



Resource Packet - Freedom of Information Act Changes

Effective July 1, 2015

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Courtesy of Mike Fisher, Livonia Chief Assistant City Attorney

Introduction

Michigan governmental entities will face significant new regulations on how they charge for responses to Freedom of Information Act (FOIA) requests beginning July 1, 2015. New legislation approved during the Legislature's final session day of 2014 will require public bodies to establish specific written procedures and guidelines for FOIA requests, including a separate written summary informing the public on how to submit FOIA requests, how to understand the public body's responses to FOIA requests, deposit requirements, fee calculations, and avenues for challenging and appealing the public body's denial of a request. The governor signed the new legislation into law as PA 563 of 2014.

Summary of the legislation

If a public body administers or maintains an internet presence, then it is required to post the procedures, guidelines, and written summary on its website. Public bodies are also required to provide free copies of the procedures, guidelines, and written summary upon request, and are required to include a free copy, or a website link to the policies, in all FOIA responses.

The procedures and guidelines must include a standard form to detail the itemization of any fee the public body estimates or charges under FOIA. The itemization must clearly list and explain each of the six fee components authorized under the new legislation, which include several categories of labor costs associated with producing public records, whether in paper or electronic form; costs of non-paper physical media used to produce public records (e.g., DVDs, flash drives); copying costs; and postage costs.

The new legislation also:

- Allows FOIA requestors to require that the public body provide records on non-paper physical media, by e-mail, or otherwise electronically provided, so long as the public body has the technological capability necessary to provide records on the particular media stipulated by the requestor.
- Prohibits a public body from charging more than \$0.10/sheet for paper copies of public records (excluding labor costs).
- Allows a public body to charge for contractual services required to perform separation and deletion of exempt information from nonexempt information if the public body does not employ a person capable of such activity. The public body may not charge more than an amount equal to six times the state minimum hourly wage rate for such contractual services.
- Allows a public body to add up to 50 percent to the applicable labor charge to cover or partially cover the cost of employee fringe benefits.
- Allows a public body to inform a FOIA requestor that requested information is available on the public body's website, in lieu of providing the public records, so long as the records were available on the website at the time of the request.
- Requires public employees receiving verbal requests for information that is available on the public body's website, to inform the requestor of the pertinent website address.
- Requires a public body, in certain circumstances, to reduce its charges for labor costs in responding to FOIA request if the public body has not responded in a timely manner.

- Allows a public body, under certain circumstances, to require a 100 percent deposit before processing a request from individuals who have not paid the public body for public records acquired pursuant to previous FOIA requests.
- Increases mandatory punitive damages to be awarded to a plaintiff from \$500 to \$1,000, and mandates a new \$1,000 civil fine which a court must award if it finds the public body has arbitrarily and capriciously violated the Act.
- Requires a court to impose an additional civil fine of \$2,500 to \$7,500 if it finds the public body willfully and intentionally failed to comply with the Act or otherwise acted in bad faith.

This publication was provided by the law firm of Miller Canfield.

Significant Changes to Michigan's FOIA Take Effect July 1st



By Steven D. Mann and Cassie J. Hare

Beginning July 1, 2015, significant new regulations take effect governing how public bodies administer and respond to requests under the Freedom of Information Act, PA 442 of 1976 (FOIA). The changes are the result of HB 4001, which was approved during the Legislature's final session day of 2014, and was signed into law by Governor Snyder on January 11, 2015 as PA 563 of 2014 (the "Amendment"). Changes of this magnitude are unprecedented in FOIA's nearly 40-year history. The changes impact nearly every area of FOIA, including local policies required for FOIA administration, fees categories and methods of calculation, good-faith deposits and fee waivers, records available on the public body's website, and the appeal process, including significant new penalties.

Newly Required Procedures and Guidelines

The most significant change made by the Amendment is that public bodies will be required to establish specific written Procedures and Guidelines (the "Procedures and Guidelines") to implement FOIA, including a standard fee itemization form, and separate written public summary. If the public body directly or indirectly administers or maintains an internet presence, the public body is required to post the Procedures and Guidelines on its website. A public body that has not established these Procedures and Guidelines or has not created a written public summary is prohibited from charging a fee for

providing public records. Free copies of the Procedures and Guidelines must be available at the public office.

The written public summary must be written "in a manner so as to be easily understood by the general public," and must inform the public "how to submit written requests to the public body and explaining how to understand a public body's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal."

All responses to written FOIA requests must include the standard fee itemization form detailing any fee charged to the requestor. The form must clearly list and explain detailed and allowable charges for each of FOIA's new six fee components. In addition, a free copy of the Procedures and Guidelines must be included with the response, or a link to the website where the Procedures and Guidelines are available.

New Fee Categories and Methods for Calculations

Another significant area of change is the categories and manner in which fees may be charged. The Amendment establishes six fee components for which a public body may charge, generally requires labor costs to be charged in increments of fifteen minutes, permits a multiplier to be applied to cover part of all of the cost of fringe benefits, and in certain cases allows charges for contracted labor costs. The fee components are as follows:

1 Labor Costs—Search, Location, and Examination of Public Records¹

The labor costs that are directly associated with the necessary search, location, and examination of public records are limited to the hourly wage of the lowest-paid employee of the public body that is capable of performing the task in each particular instance, regardless of whether that employee is available to or actually performs the task. The public body may add up to 50 percent to the labor charge to cover the cost of fringe benefits, not to exceed the actual cost of the fringe benefits. This percentage multiplier used for fringe benefits must be noted on the itemization form. The public body may not charge for overtime unless it is specifically stipulated to by the requestor. The labor cost must be charged in increments of 15 minutes or more, and all partial time must be rounded down.

2 Labor Costs—Redaction

Similar to search, location, and examination, the labor costs associated with separating and redacting exempt information from non-exempt information are limited to the hourly wage of the lowest-paid employee of the public body that is capable of performing the task in each particular instance, regardless of whether that employee is available to or actually performs the task. The public body may add up to 50 percent to the labor charge to cover the cost of fringe benefits, not to exceed the actual cost of the fringe benefits. This percentage multiplier used for fringe include a completed detailed itemization of the good-benefits must be noted on the itemization form. The public body may not charge for overtime unless it is specifically stipulated to by the requestor. The labor cost must be charged in increments of 15 minutes or more, and all partial time and must be rounded down.

If the public body does not employ a person capable of redacting the records, as determined by the FOIA Coordinator, the public body may charge for contracted labor. The fee itemization form must list the name of the person or firm contracted and the hourly rate charged for contracted labor may not exceed six times the state minimum wage. The contracted labor costs must be charged in increments of 15 minutes or more, and all partial time must be rounded down.

In either case, if the public body knows or has reason to know that the requested public record has previously been redacted and the redacted version is still the public body's possession, in the public body may not charge for labor redaction costs.

3 Cost of Non-Paper Physical Media

The Amendment allows a requestor to require the public body to provide the records on non-paper physical media, by email, or otherwise by electronic means. The public body may charge the actual and most reasonably economical cost for the non-paper physical media used to provide the public records.

Non-paper physical media includes flash drives, computer discs, computer tapes, or other digital or similar media. These provisions do not apply if the public body does not have the technological capability necessary to provide records in the requested electronic format.

4 Cost of Paper Copies

The public body may charge for the actual incremental cost of duplicating the public records, not including labor costs. The fee charged for letter (8 1/2" x 11") or legal (8 1/2" x 14") size paper may not exceed \$0.10 per sheet. The public body may charge the actual cost for other types of paper. The fee itemization form must include both the cost per sheet and the number of sheets for each type of paper. The Amendment requires the public body to use the most economical means available when providing paper copies, including using double-sided printing if available and less costly.

5 Labor Costs of Duplication and Publication

The public body is also authorized to charge for labor costs directly associated with the duplication and publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on non-paper physical media or through the internet or other electronic means stipulated by the requestor. The labor costs are limited to the hourly wage of the lowest-paid employee of the public body that is capable of performing the task in each particular instance, regardless of whether that employee is available to or actually performs the task. The public body may add up to 50 percent to the labor charge to cover the cost of fringe benefits, not to exceed the actual cost of the fringe benefits. This percentage multiplier used for fringe benefits must be noted on the itemization form. The public body may not charge for overtime unless it is specifically stipulated to by the requestor. Unlike the other labor costs, labor costs for duplication and publication may be charged in any time increment chosen by the public body and identified in its Procedures and Guidelines. All partial time is still required to be rounded down.

6 Cost of Mailing

The final component for which a public body may charge is the actual cost of mailing the documents in a "reasonably economical and justifiable manner." The public body may only charge for expedited shipping or insurance if it is stipulated by the requesting person. The public body is allowed to charge for the least expensive form of postal delivery confirmation.



Steven Mann explaining FOIA changes to Capital Conference attendees

Fee Waivers. Currently FOIA requires a public body to waive the first \$20 of a charge for completing a FOIA request for public records from a person who is indigent if that individual provides an affidavit stating the individual is receiving public assistance or stating facts showing inability to pay due to indigence. The Amendment places additional restrictions on this waiver requiring the affidavit to state that the individual is indigent and receiving specific public assistance, or stating facts showing the inability to pay due to indigency. The Amendment also limits an indigent individual to receiving two discounts from the public body per calendar year. The Amendments also provide that an indigent individual is ineligible for a discount if the request is made in conjunction with other parties who are offering remuneration.

