall be returned to the appropriate service area. When police records are requested and have been sent to or picked up by the requester, the FOIA Coordinator for Police Services must keep the request and the response letter for one year plus one day, but is not required to retain a copy of the records that were released.

## 2.2 Record Keeping

The FOIA Coordinator shall maintain a chronological file of all FOIA requests processed by him or her, together with a copy of the response letter. Except as provided in Section 2.1.2, each FOIA Coordinator shall maintain the records related to requests processed by that FOIA Coordinator for one year plus one day. If an action to compel disclosure, whether by administrative appeal or commencement of an action in Circuit Court, is commenced regarding the City's response to a FOIA request, the City Attorney or designee will notify the appropriate FOIA Coordinator to retain the relevant records until such time as the City Attorney or designee informs him/her that the records may be destroyed or otherwise disposed of. Requests and correspondence associated with requests made over one year prior may be recycled or otherwise disposed of except as provided in this Section.

If the request is limited to inspection of the public records, the FOIA Coordinator shall retain records documenting when the review is complete.

## 2.3 Payment of Costs

The FOIA Coordinator shall be responsible for collecting the computed costs (including deposits) prior to release of the requested public records. Upon payment of the required fee, if the service area copied the public documents and provided them to the FOIA Coordinator for release, the FOIA Coordinator shall

process the fee and reimburse the appropriate fund. If the public records are to be viewed at the offices of the processing service area, the FOIA Coordinator shall notify the service area of when the requester has paid the required fees and verify with the service area the Rules governing the inspection of public records.

The FOIA Coordinator is also responsible for making the determination of public interest waivers of costs under Section 10.3.5. A request for a reduced fee or no fee may only be granted by the FOIA Coordinator. An Affidavit of Indigence and other public recordation may be required.

#### 2.4 Appeal Processing

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

#### 3.0 Processing Service Area Responsibilities

The "Processing Service Area" is the service area under whose control or possession the requested public records would be found, if the public records exist.

#### 3.1 The Processing Service Area is responsible for retrieving public records requested under FOIA, identifying portions that should be redacted or exempted, if any, and computing all costs for retrieval and copying.

#### 4.0 Oral Requests for Existing Public Records

Generally, oral requests for public records do **not** constitute a request under FOIA. However, if a person making an oral 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 for Disability Act (for example, writing out the request for the person is an appropriate accommodation). If a request for public records is made to a City employee other than the FOIA Coordinator and the employee can make an appropriate accommodation, the employee will advise the FOIA Coordinator of the request and the nature of the accommodation made to assist the receipt and processing of the request at the time the service area provides the request to the FOIA Coordinator for action. Once written, the request should be processed as any other written request under FOIA. 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 will

immediately contact the FOIA Coordinator. Questions concerning equipment and service accommodations should be directed to the City Clerk's Office.

Service areas may also respond to oral requests for public records as may be appropriate for the particular service area's operations. Oral requests for **generally distributed public records** should be honored. **Generally distributed public records** include brochures, questionnaires, activity application forms, voter registration forms, public meeting agendas, and similar public records that are printed and distributed without charge as a matter of course.

## 5.0 Written Requests for Existing Public Records

### 5.1 General Considerations

5.1.1 The FOIA requires that requests for public records be in writing. Written requests include letters, memos, fax requests, and Internet e-mail. Public records include microfilm, computer files, paper, public records of all types, photographs, magnetic tape, or any other method for storing words, pictures, or data. These procedures are intended to implement this policy in accordance with the requirements of the Michigan Freedom of Information Act and the Rules and Regulations governing the production of public records adopted by City Council.

5.1.2 For a request to be considered a sufficient writing to satisfy the FOIA, it must contain the following:

- a) The name of the requester.
- b) The mailing address of the requester or, if no mailing address, a statement that the requester will return to receive the City's response.
- c) A statement indicating that the requester will pay the costs allowable under the FOIA. If the requester is receiving public assistance or other facts showing inability to pay due to indigence, the requester should include that information. This information is desired but not mandated at the time of the request. A requester who asks for waiver or reduction of fees due to indigence will be required to provide documentation of indigency as provided in Section 10.3.3.

### 5.2 Specific Types of Public Records

#### 5.2.1 Generally Distributed Public Records

Written requests for generally distributed public records do not have to be processed using the full FOIA procedures unless the written request specifies

that it is requested pursuant to FOIA. Oral requests are processed as required under Section 4.0.