The Amendment also provides for a fee waiver category for certain requests made by nonprofit organizations designated by the state to carry out activities under subtitle C of the developmental disabilities assistance and bill of rights act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, or their successors. There are no annual limits for fee waivers for these nonprofit organizations.

The fee itemization form must note any waivers granted for the request.

Deposits. A public body may continue to require a good faith deposit, not to exceed one-half the total estimated fee, for request where the fee estimate exceeds \$50. However, requests for deposits are now required to faith fee calculation and a “non-binding” “best efforts estimate” of the time frame it will take the public body to provide the public records to the requestor once the deposit is received.

The Amendment now permits a public body to require a 100 percent deposit from an individual who has not paid a previous FOIA fee in full to the public body before the public body begins another search for that individual. This 100 percent deposit may only be required if (i) the prior final fee was not more than 105 percent of the estimated fee, (ii) the public records made available contained the information being sought in the prior request and are still in the public body’s possession, (iii) the public records were made available to the individual within the time frame originally estimated by the public body, (iv) 90 days have passed since written notifica-

tion that the records were available, (v) the individual is unable to show proof of prior payment, and (vi) the public body calculates a detailed itemization of the current request. The 100 percent deposit requirement is inapplicable if the individual is able to show proof of prior payment in full, the public body is subsequently paid in full, or 365 days have passed since the individual made the written request for which payment was not made.

All deposits required under FOIA are considered a fee and must be noted on the itemization form. Categorizing deposits as fees allows individuals certain appeal rights under FOIA with respect to the deposit.

Mandated Fee Reduction for Late Responses

The Amendment mandates that if public bodies fail to respond to requests in a timely manner as required by FOIA, they must reduce the charges for labor costs by 5 percent for each day the public body exceeded the time limit, up to a maximum of 50 percent reduction. This reduction must be noted in the fee itemization form. There are certain exceptions for requests which are not clearly identifiable as a FOIA request.

Information Available on the Public Body’s Website

If a written request is made for documents or information that is available on the public body’s website, the public body may not charge for those documents. Instead, if the public body’s FOIA Coordinator knows or has reason to know that all or a portion of the requested information is available on the website, he or she must notify the requesting person in the public body’s written response and must include, to the degree practicable, the specific webpage address. The fee itemization form must separate the information that is available on the website from that which is not and shall inform the requestor that there will be an additional charge to receive copies of public records that are available on its website. If the requestor then requests the information be provided, the public body may charge for providing the records and may use a fringe benefit multiplier that exceeds the standard 50 percent multiplier (not to exceed the actual fringe benefit cost).

Verbal Requests

While a requestor is required to provide a written request in order to receive a response from a public body regarding FOIA, the Amendment provides limited ability to make a verbal request. Under the Amendment, if a verbal request is made and the public body believes the information requested is available on the public body’s website, the public body employee is required, to the best of his or her knowledge, to inform the requestor about the website location of the requested information.

Requests Caught in Spam or Junk Folder

The Amendments provide new provisions for electronic requests delivered to the public body's spam or junk mail folder. Electronic requests are generally considered "received" one business day after the transmission is made. However, the Amendments provide that if a request is delivered to the public body's spam or junk mail folder, the request is not considered "received" until one day after the public body first becomes aware of the request. The public body is required to keep a log detailing when requests are delivered to the spam or junk mail folder and when the public body becomes aware of them. The public body's Procedures and Guidelines should require the FOIA coordinator to periodically check the spam and junk folders at reasonable intervals.

Appeals

Once the Amendments take effect, requestors will have two appeal options under FOIA. The first is for the appeal of a denial of a request for public records. The second is a new appeal process for an appeal of an excessive fee. FOIA did not previously provide a method for appealing an excessive fee and fee appeals therefore were generally brought as small claim or circuit court actions.

For both denial of records and excessive fee appeals, the Amendments require any civil action to be filed in the Circuit Court for the county in which the public record or an office of the public body is located, or if the claim is against a state public body, then in the Court of Claims. This is a welcomed change from the prior provisions which allowed requestors to file in jurisdictions where they lived or worked, and sometimes resulted in public bodies facing claims in courts geographically unrelated to their offices or the location of the public records.

The Amendments allow the public body to require (in its Procedures and Guidelines) that appeals for excessive fees must first be brought before the head of the public body, or in the absence of such a provision, directly in the Circuit Court.

"Changes of this magnitude are unprecedented in FOIA's nearly 40-year history. The changes impact nearly every area of FOIA, including local policies required for FOIA administration, fees categories and methods of calculation, good-faith deposits and fee waivers, records available on the public body's website, and the appeal process, including significant new penalties."

Fee appeals to the head of the public body must be responded to within 10 business days with a determination to either waive, reduce, or uphold the fee. In certain circumstances, the head of the public body may extend the response time by an additional 10 business days. Fee appeal determinations must be in writing and must indicate the specific basis that supports the fee amount, along with other certifications required by the Amendments. After a determination is made by the head of the public body, or if there is a failure to respond to the appeal, the requestor may file an action in the Circuit Court. If the court reduces the fee by 50 percent or more, it may award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. If the court determines that the public body arbitrarily and capriciously violated FOIA by charging an excessive fee, the court shall order a civil fine of \$500, to be deposited in the general fund of the state treasury, and the court may also award actual or compensatory damages, and punitive damages of \$500 to the requestor. If the court finds the public body willfully and intentionally failed to comply with FOIA, or acted in bad faith, it must impose a civil fine in the amount of \$2,500-\$7,500 for each occurrence, such fine also being deposited in the general fund of the state treasury.

Visit mml.org for the League's One Pager *Plus* Fact Sheet with sample summary, policy and guidelines, and fee itemization form.

2015 LEAGUE EVENT


CHANGES TO THE FREEDOM OF INFORMATION ACT

The Public Act 563 of 2014 (HB 4001) makes significant changes to the Freedom of Information Act (FOIA). The changes concern fees charged by public bodies for public records, civil actions brought under the Act, and the receipt and denial of requests; and would add provisions allowing a person to appeal to a public body or bring a civil action if he or she believed that a fee was unreasonable. This is a must-attend webinar for all local government attorneys, clerks and other officials.

WEBINAR • MAY 21, 2015

Visit www.mml.org/events/calendar to register.

Conclusion

The Amendment brings a wide range of changes to Michigan's FOIA. This article discussed the most significant changes to FOIA as a result of PA 563, but is not intended as a complete or comprehensive guide to all changes. Public bodies are encouraged to consult with their own legal counsel regarding the new requirements and policy implementations. Public bodies must adopt FOIA Procedures and Guidelines before July 1, 2015. 

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1. Labor costs for search, location, examination and redaction (fee categories 1 and 2) may not be charged unless the failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs. The Court of Appeals has interpreted this provision to require that the determination be made relative to the usual or typical costs incurred by the public body in responding to FOIA requests. The key factor in determining whether the costs are "unreasonably high" is the extent to which the particular request differs from the usual request. *Bloch v Davison Cmty Schools*, (Mich.App. Apr. 26, 2011), 2011 WL 1564645.



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CITY OF KALAMAZOO

WRITTEN PUBLIC SUMMARY OF FOIA PROCEDURES AND GUIDELINES

Consistent with Public Act 563 of 2014 amending the Michigan Freedom of Information Act (FOIA), the following is the Written Public Summary of the City's FOIA Procedures and Guidelines relevant to the general public.

1. How do I submit a FOIA request to the City of Kalamazoo?

- Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the City of Kalamazoo must be submitted in writing.
- A request must sufficiently describe a public record so as to enable the City to find it.
- No specific form to submit a written request is required. However a FOIA Request form for your use and convenience is available on the City's website at www.cityofkalamazoo.org
- Written requests can be made in person by delivery to any City office in person or by mail.
- Requests can also be made by facsimile by calling 269-XXX-XXXX for non-Public Safety records and 269-XXX-XXXX for Public Safety records.
- A request may also be submitted by e-mail. To ensure a prompt response, e-mail requests should contain the term "FOIA" or "FOIA Request" in the subject line and be sent to XYZ@kalamzoocity.org

Note: If you are serving a sentence of imprisonment in a local, state or federal correctional facility you are not entitled to submit a request for a public record.

2. What kind of response can I expect to my request?

- Within 5 business days of receipt of a FOIA request the City will issue a response. If a request is received by facsimile or e-mail the request is deemed to have been received on the following business day. The City will respond to your 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 in part the request.
 - Issue a notice indicating that due to the nature of the request the City needs an additional 10 business days to respond.
 - 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 City will ask that payment be made for the allowable fees associated with responding to the request before the public record is made available. If the cost of processing the request is expected to exceed \$50, or if you have not paid for a previously granted request, the City will require a deposit before processing the request.

3. What are the City's fee deposit requirements?

- If the City has made a good faith calculation that the total fee for processing the request exceeds \$50.00, the City will require that you provide a deposit in the amount of 50% of the total estimated fee. When the City requests the deposit it will provide you a non-binding best efforts estimate of how long it will take to process the request following receipt by the City of your deposit.