### 5.2.2 Copyrighted Public Records

As a general rule, copyrighted public records may not be duplicated in response to a FOIA request if you have notice that they have been copyrighted, unless the copyright is owned by the City and the City allows distribution of the copyrighted material. You have notice if the word “copyright” (or symbol ©), the date of copyright and the name of the copyright owner appear on the public record. *If a FOIA request is for copyrighted public records when the copyright is not owned by the City, consult with the City Attorney as to the response.*

A requester may obtain access to view a copyrighted public record under FOIA. A request for a copy of copyrighted materials when the City is not the owner of the copyright should be handled as if the request was for “Review Only Requested.” See procedures in Section 6.0 for more detail.

When the City owns the copyright, the public record may be copied for distribution but the person making the copy must ensure that the copyright identification is on the public record copy.

### 5.2.3 Trade Secrets/Confidential Financial Public Records

It is rare that documents fall within this category. Information or public records submitted to obtain a contract, license, or some other benefit from the City are NOT exempt from FOIA disclosure. Contact the Attorney’s Office before granting or denying access to public records of this nature.

### 5.2.4 Public Records Governed by Statute

Some public record requests are governed by other statutes. For example, public records that would disclose the social security number of any individual, records of a public body’s security measures, conservation plans approved in connection with certain easements. If the service area receives a request for any of these public records or if the service area is unsure of whether a public record is specifically protected from disclosure by statute, contact the Attorney’s Office as to a response.

#### 5.2.4.1 Bullard-Plawecki

Employees may obtain access to their personnel files under the 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 the 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 have to be responded to in accordance with the rules and procedures for the proceeding, but may also be subject to disclosure under FOIA. Obtain advice from the Attorney's Office when receiving a FOIA request for public records of this nature.

#### 5.2.5 Regularly Disseminated Public Record; 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 promptly be 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

The FOIA requires production of the requested records within five business days of receipt unless otherwise agreed to in writing by the person making the request. Under unusual circumstances, such as an unusually large number of public records that need to be retrieved or searched, the City may, within the five business days after the day the request is received, issue a notice extending for not more than ten business days the period during which the City shall respond to the request. The City shall not issue more than one notice of extension for a particular request. It also permits charging for the costs of copying public records. (See Section 10.0 for cost information.)

#### 6.1 Overview

Public records requested under FOIA will be identified and collected by the appropriate service area(s) upon receipt of the request from the FOIA Coordinator. The timeline for response is computed from the date of the original receipt of the request by the City.

For situations where a copy of the public records is requested, the public records, proposed redactions, and computed costs will be delivered to the FOIA Coordinator for response back to the requester. The FOIA Coordinator will receive all payments and will keep the required file of all requests. For situations where only a request to review public records is made, the public records will be identified and collected by the service area(s). If public records must be copied prior to review to remove information or pages that are exempt from disclosure, the cost of the copying will be charged to the requester and payment will be required before the review. The costs, including the costs for an employee to monitor the requester and public records during the review, will be forwarded to

the FOIA Coordinator for response back to the requester. (See Section 10.0 for cost information.) If the records will be reviewed in the service area, the service area will hold the public records until the review. Otherwise, the service area will forward the public records to the FOIA Coordinator who will coordinate and handle the review.

## 6.2. Specific Processing Steps

### 6.2.1 Incoming Review

If the FOIA request is hand delivered to other than the appropriate FOIA Coordinator, the receiving service area shall immediately hand deliver or transmit electronically the request to the FOIA Coordinator. The FOIA Coordinator shall evaluate the request to determine if it is a sufficient writing. See Section 5.1.2. If not, the FOIA Coordinator may contact the requester to explain what is needed before the City will initiate the search for the requested public records. If the requester refuses or fails to provide the needed information, the FOIA Coordinator shall then prepare the appropriate response.

### 6.2.2 First Day Review Requirements

All FOIA requests **must** receive immediate, same day attention by the receiving service area. Upon receipt, the receiving service area must hand deliver or transmit electronically all FOIA requests to the FOIA Coordinator. The FOIA Coordinator must do the following:

- a) Date stamp the request, evaluate the sufficiency of the request under Section 5.1.2. 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 is at or includes another service area(s), **hand deliver or transmit electronically that day** the request to the other service area(s). Service areas receiving the referred FOIA request must actively coordinate their response with the FOIA Coordinator.
- f) The service area(s) shall review the FOIA request immediately upon receipt. If a service area subsequently determines that another service area(s) also has or may have public records that are responsive, the service area will notify the FOIA Coordinator promptly to forward the FOIA request to the other service area(s).

### 6.2.3 Document Review; Exemptions

A public body may exempt from disclosure as a public record, under the Act, specific public records or portions of a public record (See Exhibit 1). The general policy of the City is to not release information that is exempt from disclosure under FOIA or other law. Exemptions must be interpreted narrowly and the service area must separate exempt and nonexempt material and make the nonexempt material available for inspection or release.

If the service area has some or all of the requested public records, the records shall be reviewed by the service area to identify any portions of the public records that are or may be exempt from release under FOIA. Some exemptions require a balancing test. If a service area is unsure of whether a public record or a portion of the public record can be exempted, contact the Attorney's Office (see this Section).

#### 6.2.3.1 No Exemptions Identified - Copy Requested

The service area shall copy the requested public records, compute the accumulated costs, and forward the public records and cost data to the FOIA Coordinator.

#### 6.2.3.2 Exemptions Identified - Copy Requested

The service area shall highlight or otherwise identify public records (or portions) for which it determines an exemption applies or may apply and provide the public records to the FOIA Coordinator, along with information as to which exemptions the service area believes apply. The FOIA Coordinator shall present these initial determinations to the City Attorney for review. The City Attorney will return the public records to the FOIA Coordinator with direction as to which portions may be omitted or redacted. After redacting, the FOIA Coordinator shall recompute the accumulated costs, if needed.

If there is any difference between the recommendations of the service area or the FOIA Coordinator and that of the Attorney's Office, the Attorney's Office will be responsible to follow up on the differences with the service area and the FOIA Coordinator.

The Attorney's Office provides the FOIA Coordinator with the exemptions from disclosure for inclusion in the response letter.

#### 6.2.3.3 No Exemptions Identified - Review Only Requested

The service area shall forward the requested public records to be inspected by the requester and the costs for retrieval and examination of the public records to

the FOIA Coordinator. The FOIA Coordinator shall prepare an inspection letter that includes the rules for inspection of public records, the right to have any public record being inspected copied, and the cost of examination and copying. Upon receipt of the inspection fee, the FOIA Coordinator shall arrange reasonable facilities 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 service area shall be **present at all times** to insure that nothing is removed from or added to the City files. No public record shall be removed from the inspection facility without the prior approval of the FOIA Coordinator or designee.

The requester shall pay the labor cost specified in Section 10.0 for staff review time specified in the paragraph above and, if necessary, outside legal support for inspection and examination of public records. The requester shall be notified of the cost of examination in the inspection letter that is provided to the requester prior to inspection of the public records. The inspection letter shall contain an acknowledgement provision which shall state at minimum that the requester has read the inspection letter, understands the rules of inspection, and agrees to them, including the payment of any inspection fee. 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 review. The requester shall be entitled to a copy of the inspection letter. At the completion of the requester's inspection of the requested public records, the FOIA Coordinator or designee shall calculate the total cost and the requester shall be required to present payment in the stated amount.

#### 6.2.3.4 Exemptions Identified - Review Only Requested

The procedures in Section 6.2.3.2 for exemptions shall be followed.

For situations where the exemption is only part of a public record, the requester must pay for all costs associated with making the public record viewable; in other words, the requester must pay for the search, retrieval, and copying costs associated with preparing the redacted public record.

#### 6.3 Extensive Time For Review: Voluminous Public Record Requests or Requiring Significant Staff Time to Complete

Processing a broad request is a multi-step process. A few different approaches are possible. The approach taken for a particular request should be determined by the FOIA Coordinator in consultation with the processing service area and, if needed, the Attorney's Office. Possible approaches include: (1) Often a call to the requester by the FOIA Coordinator explaining the breadth of the request will result in the requester limiting the request to public records within a single service area or category of file. If this approach is selected, the FOIA Coordinator MUST

obtain a written modification from the requester. Oral modifications are of no effect. (2) The City may request a deposit before processing.

The following steps are required 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 must send a copy of the request to that service area. In turn, the service area must provide the FOIA Coordinator the time and per hour cost required to search, retrieve and copy the requested public records, or otherwise ascertain whether the requested public records exist in the service area. When the cost to process a FOIA request exceeds \$50, the City may demand a good faith deposit of up to ½ the estimated cost or less of the fee before proceeding further. The FOIA Coordinator can prepare the response letter to the requester with the request for deposit. The request for a good faith deposit must be made within the statutory five business day response requirement.