- If the City receives a request from a person who has not paid the City for copies of public records made in fulfillment of a previously granted written request, the City will require a deposit of 100% of the estimated processing fee before it begins to search for the public record for any subsequent written request when all of the following conditions exist:
 - the final fee for the prior written request is not more than 105% of the estimated fee;
 - the public records made available contained the information sought in the prior written request and remain in 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 City notified the individual in writing that the public records were available for pickup or mailing;
 - the individual is unable to show proof of prior payment to the City; and
 - the City has calculated an estimated detailed itemization that is the basis for the current written request's increased fee deposit.
- The City will not require the 100% 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 all applicable prior written requests; or
 - 365 days have passed since the person made the request for which full payment was not remitted to the City.

4. How does the City calculate FOIA processing fees?

- A fee will not be charged for the cost of search, examination, review and the deletion and separation of exempt from nonexempt 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 costs.
- The Michigan FOIA statute permits the City to assess and collect a fee for six designated processing components. The City may charge for the following costs associated with processing a request:
 - Labor costs 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 cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media.
 - The cost of duplication or publication, not including labor, of paper copies of public records.
 - Labor costs associated with duplication or publication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
 - The cost to mail or send a public record to a requestor.

- Labor Costs
 - 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 of the lowest-paid City employee capable of doing the work in the specific fee category, regardless of who actually performs work.
 - Labor costs will also include a charge to cover or partially cover the cost of fringe benefits.
- Non-paper Physical Media
 - The cost for records provided on non-paper physical media, such as computer discs, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
 - This cost will only be assessed if the City has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- Paper Copies
 - Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets will reflect the actual cost of reproduction.
 - The City may provide records using double-sided printing, if cost-saving and available.
- Mailing Costs
 - The cost to mail public records will use a reasonably economical and justified means.
 - The City may charge for the least expensive form of postal delivery confirmation.
 - No cost will be made for expedited shipping or insurance unless requested.

5. How do I qualify for a reduction of the processing fees?

- The City may waive or reduce the fee associated with a request when City determines that to do so is in the public interest because release of the information is considered as primarily benefitting the general public.
- The City will waive the first \$20.00 of the processing fee for a request if you submit an affidavit stating that you are:
 - indigent and receiving specific public assistance; or
 - if not receiving public assistance, stating facts demonstrating an inability to pay because of indigency.
- You are not eligible to receive the \$20.00 waiver if you:
 - have previously received discounted copies of public records from the City twice during the calendar year; or
 - are requesting information on behalf of other persons who are offering or providing payment to you to make the request.

- An affidavit is sworn statement. For your convenience the City has provided an Affidavit of Indigency form for the waiver of FOIA fees on its website.
- The City will waive the fee for an nonprofit organization which meets all of the following conditions:
 - the organization is designated by the State under federal law to carry out activities under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Protection and Advocacy for Individuals with Mental Illness Act;
 - the request is made directly on behalf of the organization or its clients;
 - the request is made for a reason wholly consistent with the provisions of federal law under Section 931 of the Mental Health Code; and
 - the request is accompanied by documentation of the organization's designation by the State

6. How may I challenge the denial of a public record or an excessive fee?

- Appeal of a Denial of a Public Record
If you believe that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, you may file an appeal of the denial with the Office of the Mayor. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons you are seeking a reversal of the denial.

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 denial in part and uphold the disclosure denial in part.

Whether or not you submitted an appeal of a denial to the Mayor, you may file a civil action in Kalamazoo County Circuit Court within 180 days after the City's final determination to deny your request. Should you prevail in the civil action the court will award you reasonable attorneys' fees, costs and disbursements. If the court determines that the City acted arbitrarily and capriciously in refusing to disclose or provide a public record, the court shall award you damages in the amount of \$1000.00

- Appeal of an Excessive FOIA Processing Fee
If you believe that the fee charged by the City to process your FOIA request exceeds the amount permitted by state law, you must first submit a written appeal for a fee reduction to the Office of the Mayor. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

Within 10 business days after receiving the appeal, the Mayor will respond in writing by:

- waiving the fee;
- reducing the fee and issue a written determination indicating the specific basis that supports the remaining fee;
- upholding the fee and issue a written determination indicating the specific basis that supports the required fee; or
- issuing 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.

Within 45 days after receiving notice of the Mayor's determination of the processing fee appeal, you may commence a civil action in Kalamazoo County Circuit Court for a fee reduction. If you prevail in the civil action 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 acted arbitrarily and capriciously by charging an excessive fee, court may also award you punitive damages in the amount of \$500.00.

Need more details or information?

This is only a summary of the City of Kalamazoo's FOIA Procedures and Guidelines. For more details and information, copies of the City of Kalamazoo's FOIA Procedures and Guidelines are available at no charge at any City office and on the City's website, www.kalamazoocity.org.

DISCLAIMER: This document is intended only as example of how a municipality might attempt to comply with the FOIA requirements set forth by 2014 Public Act 563. It is not intended as legal advice and should not be relied upon as such. It is being provided in furtherance of the mission of the Michigan Municipal League to provide educational opportunities and administrative assistance to elected and appointed officials of municipalities. –Clyde J. Robinson, Kalamazoo City Attorney

CITY OF KALAMAZOO

FREEDOM OF INFORMATION ACT PROCEDURES & GUIDELINES

Preamble: Statement of Principles

It is the policy of the City of Kalamazoo that all persons, *except those who are serving a sentence of imprisonment*^{*}, 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 people shall be informed so that they fully participate in the democratic process.

The City of Kalamazoo'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, and even-handed manner regardless of who makes such a request.

The City of Kalamazoo acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The City of Kalamazoo acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

The City of Kalamazoo will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The City of Kalamazoo's policy is to disclose public records consistent with and in compliance with State law.

Section 1: General Policies

The City Commission acting pursuant to the authority at MCL 15.236 designates the City Attorney as the FOIA Coordinator. He or she is authorized 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.

If a request for a public record is received by facsimile or e-mail, the request is deemed to have been received on the following business day. If a request is sent by e-mail and delivered to a City spam or junk-mail folder, the request is not deemed received until one day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall note in the FOIA log both the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator became aware of the request.

The FOIA Coordinator shall review City spam and junk-mail folders on a regular basis, which shall be no less than once a month. The FOIA Coordinator shall work with City

^{*} Any material appearing in italic typeface is intended to reference optional language which might be included in the document.

Information Technology staff to develop administrative rules for handling spam and junk-mail so as to protect City systems from computer attacks which may be imbedded in an electronic FOIA request.

The FOIA Coordinator may, in his or her discretion, implement administrative rules, consistent with State law and these Procedures and Guidelines to administer the acceptance and processing of FOIA requests.

The City is not obligated to create a new public record or make a compilation or summary of information which does not already exist. Neither the FOIA Coordinator nor other City staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

The FOIA Coordinator shall keep a copy of all written requests for public records received by the City on file for a period of at least one year.

Section 2: Requesting a Public Record

A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed or retained by City of Kalamazoo must do so in writing. The request must sufficiently describe a public record so as to enable City personnel to identify and find the requested public record.

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.

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 their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for processing.

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

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

A person who makes a verbal, non-written request for information believed to be available on the City's website, where practicable and to the best ability of the employee receiving the request, shall be informed of the pertinent website address.

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 will deny all such requests.

Section 3: Processing a Request

Unless otherwise agreed to in writing by the person making the request, within 5 business days of receipt of a FOIA request the City will 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 will 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 in part the request.
- Issue a notice indicating that due to the nature of the request the City needs an additional 10 business 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 will 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 these Procedures and Guidelines shall be provided to the requestor with the response to a written request for public records, provided however, that if these Procedures and Guidelines, and its Written Public Summary are maintained on the City's website, then a website link to those documents may be provided in lieu of providing paper copies.

If the cost of processing a FOIA request is \$50 or less, the requester will be notified of the amount due and where the documents can be obtained.

If based on a good faith calculation by the City, the cost of processing a FOIA request is expected to exceed \$50, or if the requestor has not fully paid for a previously granted request, the City will require a good-faith deposit before processing the request. In making the request for a good-faith 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 a best efforts estimate of a time frame it will take the City to provide the records to the requestor. The best efforts 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 in the particular instance, so as to provide the requested records in a manner based on the public policy expressed by Section 1 of the FOIA.

If the request is denied or denied in part, the FOIA Coordinator will 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 by 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 office of the Mayor or seek judicial review in the Kalamazoo County Circuit Court; and
- An explanation of the right to receive attorneys' fees, costs, and disbursements as well 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 a 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 will be considered a new request subject to the timelines described in this Section.

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 promulgate 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 certified copy of a public record at no additional cost to the person requesting the public record.

Section 4: Fee Deposits

If the fee estimate is expected to exceed \$50.00 based on a good-faith 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 made in fulfillment of a previously granted written request, the FOIA Coordinator will 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 105% of the estimated fee;
- the public records made available contained the information sought in the prior written request and remain in 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 pickup 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 will 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; or
- 365 days have passed since the person made the request for which full payment was not remitted to the City.