Once a good faith deposit is received, or the requester has narrowed, in writing, the scope of the request, the processing proceeds using the usual procedures found in this Administrative Policy.

#### 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 should 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, advise the FOIA Coordinator and contact the Attorney's Office immediately for advice and consultation.

If a service area suspects that a public record request may be connected to a civil action, the service area shall inform the reviewing attorney (either orally or in writing) of the facts that give rise to the suspicion. Thereafter, the service area and/or FOIA Coordinator shall process the request as directed by the reviewing attorney. 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. Although the FOIA exemption is limited to civil lawsuits, requests that do or may relate to any of the foregoing types of action should be referred to the Attorney's Office for review.

## 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 the 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 by one of the following in writing: (a) grant the request, (b) deny the request, (c) grant the request in part and notify the requester what portion of the request is being denied and on what grounds, or (d) notify the requester that the City is extending the response period for not more than ten business days.

*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 to prevent this circumstance.*

#### 7.1.1 Granting or Denying the FOIA Request

The response letter either granting or denying access in whole or in part to the requested public records must contain the following provisions:

- a) Statement specifying the request shall been "granted," "denied" or "granted in part and denied in part."
- b) If denied, a description of the public record or portion of the public record exempted from disclosure and the grounds for the exemption. The grounds for exemption are limited to (1) exemption stated in Exhibit 1, and/or (2) specific exemption under other statutes.
- c) Statement specifying the document is provided without guarantee (insert the following language as it appears below):

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

- d) Statement specifying the amount of the fee being assessed for provision of the public record and the manner of payment required and access/receipt information in connection with how the requested public records may be inspected, picked up or mailed.

- e) If denied, 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.

#### 7.1.2 Extension Required for FOIA 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 a basis for the extension. The FOIA Coordinator then prepares the extension letter. 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.

### 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. The appeal must be in writing, addressed to the City Administrator, and specifically state the grounds for appeal. 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 public records to make a determination. On direction of the Administrator, the FOIA Coordinator shall prepare the determination letter. A copy of the appeal request, findings, and determination letter shall be maintained with the original response public recordation.

#### 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 Appeal Statutory Criteria Review

If the statutory criteria stated in this section are not met, within 24 hours of receipt 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 Investigation Procedure

If the statutory criteria are met, within 24 hours of receipt the FOIA Coordinator shall take the following steps to process the appeal:

- a) Obtain from the service area, if necessary, an unredacted copy of the requested public record(s) identifying those portions of the public record that had been redacted, or a copy of the public records requested without omissions or reactions plus a copy of the previously released public records with the omissions and redactions identified, 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.
- b) Obtain, if appropriate, an advisory memorandum from the City Attorney, or designee, concerning the grounds for the omission(s) and/or redaction(s).
- c) Prepare a determination letter appeal 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 upheld or reversed in part, the reason(s) are to be clearly stated.
  - 2) If the result is a reversal in whole or in part, the determination letter shall include a statement specifying the document is provided without guarantee (insert the following language as it appears below)

*"The City does not warrant or guarantee the accuracy of the information provided. Rather, it provides the 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 the amount of the fee being assessed for provision of the public record and the manner of payment required and

access/receipt information in connection with how the requested public records may be inspected, picked up or mailed.

4) Signature of the City Administrator.

Please refer to Section 4.0, first paragraph, for procedures to accommodate persons with disabilities.

8.4 City Administrator Decision

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

8.5 Extension Required for FOIA Appeal

Under unusual circumstances, if a response to a FOIA appeal cannot be completed within the statutory ten **calendar** days after the appeal is received, then the FOIA Coordinator shall advise the City Administrator that an extension is needed and the basis for the extension. The FOIA Coordinator will 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 Compilations From Paper or Electronic Files

The FOIA does not require the City to create records or make compilations on request. However, a person often will seek small amounts of public information that can be compiled by a brief review of a few public records. The request shall be processed as time, resources and technical capabilities allow without interrupting or delaying the primary services provided by that service area to its customers, external or internal. The response may be either oral or written.

10.0 Costs

The FOIA allows the City to be reimbursed for certain costs associated with responding to a document request.

10.1 Generally Distributed Documents

The costs for generally distributed documents shall be set by the distributing service area unless otherwise set by City Council, state or federal law. The distributing service area may not set the amount charged to exceed the FOIA formula.

## 10.2 FOIA 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 to the public at no charge.

### 10.3.2 Costs Set By Law

Public records that are required to be prepared and sold for a specific fee under Michigan or federal law are exempt from FOIA cost calculation and shall be sold in accordance with the applicable federal law or state statute.

### 10.3.3 Public Assistance/Indigence

Persons receiving public assistance or presenting facts showing an inability to pay due to indigence shall have the first \$20.00 of charges waived as required by the FOIA. The individual must complete and submit an affidavit stating all the information required on the Exhibit 4 (Waiver of Fees for Indigency) and must submit a copy of relevant public recordation (such as copy of Medicaid card). The completed, signed affidavit must be provided to the FOIA Coordinator along with the other required public recordation.

### 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 as may be in the public interest because furnishing copies of the public record(s) would be considered as primarily benefiting the general public.

## 11.0 Subpoenas

A subpoena is a court order mandating that an individual appear in court or submit evidence in court. A copy of any subpoenas served on the City, its service area or City employee must immediately be hand delivered to the

Attorney's Office for review. The Attorney's Office, or designee, and the service area shall discuss any subpoena, determine the necessary action, and process as appropriate.

#### 11.1 Public Record Subpoenas

Subpoenas for public records may also be served by parties to litigation even though the City may not be a party to the litigation. Contact the City Attorney's Office for advice immediately after receipt of a subpoena. Subpoenas may be issued for either appearance at a court hearing, at a deposition that also requires testimony, or simply for production of public records directly to the party issuing the subpoena. The exemptions from disclosure that are available and apply to public records required to be produced in a court proceeding are more limited than the exemptions under the FOIA. Subpoenas for public records require a case-by-case evaluation.

#### 12.0 Creation of Public Records/Reports

Service areas shall charge a consistent rate for preparing or compiling reports or information that are not FOIA requests. The rate shall be \$50.00 per hour for labor. This rate is intended to recover personnel costs and any other computer time or other associated costs for compiling and/or creating the requested information. Charges for disks, tapes, or other materials for recording electronic information will be according to the City's actual cost for these materials. No outside disks, tapes, or other recording mediums are to be used in the City's computer system in order to avoid viruses or other problems. A deposit of 50% may be required for any requests with charges over \$25.00 before the work is started.

## Exhibit 1

### Items May Be Exempted From Disclosure under FOIA

A public body may exempt from disclosure as a public record under 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 is entitled to establish a policy seeking reimbursement to the City for the costs incurred in honoring FOIA requests when a request results in an unusually high cost to the public body. Based on the volume and complexity of requests that the City of Ann Arbor annually 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 costs or publication costs as established below, or if the nature of the duplication necessitates duplication by outside sources, the actual cost invoiced by the outside source.

Copies	\$ .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 Copies	Copied off-site; cost equal to rate charged to City
Compact Disk	\$ _____/hour* for labor to create disk <i>plus</i> \$1.00 for disk
Photographs, videotapes, maps, plans, microforms, or any other type of medium	Copied off-site; cost equal to rate charged to City
Subscriptions	Actual costs

\* Based on hourly wage plus fringe benefits of lowest paid employee capable of performing the functions involved in responding to the request

2. Actual labor costs incurred in duplication or publications. For purposes of copying only, the hourly wage of the lowest paid employee capable of performing the work shall be the lowest paid full-time position for the City of Ann Arbor, regardless of who actually does the work.

Hourly wage divided by 60, then multiplied by number of minutes.

However, if the City FOIA Coordinator or City employee responding to the request is certain that, because of the complexity of the public records being requested or for other valid reasons, a higher skill level employee is minimally required to adequately perform the work, the per minute labor rate based on wage rate for such employee may be used.

**Exhibit 2 cont.**

3. Actual mailing costs. (Postage costs will be waived for up to 8 pages in business envelope.)
  
4. Labor costs incurred in searching, examining, reviewing, deleting or separating materials will be charged where the nature of the request 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, but only 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 or single request which contains a series of subrequests, and/or (ii) the need to collect the requested public records from numerous locations, files or databases. All requests from an individual, entity or association during a five-business-day period will be considered a single request solely for the purposes of the following formula. 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 FOIA, the following formula will be applied to any response.