Section 5: Calculation of Fees

A fee will not be charged for the cost of search, examination, review and the deletion and separation of exempt from nonexempt 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 costs.

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. *See Bloch v Davison Community Schools, 2011 Mich App Lexis 771, 2011 WL 1564645*

- Volume of the public record requested
- Amount of time spent to search for, examine, review and separate exempt from 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 of the lowest-paid City employee capable of doing the work in the specific fee category, regardless of who actually performs 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.

[†] The cost of labor directly associated with duplication, publication or transferring records to nonpaper physical media can be charged in time increments of the public body's choosing with all partial increments rounded down.

[‡] If using contract or outside labor to separate and delete exempt material from non-exempt material, the public body must clearly note the name of person or firm who does the work and the total labor cost may not exceed an amount 6 times the state minimum hourly wage, which is currently \$8.15.

- 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 following requirements:

- Computer disks, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will only be assessed if the City has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- In order to ensure the integrity and security of the City's technological infrastructure, the City will procure any requested non-paper media and will not accept non-paper media from the requestor

The cost to provide paper copies of records will be based on the following requirements:

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
- The City may provide records using double-sided printing, if cost-saving and available.

The cost to mail records to a requestor will be based on the following requirements:

- The actual cost to mail public records using a reasonably economical and justified means.
- The City may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless requested.

If the FOIA Coordinator does not respond to a written request in a timely manner, the following shall be required:

- Reduce the labor costs by 5% for each day the City exceeds the time permitted under FOIA up to a 50% maximum reduction, if any of the following applies:
 - The late response was willful and intentional.
 - The written request, within the first 250 words of the body of a letter facsimile, e-mail or e-mail attachment conveyed a request for information

- The written request included the words, characters, or abbreviations for “freedom of information”, “information”, “FOIA”, “copy” or a recognizable misspelling of such, or legal code reference to MCL 15. 231 et seq or 1976 Public Act 442 on the front of an envelope or in the subject line of an e-mail, letter or facsimile cover page.
- Fully note the charge reduction in the Detailed Itemization of Costs Form

Section 6: Waiver of Fees

The cost of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced fee is in the public interest because such can be considered as primarily benefitting the general public. *May wish to establish and set forth the conditions a requestor must meet to so as to “benefit the general public” in order to obtain a waiver of fees.*

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 specific public assistance; or
- if not receiving public assistance stating facts demonstrating an inability to pay because of indigency.

An individual is not eligible to receive the waiver if:

- the requestor has previously received discounted copies of public records from the City twice[§] during the calendar year; or
- the requestor requests information in connection with other persons who are offering or providing payment to make the request.

An affidavit is sworn statement. The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

A nonprofit organization designated to by the State to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 200 and the Protection and Advocacy for Individuals with Mental Illness Act, or their successors, if the request meets all of the following requirements:

- is made directly on behalf of the organization or its clients;

[§] The FOIA requires that an indigent requestor is entitled to at least two discounted fees in a calendar year; however a public body may permit more than two if it so chooses to do so.

- is made for a reason wholly consistent with the mission and provisions of those laws under Section 931 of the Mental Health Code, MCL 330.1931;
- is accompanied by documentation of its designation by the State.

Section 7: Appeal of a 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 Office of 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.

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 denial 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 requested records from numerous facilities located apart from the office receiving or processing the request, the Mayor may issue not more than 1 notice of extension for not more than 10 business days to respond to the appeal

Whether or not a requestor submitted an appeal of a denial to the Mayor, he or she may file a civil action in Kalamazoo County Circuit Court within 180 days after the City's final determination to deny the request.

If the court determines that the public record is not exempt from disclosure, the court will award the appellant reasonable attorneys' fees, cost and disbursements. If the court determines that the appellant prevails only in part, the court in its discretion may award all or an appropriate portion of reasonable attorneys' fees, costs and disbursements.

If the court determines that the City arbitrarily and capriciously violated the FOIA by refusing or delaying the disclosure of copies of a public record, it shall award the appellant punitive damages in the \$1,000. *Court shall also order that the public body pay a civil fine of \$1000 to the general fund of the State treasury.*

** If the head of the public body is a board or commission, it is not considered to have received a written appeal of either a denial or a fee amount until its first regularly scheduled meeting following the submission of the appeal. It then has 10 business days to respond to the appeal.

Section 8: Appeal of an 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 Office of the Mayor. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

Within 10 business days after receiving the appeal, the Mayor will respond in writing by:

- waive the fee;
- 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 these Procedures and Guidelines and Section 4 of the FOIA;
- uphold the fee and issue a written determination indicating the specific basis under Section 4 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 these Procedures and Guidelines and Section 4 of the FOIA; or
- 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.

Within 45 days after receiving notice of the Mayor's determination of a fee appeal, a requestor may commence a civil action in Kalamazoo County Circuit Court for a fee reduction. If a civil action 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 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.

Section 9: Conflict with Prior FOIA Policies and Procedures; Effective Date

^{††} A public body does not have to provide for administrative fee appeals; if such is the case, the fee appeal is made directly to circuit court within 45 days of receiving notice of the required fee.

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by City Commission or the City Administration these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the City Commission or the City Administration, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the City Commission or the City Administration, and to adopt such administrative rules as he or she may deem necessary, to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA statute, provided that such modifications and rules are consistent with State law. The FOIA Coordinator shall inform the City Commission of any change these Policies and Guidelines.

These FOIA Policies and Guidelines become effective July 1, 2015.

Section 9 3/4: Penalty for Violation of the Act^{††}

If the court determines in either an appeal of a denial of a public record, or the appeal of an excessive fee, that the public body willfully and intentionally failed to comply with the FOIA or otherwise acted in bad faith, then in addition to any another award or sanction, the court shall impose a civil fine of not less than \$2500 or more than \$7500 for each occurrence.

The court is required to consider the budget of the public body and whether the public body has been previously been assisted penalties for violations of the FOIA.

The civil fine is to be deposited to the general fund of the State treasury.

Section 10: Appendix of City of Kalamazoo FOIA Forms^{§§}

- Request Form
- Denial Form
- Waiver of Fee Form
- Detailed Itemization of Fees Form

^{††} This section is not necessarily required. The use of 9 ¾ is reference to the platform at King's Cross Station in London used by wizarding students to board the Hogwarts Express in the Harry Potter series of books by J.K. Rowling.

^{§§} The referenced forms are not attached, they are in the process of being drafted.

- Appeal Form
- Certification Form

DISCLAIMER: This document is intended only as example of how a municipality might attempt to comply with the FOIA requirements set forth by 2014 Public Act 563. It is not intended as legal advice and should not be relied upon as such. It is being provided in furtherance of the mission of the Michigan Municipal League to provide educational opportunities and administrative assistance to elected and appointed officials of municipalities. I would like to thank Andrew Mulder, Holland City Attorney for sharing that community's existing FOIA Policy. –Clyde J. Robinson, Kalamazoo City Attorney

SAMPLE



REQUEST FOR PUBLIC RECORD
Michigan Freedom of Information Act

Control No. _____

PLEASE PRINT OR TYPE:

Name:	Phone:	
Firm/Organization:	Fax:	
Street:		
City:	State:	Zip:
Email:		

Describe the public record(s) as specifically as possible:

DELIVERY METHOD: ☐ Pick up ☐ Mail ☐ Email ☐ Fax ☐ Schedule appointment to inspect record(s)

Please check if you would like ☐ the record(s) on digital media
☐ certified copy of record(s)

Date

Requestor's Signature

☐ I am a designated agent for the nonprofit organization making this FOIA request. This request is made directly on behalf of the organization or its clients and is made for a reason wholly consistent with the mission and provisions of those laws under Section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931. (Must fill out Waiver of Costs)

☐ I am submitting an affidavit and requesting that I receive the discount for indigence. (Must fill out Affidavit of Indigency)

THE CITY OF KALAMAZOO FOIA PROCEDURES & GUIDELINES AND ITS WRITTEN PUBLIC SUMMARY ARE
AVAILABLE AT WWW.KALAMAZOOCITY.ORG/FOIA.

TO BE COMPLETED BY CITY STAFF

Date Received: _____

Staff Member: _____

Check if received via: ☐ Email ☐ Fax ☐ Other Electronic Method

Date delivered to junk/spam folder: _____

Date discovered in junk/spam folder: _____



Kalamazoo Public Safety
OFFICE OF THE CHIEF
150 E. Crosstown, Suite A
Kalamazoo, Michigan 49001-2849
(269) 337-8123
Fax (269) 337-8141

Release of Motor Vehicle Accident Report Request Form

Pursuant to MCL 257.503, effective January 1, 2014, for thirty (30) days after the date a motor vehicle accident report is filed with a law enforcement agency, a person or organization may only access the report if they file a statement indicating that from the time access is granted to the report until thirty (30) days after the date the report is filed with the law enforcement agency, they acknowledge that they are prohibited from using the report for any direct solicitation or disclosing any personal information contained in the report to a third party for commercial solicitation of an individual, vehicle owner, or property owner listed in the report.

To be completed by requestor:

Date of Request: _____

Motor Vehicle Accident Report #: _____

Requestor's Name: _____

Requestor's Relationship to Accident Report:

☐ Vehicle Owner ☐ Driver/Passenger ☐ Damaged Property Owner

☐ Pedestrian/Bicyclist ☐ Witness ☐ Uninvolved Party

☐ Other _____

I acknowledge under MCL 257.503, I (and/or any individual or organization I represent) am prohibited from the following:

1. Using the report for any direct solicitation of an individual, vehicle owner, or property owner listed in the report.
2. Disclose any personal information contained in the report to a third party for commercial solicitation of an individual, vehicle owner, or property owner listed in the report, until thirty (30) days after the date the report is filed.

Violation of this law is a misdemeanor, subject to a fine of \$30,000 for a first offense and a fine of \$60,000 and 1 year imprisonment for subsequent offenses.

Requestor's Signature

Printed Name

To be completed by KDPS staff:

Type of identification presented: ☐ Driver's License ☐ MI ID Card ☐ Other: _____

KDPS Staff Initials: _____



**FREEDOM OF INFORMATION ACT AFFIDAVIT OF
INDIGENCY REQUESTING PARTIAL WAIVER OF COSTS**

The applicant, being duly sworn and subject to penalties of perjury, states as follows:

1. That I am making this affidavit on personal knowledge and everything herein is true and correct to the best of my knowledge.
2. That I am making a request for public records from the City of Kalamazoo pursuant to the Michigan Freedom of Information Act, MCL 15.231 et seq., and I request that the first \$20 of fees and costs associated with this request be suspended as allowed by the Freedom of Information Act. I am indigent and (pick A or B, not both):

A. I am currently receiving public assistance: \$ _____, per _____ (week, month),
Case No.: _____.

B. I am not receiving public assistance, but I am unable to pay these fees and costs because of indigency, based on the following facts: Please fill out completely. The City reserves the right to ask for additional documentation.

INCOME: _____ Employer name and address
_____ length of employment
_____ average gross pay per pay period (week/ month /two weeks)
_____ average net pay per pay period (week/ month/ two weeks)

ASSETS: State value of car, home, bank deposits, bonds, stocks, etc.

OBLIGATIONS: Itemize monthly rent, installment payments, mortgage payments, child support, etc.

3. I have not received more than two discounted copies from the City of Kalamazoo in the current calendar year.
4. This request is not being made in conjunction with outside parties in exchange for payment or other form of compensation or remuneration.

Signature of applicant

Printed Name of Applicant

Subscribed and sworn to before me on _____, by the applicant.

_____, Notary Public
Kalamazoo County, Michigan
My commission expires: _____



FREEDOM OF INFORMATION ACT REQUEST FOR WAIVER OF COSTS
NON-PROFIT ORGANIZATION

In support of seeking a waiver of the first \$20 of the fee for providing records under the Freedom of Information Act, the below signed individual states the following:

1. I am the authorized representative of _____, a non-profit organization under the laws of the State of _____.
2. The above named organization has been formally designated by the State of Michigan to carry out activities under Subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, and the Protection and Advocacy for Individuals with Mental Illness Act, Public Law 99-319, or their successors, and documentation of its designation is attached.
3. This request is being made directly on behalf of the above-named organization or its clients.
4. This request is being made for a reason wholly consistent with the mission and provisions of those laws under Section 931 of the Michigan Mental Health Code, 1974 Public Act #258; MCL 330.1931.

Date: _____

Signature

Printed Name and Title



CERTIFICATION OF NONEXISTENCE

I, Clyde J. Robinson, FOIA Coordinator for the City of Kalamazoo, certify that an attempt has been made to locate the below described documents and such does not exist or cannot be located using the description provided:

Dated: _____

Clyde J. Robinson
FOIA Coordinator

Subscribed and sworn to before me
this _____ day of _____, 2015

Sarah E. Rustenholtz, Notary Public
Kalamazoo County, Michigan
Commission Expires 4/21/2021



CERTIFICATION OF DOCUMENTS

I, Clyde J. Robinson, FOIA Coordinator for the City of Kalamazoo, certify that the below described documents provided in response to a request filed pursuant to the Michigan Freedom of Information Act, MCL 15.231 et. seq., are true copies of the original records on file with the City of Kalamazoo regarding

Dated: _____

Clyde J. Robinson
FOIA Coordinator

Subscribed and sworn to before me
this _____ day of _____, 2015

Sarah E. Rustenholtz, Notary Public
Kalamazoo County, Michigan
Commission Expires 4/21/2021



CITY OF KALAMAZOO

Control No. _____

DENIAL (PARTIAL DENIAL) OF REQUEST FOR PUBLIC RECORD

(Name)

requested to receive a copy of / examine the following public record(s):

The request is being denied or denied in part because the public record:

- _____ 1. does not exist or cannot be located using the description given .
- _____ 2. although granted in part, has had the following portions deleted for the reasons listed below:
- a _____ Information of a personal nature, such as home addresses, phone numbers, date of birth, social security number, driver license number, and other personal information on private citizens because release would be an invasion of privacy. See MCL 15.243(1)(a), MCL 15.243(1)(b)(iii), MCL 15.243(1)(w).
 - b _____ Release of all or part of the requested records at this time would interfere with law enforcement proceedings, deprive a person of a fair hearing, disclose a confidential source, disclose law enforcement processes or endanger law enforcement personnel. See MCL 15.243(1)(b).
 - c _____ Information subject to attorney – client or other privilege. See MCL 15.243(1)(g) and (h).
 - d. _____ Other: _____
Per MCL 15.243(l) _____ (See explanation below)
- _____ 3. is exempt from disclosure per MCL 15.243(l) _____ (See explanation below)

Explanation: _____

FOIA Coordinator

Date

NOTICE: Michigan law provides two means for appealing a denial of all or part of a request under the Freedom of Information Act. You may file a written appeal with the City Clerk or the City Attorney which must state the word “appeal” and identifies the reason or reasons for reversal of the denial.

In addition, you have the right to challenge this denial by starting a lawsuit in the Kalamazoo Circuit Court to compel disclosure within 180 days after a final denial of the request. Should you prevail, you will be entitled to have reasonable attorney fees, costs and disbursements assessed against the public body, as ordered by the Court. If the public body has been arbitrary and capricious, you may be awarded, in addition to actual damages, punitive damages not exceeding \$1,000.

THE CITY OF KALAMAZOO FOIA PROCEDURES & GUIDELINES AND ITS WRITTEN PUBLIC SUMMARY ARE
AVAILABLE AT WWW.KALAMAZOOCITY.ORG/FOIA.

DISTRIBUTION:

White Copy – FOIA Requestor

Canary Copy - Originating Dept.

Pink - FOIA Coordinator



**CITY OF KALAMAZOO
FREEDOM OF INFORMATION ACT
APPEAL OF DENIAL OF RECORD**

On _____, 20____, I filed a Freedom of Information Act request with the City of Kalamazoo. A copy of that request is attached. The City of Kalamazoo Freedom of Information Act Coordinator has denied the request, either entirely or in part.

I submit the following appeal of that decision to the Mayor.

Name: _____

Date: _____

Address: _____

Phone: _____

Explain the reason(s) why you feel the Mayor should reverse the decision of the City's FOIA Coordinator to deny (entirely or in part) access to the requested records pursuant to the FOIA (an explanation may be made below or else attached to this form):

You will receive a response in writing. It will be mailed to you no later than ten (10) days after receipt of your appeal. You may direct any questions to the City's Freedom of Information Act Coordinator at 269-337-8185.



**CITY OF KALAMAZOO
FREEDOM OF INFORMATION ACT
APPEAL OF EXCESSIVE FEE**

On _____, 20____, I filed a Freedom of Information Act request with the City of Kalamazoo. A copy of that request and a copy of the Fee Itemization for that request are attached. I believe that the fee for my request exceeds the amount permitted by the City's FOIA Procedures and Guidelines and/or Section 4 of the Freedom of Information Act.

I submit the following appeal of the excessive fee to the Mayor.

Name: _____

Date: _____

Address: _____

Phone: _____

Explain the reason(s) why you feel the Mayor should waive or reduce the fee for processing your FOIA request (an explanation may be made below or else attached to this form):

You will receive a response in writing. It will be mailed to you no later than ten (10) days after receipt of your appeal. You may direct any questions to the City's Freedom of Information Act Coordinator at 269-337-8185.



FEE ITEMIZATION FORM
Michigan Freedom of Information Act

Control No. _____

☐ THIS IS AN ESTIMATE FOR DEPOSIT. 50% (_____) DUE BEFORE THE CITY PROCESSES THIS REQUEST.

I. LABOR*:

A. SEARCH, LOCATION & EXAMINATION OF RECORDS:

Hourly rate _____ x 1.1 (fringe benefit multiplier) x # of hours** _____ = \$ _____

This fee is being charged because the failure to do so will result in unreasonably high costs to the City due to: _____

B. REDACTION:

Hourly rate _____ x 1.1 (fringe benefit multiplier) x # of hours** _____ = \$ _____

This fee is being charged because the failure to do so will result in unreasonably high costs to the City due to: _____

C. DUPLICATION, COPYING & TRANSFERRING RECORDS

Hourly rate _____ x 1.1 (fringe benefit multiplier) x # of hours^ _____ = \$ _____

II. COPYING:

Paper: _____ # of sheets @ 5¢ per sheet = \$ _____

Digital Media _____ # of _____ (type) @ _____ each = \$ _____

III. MAILING:

Postage: _____ + Other (specify): _____ = \$ _____

SUBTOTAL = \$ _____

☐ Indigency Waiver (\$20) ☐ Waiver under Section 931 of Mental Health Code (\$20) - \$ _____

☐ Reduction for late response @ 5% each day = _____ % reduction (max. 50%) - \$ _____

Less deposit received - \$ _____

TOTAL FEE DUE: \$ _____

*All hourly rates reflect the wage of the lowest paid employee capable of performing the work.