1 hour or less	No Charge*
Over 1 hour	Number of hours or fraction thereof over 1 of FOIA Coordinator multiplied by \$_____ labor rate of lowest paid staff capable of doing the search, examination, review, deletion and/or separation of the materials and/or responding to the requestor, regardless of who actually does the work;** plus
Over 1 hour	Number of hours or fraction thereof over 1 of all other staff multiplied by \$_____ labor rate of lowest paid staff capable of doing the search, examination, review, deletion and/or separation of the materials, regardless of who actually does the work;*** plus
IT time for search/retrieval of electronic records	Number of hours or fraction thereof of IT staff (for search/retrieval of electronic records) multiplied by \$_____ labor rate of lowest paid IT staff capable of performing the search/retrieval activities

\* Does not apply to IT staff time for search/retrieval of electronic records, which is calculated as described.

\*\* Applies only if FOIA Coordinator or designee(s) incurred more than 1 hour of time.

\*\*\* Applies only if City staff (regardless of number of staff involved) incurred more than 1 hour, not including IT staff doing search/retrieval of electronic records.

**Exhibit 2 cont.**

5. Review/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 required in order to protect the public record and prevent excessive and unreasonable interference with the discharge of municipal functions. Fees may be charged for the necessary copying of a public record for inspection when review of a particular document requires the deletion and separation of exempt from non-exempt information.

Labor (required staff presence during review)	\$_____/hour (divided by 60, then multiplied by number of minutes)
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If the requester indicates that he/she wishes to have copies of public records after inspection, the applicable costs for copying and labor as outlined above shall apply to any document which has not previously been copied in connection with the deletion and separation of exempt from non-exempt information. If the requestor indicates that he/she wishes to have copies of public records already made and assessed for as necessary copying for review, no additional charge shall apply.

This 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, or by resolution of City Council.

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 the documentation required by Section 10.3.3 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 is entitled to establish a policy seeking reimbursement to the City for the costs incurred in honoring FOIA requests when a request results in an unusually high cost to the public body. Based on the volume and complexity of requests that the City of Ann Arbor annually 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 costs or publication costs as established below, or if the nature of the duplication necessitates duplication by outside sources, the actual cost invoiced by the outside source.

Copies	\$.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 Copies	Copied off-site; cost equal to rate charged to City
Compact Disk	\$____/hr* for labor to create disk <i>plus</i> \$1.00 for disk
Videotape copied by the City	\$____/hr* for labor to create tape <i>plus</i> \$2.50 for tape
WAV files	\$19.00
In-car video	\$____/hr* for labor to create disk <i>plus</i> \$1.00 for DVD
Mini-tape copied by the City	\$____/hr* for labor to create tape <i>plus</i> \$1.00 for tape
Photographs, videotapes, maps, plans, microforms, or any other type of medium	Copied off-site; cost equal to rate charged to City
UD-10s	\$5.00, based on cost equal to rate charged to City
Theft or property damage reports requested by the victim (no suspect(s) identified)**	\$5.00, due to immediate response rather than having to go through the FOIA request process
Subscriptions	Actual costs

\* Based on hourly wage plus fringe benefits of lowest paid employee capable of performing the functions involved in responding to the request

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

2. Actual labor costs incurred in duplication or publications. For purposes of copying only, the hourly wage of the lowest paid employee capable of performing the work shall be the lowest paid full-time position for the City of Ann Arbor Police Department, regardless of who actually does the work.

Hourly wage divided by 60, then multiplied by number of minutes.

However, if the City FOIA Coordinator or City employee responding to the request is certain that, because of the complexity of the public records being requested or for other valid reasons, a higher skill level employee is minimally required to adequately perform the work, the per minute labor rate based on wage rate for such employee may be used.

3. Actual mailing costs. (Postage costs will be waived for up to 8 pages in business envelope.
4. Labor costs incurred in searching, examining, reviewing, deleting, or separating materials will be charged where the nature of the request 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, but only necessary for the proper processing of a request: the need to search for, collect or appropriately examine or review and process a voluminous amount of separate and distinct public records pursuant to a single request. 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 FOIA, the following formula will be applied to any response for which four or more combined hours of labor time is incurred answering the request:

1 hour or less	No Charge*
Over 1 hour	Number of hours or fraction thereof over 1 of all staff multiplied by \$_____ labor rate of lowest paid staff involved in the search, examination, review, deletion and/or separation of the materials; includes the number of hours or fraction thereof of FOIA Coordinator or designee multiplied by \$_____ labor rate of lowest paid full-time Ann Arbor Police Department employee capable of performing the functions involved in responding to the request, regardless of who actually does the work.**
IT time for search/retrieval of electronic records	Number of hours or fraction thereof of IT staff (for search/retrieval of electronic records) multiplied by \$_____ labor rate of lowest paid IT staff capable of performing the search/retrieval activities

\* Does not apply to IT staff time for search/retrieval of electronic records, which is calculated as described.