** Rounded down to the nearest 1/4 hour.

^ Rounded down to the nearest 1/10 hour.

THE CITY OF KALAMAZOO FOIA PROCEDURES & GUIDELINES AND ITS WRITTEN PUBLIC SUMMARY
ARE AVAILABLE AT WWW.KALAMAZOOCITY.ORG/FOIA

FOIA Fee Itemization Form

(Effective July 1, 2015)

Component	Cost Calculations	Total
1. Labor Costs – Search, Location, and Examination of Records*	<p>Enter the hourly wage of lowest paid employee capable of performing the search, location and examination \$_____ per hour</p> <p>Multiply the wage by the fringe benefit multiplier (maximum of 50% of the hourly wage); OR, if the requested information is available online and the requestor request the documents to be provided in another format, the fringe benefit multiplier may exceed 50% (not to exceed actual cost) _____ %</p> <p>Multiply the hourly wage times the fringe benefit multiplier \$_____ x 1.____ = \$_____</p> <p>If stipulated by the requestor, add the hourly overtime wage increment (but do not include in the calculation of fringe benefit costs) \$_____ + _____ = \$_____</p> <p>Divide the resulting hourly wage by four (4) to determine the charge per fifteen (15) minute increment \$_____ / 4 = \$_____</p>	
	<p>Number of 15 minute increments (partial time increments must be rounded down) multiplied by the permitted rate _____ x \$_____ = \$_____</p>	\$_____
2. Employee Labor Costs – Redaction*	<p>If performed by the public body's employee:</p> <p>Enter the hourly wage of lowest paid employee capable of performing the redaction \$_____ per hour</p> <p>Multiply the wage by the fringe benefit multiplier (maximum of 50% of the hourly wage); OR, if the requested information is available online and the requestor request the documents to be provided in another format, the fringe benefit multiplier may exceed 50% (not to exceed actual cost) _____ %</p> <p>Multiply the hourly wage times the fringe benefit multiplier</p>	

	$\text{\$} \underline{\hspace{1cm}} \times 1. \underline{\hspace{1cm}} = \text{\$} \underline{\hspace{1cm}}$ <p>If stipulated by the requestor, add the hourly overtime wage increment (but do not include in the calculation of fringe benefit costs)</p> $\text{\$} \underline{\hspace{1cm}} + \underline{\hspace{1cm}} = \text{\$} \underline{\hspace{1cm}}$ <p>Divide the resulting hourly wage by four (4) to determine the charge per fifteen (15) minute increment</p> $\text{\$} \underline{\hspace{1cm}} / 4 = \text{\$} \underline{\hspace{1cm}}$	
	<p>Number of 15 minute increments (partial time increments must be rounded down) multiplied by the permitted rate</p> $\underline{\hspace{1cm}} \times \text{\$} \underline{\hspace{1cm}} = \text{\$} \underline{\hspace{1cm}}$	$\text{\$} \underline{\hspace{1cm}}$
2. Contracted Labor Costs – Redaction*	<p>If performed by Contracted Labor (Only permitted if the public body does not employ a person capable of redacting the records as determined by the FOIA Coordinator):</p> <p>Name of person or firm contracted:</p> <p>_____</p> <p>Enter the hourly rate charged by the contractor (may not exceed six (6) times the State minimum wage (i.e. \$8.15x6=\$48.90)</p> <p style="text-align: right;">$\text{\\$} \underline{\hspace{1cm}}$ per hour</p> <p>Divide the hourly rate by four (4) to determine the charge per fifteen (15) minute increment</p> $\text{\$} \underline{\hspace{1cm}} / 4 = \text{\$} \underline{\hspace{1cm}}$	
	<p>Number of 15 minute increments (partial time increments must be rounded down) multiplied by the permitted rate</p> $\underline{\hspace{1cm}} \times \text{\$} \underline{\hspace{1cm}} = \text{\$} \underline{\hspace{1cm}}$	$\text{\$} \underline{\hspace{1cm}}$
3. Non-Paper Physical Media	<p>Actual and most reasonably economical cost of:</p> <p>Flash Drives $\text{\\$} \underline{\hspace{1cm}} \times \text{number used } \underline{\hspace{1cm}} = \text{\\$} \underline{\hspace{1cm}}$</p> <p>Computer Discs $\text{\\$} \underline{\hspace{1cm}} \times \text{number used } \underline{\hspace{1cm}} = \text{\\$} \underline{\hspace{1cm}}$</p> <p>Other Media $\text{\\$} \underline{\hspace{1cm}} \times \text{number used } \underline{\hspace{1cm}} = \text{\\$} \underline{\hspace{1cm}}$</p>	$\text{\$} \underline{\hspace{1cm}}$
4. Paper Copies	<p>Actual total incremental cost of duplication (not including labor) up to a <u>maximum of 10 cents per page</u>:</p> <p>Letter paper (8 ½” x 11”)</p> <p style="text-align: right;">number of sheets $\underline{\hspace{1cm}}$ x \$0. $\underline{\hspace{1cm}}$ = $\text{\\$} \underline{\hspace{1cm}}$</p>	

	<p>Legal paper (8 1/2" x 14") number of sheets ____ x \$0.____ = \$____ Actual cost of other types of paper: Type of Paper: _____ number of sheets ____ x \$____ = \$____ Type of Paper: _____ number of sheets ____ x \$____ = \$____</p> <p>(NOTE: Must print double-sided if available and costs less.)</p>	\$_____
5. Labor Cost – Duplication Copying, and transferring records to non-paper physical media	<p>Enter the hourly wage of lowest paid employee capable of performing the duplication, copying, or transferring digital records to non-paper physical media \$_____ per hour</p> <p>Multiply the wage by the fringe benefit multiplier (maximum of 50% of the hourly wage); OR, if the requested information is available online and the requestor request the documents to be provided in another format, the fringe benefit multiplier may exceed 50% (not to exceed actual cost) _____ %</p> <p>Multiply the hourly wage times the fringe benefit multiplier \$_____ x 1.____ = \$_____</p> <p>If stipulated by the requestor, add the hourly overtime wage increment (but do not include in the calculation of fringe benefit costs) \$_____ + _____ = \$_____</p> <p>Divide the resulting hourly wage by _____ to determine the charge per _____ (____) minute increment \$_____ / 4 = \$_____</p> <p>(NOTE: May use any time increment for this category)</p>	
	<p>Number of ____ minute increments (partial time increments must be rounded down) multiplied by the permitted rate _____ x \$_____ = \$_____</p>	\$_____
6. Mailing	<p>Actual cost of mailing records in a reasonable and economical manner: Cost of mailing: \$_____</p> <p>Cost of least expensive form of postal delivery confirmation: \$_____</p> <p>Cost of expedited shipping or insurance only if specifically stipulated by the requestor:</p>	

	\$ _____	\$ _____
	Subtotal	\$ _____
Waivers and Reductions	<p>Subtract any Fee Waiver or Reduction: \$20.00 for indigency or nonprofit organization as further described in the Public Body's procedures and guidelines.</p> <p>Any amount determined by the Public Body due to the search and furnishing of the Public Record determined to be in the public interest. \$ _____</p> <p>The reduction amount due to the late response of the Public Body. 5% of fee x _____ days late = _____% reduction (maximum reduction is 50%)</p>	-\$ _____
Deposit	Subtract any good-faith deposit received: \$ _____	-\$ _____
	Total Due	\$ _____

*Note: Labor costs for search, location, examination and redaction (categories 1 and 2 on the itemization form) may not be charged unless the failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs.

The Court of Appeals has interpreted this provision to require that the determination be made relative to the usual or typical costs incurred by the public body in responding to FOIA requests. The key factor in determining whether the costs are "unreasonably high" is the extent to which the particular request differs from the usual request. *Bloch v Davison Cmty Schools*, (Mich.App. Apr. 26, 2011), 2011 WL 1564645.

Freedom of Information Act Request Detailed Cost Itemization

Date: _____ Prepared for Request No.: _____ Date Request Received: _____

The following costs are being charged/estimated in compliance with Section 4 of the Michigan Freedom of Information Act, MCL 15.234, according to the City's FOIA Policies and Guidelines. If the City is seeking a 50% deposit prior to providing the public records sought, the estimate is itemized on this form, lines 2-7 below.

1. If all or a portion of the requested information is available on the City's website, the City is required to tell you it is available on the website and, where practicable, include a specific webpage address where the information is available. In this case

- ☐ None
☐ Some
☐ All

of the requested material can be found at the following webpage(s):

If the webpage is all the information you need, it is provided without charge. If, however, you still wish to receive a copy of material from the webpage, please let us know. The usual charge will apply if the City is required to produce copies of material from the webpage.

2. Labor Cost to Locate Records Not on City Website:

This is the cost of labor directly associated with the necessary searching for, locating, and examining public records in conjunction with receiving and fulfilling a granted written request. **This fee is being charged because failure to do so will result in unreasonably high costs to the City because of the nature of the request in this particular instance, specifically:** _____

The City will not charge more than the hourly wage of its lowest-paid employee capable of searching for, locating, and examining the public records in this particular instance, regardless of whether that person is available or who actually performs the labor.

These costs will be estimated and charged in 15 minute time increments; all partial time increments must be rounded down. *If the number of minutes is less than 15, there is no charge.*

Hourly Wage Charged: \$ _____

Charge per ¼ hour: \$ _____

OR

Hourly Wage with Fringe Benefit Cost: \$ _____

OR

Multiply the hourly wage by the percentage multiplier: _____ %
(up to 50% of the hourly wage) and add to the hourly wage for a total per hour rate.

Charge per ¼ hour: \$ _____

☐ Overtime rate charged as stipulated by Requestor (*overtime is not used to calculate the fringe benefit cost*)

To figure the number of increments, take the number of minutes: _____, divide by 15 and round down. Enter below:

Number of increments

x _____ =

2. Labor Cost

\$ _____

3. Labor Cost for Copying / Duplication of Records

This is the cost of labor directly associated with duplication of publications, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on non-paper physical media or through the Internet or other electronic means as stipulated by the requestor.

This shall not be more than the hourly wage of the City's lowest-paid employee capable of necessary duplication or publication in this particular instance, regardless of whether that person is available or who actually performs the labor.

These costs will be estimated and charged in **15 minute time increments**; all partial time increments must be rounded down. *If the number of minutes is less than one increment, there is no charge.*

Hourly Wage Charged: \$ _____

Charge per ¼ hour: \$ _____

OR

Hourly Wage with Fringe Benefit Cost: \$ _____

OR

Multiply the hourly wage by the percentage multiplier: _____ %
(up to 50% of the hourly wage) and add to the hourly wage for a total per hour rate.

Charge per ¼ hour: \$ _____

☐ Overtime rate charged as stipulated by Requestor (*overtime is not used to calculate the fringe benefit cost*)

To figure the number of increments, take the *number of minutes*: _____, divide by 15, and round down.
Enter below:

Number of increments

x _____ =

3. Labor Cost

\$ _____

4. Labor Cost for Copying/Duplicating Records Already on City's Website:

This shall not be more than the hourly wage of the City's lowest-paid employee capable of necessary duplication or publication in this particular instance, regardless of whether that person is available or who actually performs the labor. These costs will be estimated and charged in **15 minute time increments**; all partial time increments must be rounded down. *If the number of minutes is less than 15, there is no charge.*

Hourly Wage Charged: \$ _____

Charge per increment: \$ _____

OR

Hourly Wage with Fringe Benefit Cost: \$ _____

OR

Multiply the hourly wage by the percentage multiplier: _____ %
and add to the hourly wage for a total per hour rate.

Charge per increment: \$ _____

☐ Requestor has stipulated that some / all of the requested records that are already available on the City's website be provided in a paper or non-paper physical digital medium.

☐ Overtime rate charged as stipulated by Requestor

To figure the number of increments, take the *number of minutes*: _____, divide by 15, and round down.
Enter below:

Number of increments

x _____ =

4. Web Labor Cost

\$ _____

5. Labor Cost for Separating Exempt from Non-Exempt (Redacting): Material Not on City Website

The City will not charge for labor directly associated with redaction if it knows or has reason to know that it previously redacted the record in question and still has the redacted version in its possession.

This fee is being charged because failure to do so will result in unreasonably high costs to the City that are excessive and beyond the normal or usual amount for those services compared to the City's usual FOIA requests, because of the nature of the request in this particular instance, specifically: _____

This is the cost of labor of a **City employee**, including necessary review, directly associated with separating and deleting exempt from nonexempt information. This shall not be more than the hourly wage of the **City's lowest-paid employee** capable of separating and deleting exempt from nonexempt information in this particular instance, regardless of whether that person is available or who actually performs the labor.

These costs will be estimated and charged in **15 minute time increment**; all partial time increments must be rounded down. *If the number of minutes is less than 15, there is no charge.*

Hourly Wage Charged: \$ _____

Charge per increment: \$ _____

OR

Hourly Wage with Fringe Benefit Cost: \$ _____

OR

Multiply the hourly wage by the percentage multiplier: _____%
(up to 50% of the hourly wage) and add to the hourly wage for a total per hour rate.

Charge per increment: \$ _____

☐ Overtime rate charged as stipulated by Requestor (*overtime is not used to calculate the fringe benefit cost*)

6. Copying / Duplication Cost:

Copying costs may be charged if a copy of a public record is requested, or for the necessary copying of a record for inspection (*for example, to allow for blacking out exempt information, to protect old or delicate original records, or because the original record is a digital file or database not available for public inspection*).

No more than the actual cost of a sheet of paper, up to maximum 10 cents per sheet for:

- **Letter** (8 1/2 x 11-inch, single and double-sided): _____ cents per sheet
- **Legal** (8 1/2 x 14-inch, single and double-sided): _____ cents per sheet

No more than the actual cost of a sheet of paper for other paper sizes:

- **Other paper sizes** (single and double-sided): _____ cents / dollars per sheet

Actual and most reasonably economical cost of non-paper physical digital media:

- **Circle applicable:** Disc / Tape / Drive / Other Digital Medium **Cost per Item:** _____

The cost of paper copies **must** be calculated as a total cost per sheet of paper. The fee **cannot exceed** 10 cents per sheet of paper for copies of public records made on 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper. A City must utilize the most economical means available for making copies of public records, including using double-sided printing, if cost saving and available.

To figure the number of increments, take the *number of minutes*: _____, divide by 15, and round down. Enter below:

Number of increments

x _____ =

5. Labor Cost
\$ _____

Number of Sheets:

x _____ =

x _____ =

Costs:

x _____ =

\$ _____
\$ _____

x _____ =

\$ _____

No. of Items:

x _____ =

6. Total Copy Cost
\$ _____

7. Mailing Cost:

The City will charge the actual cost of mailing, if any, for sending records in a reasonably economical and justifiable manner. Delivery confirmation is not required.

- The City **may** charge for the least expensive form of postal delivery confirmation.
- The City **cannot** charge more for expedited shipping or insurance unless specifically requested by the requestor.*

Actual Cost of Envelope or Packaging: \$ _____

Actual Cost of Postage: \$ _____ per stamp
\$ _____ per pound
\$ _____ per package

Actual Cost (least expensive) Postal Delivery Confirmation: \$ _____

*Expedited Shipping or Insurance as Requested: \$ _____

☐ * Requestor has requested expedited shipping or insurance

Number of
Envelopes or
Packages:

x _____ =

x _____ =

x _____ =

x _____ =

x _____ =

x _____ =

Costs:

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

7. Total
Mailing Cost

\$ _____

8. Subtotal Fees Before Waivers, Discounts or Deposits:

- ☐ Cost estimate
☐ Bill

Estimated Time Frame to Provide Records:

_____ (days or date)

The time frame estimate is nonbinding upon the City, but the City is providing the estimate in good faith. Providing an estimated time frame does not relieve the City from any of the other requirements of this act.

1. Records on City
Website:

2. Labor Cost to Locate:

3. Labor Cost for Copying:

4. Labor Cost for Copying Records on Website:

5. Labor Cost to Redact:

6. Copying/Duplication Cost:

7. Mailing Cost:

8. Subtotal Fees:

No Charge

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

9. Good Faith Deposit:

If the estimated cost of responding to this request exceeds \$50.00, the City may collect up to 50% of that estimate (i.e., 50% of the amount on line 8) before responding.