\*\* Applies only if City staff, including FOIA Coordinator or designee(s) and regardless of number of staff involved, incurred more than 1 hour of time, but not including IT staff doing search/retrieval of electronic records.

5. Review/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 required in order to protect the public record and prevent excessive and unreasonable interference with the discharge of municipal functions. Fees may be charged for the necessary copying of a public record for inspection when review of a particular document requires the deletion and separation of exempt from non-exempt information.

Labor (required staff presence during review)      \$\_\_\_/hr (divided by 60, then multiplied by number of minutes)

If the requester indicates that he/she wishes to have copies of public records after inspection, the applicable costs for copying and labor as outlined above shall apply to any document which has not previously been copied in connection with the deletion and separation of exempt from non-exempt information. If the requestor indicates that he/she wishes to have copies of public records already made and assessed for as necessary copying for review, no additional charge shall apply.

This 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, or by resolution of City Council.

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 the documentation required by Section 10.3.3 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 4  
CITY OF ANN ARBOR  
FREEDOM OF INFORMATION ACT RELEASE OF DOCUMENTS REQUEST**

***AFFIDAVIT OF INDIGENCY***

**Please Print or Type**

Date Requested: \_\_\_\_\_ (date stamp by receiving service area)

Requesting Party: \_\_\_\_\_

Address: \_\_\_\_\_  
(street) (city) (state) (zip code)

Phone No.: \_\_\_\_\_  
(area code) (number) (extension, if any)

Under Michigan law, a public record search will be made and copy of a public record furnished without charge for the first \$20.00 of the fee for each request made by an individual who is entitled to information under FOIA and who submits an affidavit of indigency.

**AFFIDAVIT**

I AM ENTITLED TO AND ASK THE CITY OF ANN ARBOR FOR THE SUSPENSION OF FEES UP TO \$20.00 UNDER THE PROVISIONS OF THE MICHIGAN FREEDOM OF INFORMATION ACT FOR THE FOLLOWING REASON:

\_\_\_\_\_ I am currently receiving public assistance \$\_\_\_\_\_ per \_\_\_\_\_  
Case No. \_\_\_\_\_  
Type of Assistance \_\_\_\_\_

\_\_\_\_\_ I am unable to pay the fee because of indigency, based on the following facts:

Income: \_\_\_\_\_  
employer name and address

\_\_\_\_\_ per \_\_\_\_\_  
length of employment average gross pay average net pay week/month

Assets:(state value of car, home, bank deposits, bonds, stocks, etc.; use back of form, if necessary)

\_\_\_\_\_  
Affiant Signature

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_ County, Michigan.

\_\_\_\_\_  
NOTARY PUBLIC  
County of \_\_\_\_\_, State of Michigan  
My Commission Expires: \_\_\_\_\_  
Acting in the County of Washtenaw

**Exhibit 4 cont.**

**CERTIFICATION BY PERSON OTHER THAN  
REQUESTING PARTY**

1. I have personal knowledge of the facts appearing in the affidavit.
2. The person in whose behalf the petition is filed is unable to sign it because of:

\_\_\_\_\_ under 18 yrs of age \_\_\_\_\_  
 (date of birth of requesting party)

\_\_\_\_\_ disability  
 \_\_\_\_\_  
 (state nature of disability)

Relationship to person in whose behalf the petition is filed: \_\_\_\_\_

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

\_\_\_\_\_  
 Name (type or print)

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 City State Zip Code

\_\_\_\_\_  
 Telephone No.

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_ County,  
 Michigan.

\_\_\_\_\_  
 NOTARY PUBLIC  
 County of \_\_\_\_\_, State of Michigan  
 My Commission Expires: \_\_\_\_\_  
 Acting in the County of Washtenaw

.....  
**City of Ann Arbor Determination**

\_\_\_\_\_ Request approved Date: \_\_\_\_\_

\_\_\_\_\_ Request denied Date: \_\_\_\_\_

\_\_\_\_\_  
 FOIA Coordinator