x 50%

9. Good
Faith Deposit

\$ _____

<p>10. Waiver: Public Interest</p> <p>A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the City determines, upon request, that a waiver or reduction of the amount on line 8 above is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public.</p> <p><input type="checkbox"/> All fees are waived OR <input type="checkbox"/> All fees are reduced by: _____%</p>	<p>Subtotal from Line 8 Above as Affected by City's Decision Re: Requested Waiver:</p>	<p>\$ _____</p>
<p>11. Discount: Indigence</p> <p>A public record search must be made and a copy of a public record must be furnished without charge for the first \$20.00 of the fee for each request by an individual who is entitled to information under this act and who:</p> <p>1) Submits an affidavit stating that the individual is indigent and receiving specific public assistance, OR</p> <p>2) If not receiving public assistance, stating facts showing inability to pay the cost because of indigence.</p> <p>If a requestor is ineligible for the discount, the public body shall inform the requestor specifically of the reason for ineligibility in the public body's written response. An individual is ineligible for this fee reduction if ANY of the following apply:</p> <p>(i) The individual has previously received discounted copies of public records from the same public body twice during that calendar year, OR</p> <p>(ii) The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. A public body may require a statement by the requestor in the affidavit that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.</p> <p><input type="checkbox"/> Eligible for Indigence Discount</p>	<p>Subtotal Fees After Discount (subtract \$20 if eligible, otherwise enter amount from Line 10):</p>	<p>\$ _____</p>
<p>12. Discount: Nonprofit Organization</p> <p>A public record search must be made and a copy of a public record must be furnished without charge for the first \$20.00 of the fee for each request by a nonprofit organization formally designated by the state to carry out activities under subtitle C of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the federal Protection and Advocacy for Individuals with Mental Illness Act, if the request meets ALL of the following requirements:</p> <p>(i) Is made directly on behalf of the organization or its clients.</p> <p>(ii) Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Michigan Mental Health Code, 1974 PA 258, MCL 330.1931.</p> <p>(iii) Is accompanied by documentation of its designation by the state, if requested by the City.</p> <p><input type="checkbox"/> Eligible for Nonprofit Discount</p>	<p>Subtotal Fees After Discount (subtract \$20 if eligible, otherwise enter amount from Line 11):</p>	<p>\$ _____</p>
<p>13. Deposit: Previously Paid</p> <p>The City may require a good-faith deposit <u>before providing the public records to the requestor</u> if the entire fee estimate or charge authorized under this section exceeds \$50.00, based on a good-faith calculation of the total fee. The deposit cannot exceed 1/2 of the total estimated fee. Percent of Deposit: 50%</p>	<p>Date paid: _____</p>	<p>13a. \$ _____</p>

<p>Deposit: Increased Deposit Due to Previous FOIA Fees Not Paid In Full</p> <p>After a City has granted and fulfilled a written request from an individual under this act, if the City has not been paid in full the total amount of fees for the copies of public records that the township made available to the individual as a result of that written request, the City may require an increased estimated fee deposit of up to 100% of the estimated fee before it begins a full public record search for any subsequent written request from that individual if ALL of the following apply:</p> <p>(a) The final fee for the prior written request was not more than 105% of the estimated fee. (b) The public records made available contained the information being sought in the prior written request and are still in the City's possession. (c) The public records were made available to the individual, subject to payment, within the best effort estimated time frame given for the previous request. (d) Ninety (90) days have passed since the City notified the individual in writing that the public records were available for pickup or mailing. (e) The individual is unable to show proof of prior payment to the City. (f) The City calculates a detailed itemization, as required under MCL 15.234, that is the basis for the current written request's increased estimated fee deposit.</p> <p>A City can no longer require an increased estimated fee deposit from an individual if ANY of the following apply:</p> <p>(a) The individual is able to show proof of prior payment in full to the City, OR (b) The City is subsequently paid in full for the applicable prior written request, OR (c) Three hundred sixty-five (365) days have passed since the individual made the written request for which full payment was not remitted to the City.</p>	<p>Date paid: _____</p>	<p>Percent Deposit Required _____%</p> <p>13b Deposit Required \$ _____</p> <p>13c Balance from Line 12 after deducting any previously paid deposit. \$ _____</p>
<p>14. Late Response Labor Costs Reduction</p> <p>If the City does not respond to a written request in a timely manner as required under MCL 15.235(2), the City must do the following:</p> <p>(a) Reduce the charges for labor costs otherwise permitted by 5% for each day the City exceeds the time permitted for a response to the request, with a maximum 50% reduction.</p> <p>15. Balance Due (Deduct amount on Line 14 from amount on Line 13c)</p>	<p>Number of Days Over Required Response Time: _____</p> <p>Multiply by 5% _____</p> <p>= Total Percent Reduction: _____</p> <p>Date Paid _____</p>	<p>Total Labor Costs \$ _____</p> <p>Minus Reduction \$ _____</p> <p>= Reduced Total Labor Costs \$ _____</p> <p>Total Balance Due: \$ _____</p>
<p>The Public Summary of the City's FOIA Procedures and Guidelines is available free of charge from: Website: _____ Email: _____ Phone: _____ Address: _____</p> <p>Request Will Be Processed, But <u>Balance Must Be Paid Before</u> Copies May Be Picked Up, Delivered or Mailed</p>		

Form created by Michigan Townships Association and the City of Livonia April 2015

P:\FOIA\City of Livonia Cost Worksheet April 2015.doc

FREEDOM OF INFORMATION ACT
Act 442 of 1976

15.231 Short title; public policy.

Sec. 1.

(1) This act shall be known and may be cited as the "freedom of information act".

(2) It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, 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 public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

15.232 Definitions.

Sec. 2.

As used in this act:

(a) "Field name" means the label or identification of an element of a computer data base that contains a specific item of information, and includes but is not limited to a subject heading such as a column header, data dictionary, or record layout.

(b) "FOIA coordinator" means either of the following:

(i) An individual who is a public body.

(ii) An individual designated by a public body in accordance with section 6 to accept and process requests for public records under this act.

(c) "Person" means an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.

(d) "Public body" means any of the following:

(i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof.

(ii) An agency, board, commission, or council in the legislative branch of the state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.

(iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

(v) The judiciary, including the office of the county clerk and employees thereof when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.

(e) "Public record" 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. Public record does not include computer software. This act separates public records into the following 2 classes:

(i) Those that are exempt from disclosure under section 13.

(ii) All public records that are not exempt from disclosure under section 13 and which are subject to disclosure under this act.

(f) "Software" means a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result. Software does not include computer-stored information or data, or a field name if disclosure of that field name does not violate a software license.

(g) "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.

(h) "Writing" means 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.

(i) "Written request" means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.

15.233 Public records; right to inspect, copy, or receive; subscriptions; forwarding requests; file; inspection and examination; memoranda or abstracts; rules; compilation, summary, or report of information; creation of new public record; certified copies.

Sec. 3.

(1) Except as expressly provided in section 13, upon providing a public body's FOIA coordinator with a written request that describes a public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy, or receive copies of the requested public record of the public body. A person has a right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to 6 months, at the request of the subscriber, and shall be renewable. An employee of a public body who receives a request for a public record shall promptly forward that request to the freedom of information act coordinator.

(2) A freedom of information act coordinator shall keep a copy of all written requests for public records on file for no less than 1 year.

(3) A public body shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions. A public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction.

(4) This act does not require a public body to make a compilation, summary, or report of information, except as required in section 11.

(5) This act does not require a public body to create a new public record, except as required in section 11, and to the extent required by this act for the furnishing of copies, or edited copies pursuant to section 14(1), of an already existing public record.

(6) The custodian of a public record shall, upon written request, furnish a requesting person a certified copy of a public record.

Sec. 4. (1) A public body may charge a fee for a public record search, **FOR** the necessary copying of a public record for inspection, or for providing a copy of a public record **IF IT HAS**

ESTABLISHED, MAKES PUBLICLY AVAILABLE, AND FOLLOWS PROCEDURES AND GUIDELINES TO IMPLEMENT THIS SECTION AS DESCRIBED IN SUBSECTION

(4). Subject to subsections **(2), (3), (4), (5), AND (9),** the fee shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14. **EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, IF THE**

PUBLIC BODY ESTIMATES OR CHARGES A FEE IN ACCORDANCE WITH THIS ACT, THE TOTAL FEE SHALL NOT EXCEED THE SUM OF THE FOLLOWING COMPONENTS:

(A) THAT PORTION OF LABOR COSTS DIRECTLY ASSOCIATED WITH THE 7 NECESSARY SEARCHING FOR, LOCATING, AND EXAMINING OF PUBLIC RECORDS IN CONJUNCTION WITH RECEIVING AND FULFILLING A GRANTED WRITTEN REQUEST. THE PUBLIC BODY SHALL NOT CHARGE MORE THAN THE HOURLY WAGE OF ITS LOWEST-PAID EMPLOYEE CAPABLE OF SEARCHING FOR, LOCATING, AND EXAMINING THE PUBLIC RECORDS IN THE PARTICULAR INSTANCE REGARDLESS OF WHETHER THAT PERSON IS AVAILABLE OR WHO ACTUALLY PERFORMS THE LABOR. LABOR COSTS UNDER THIS SUBDIVISION SHALL BE ESTIMATED AND CHARGED IN INCREMENTS OF 15 MINUTES OR MORE, WITH ALL PARTIAL TIME INCREMENTS ROUNDED DOWN.

(B) THAT PORTION OF LABOR COSTS, INCLUDING NECESSARY REVIEW, IF ANY, DIRECTLY ASSOCIATED WITH THE SEPARATING AND DELETING OF EXEMPT INFORMATION FROM NONEXEMPT INFORMATION AS PROVIDED IN SECTION 14. FOR SERVICES PERFORMED BY AN EMPLOYEE OF THE PUBLIC BODY, THE PUBLIC BODY SHALL NOT CHARGE MORE THAN THE HOURLY WAGE OF ITS LOWEST-PAID EMPLOYEE CAPABLE OF SEPARATING AND DELETING EXEMPT INFORMATION FROM NONEXEMPT INFORMATION IN THE PARTICULAR INSTANCE AS PROVIDED IN SECTION 14, REGARDLESS OF WHETHER THAT PERSON IS AVAILABLE OR WHO ACTUALLY PERFORMS THE LABOR. IF A PUBLIC BODY DOES NOT EMPLOY A PERSON CAPABLE OF SEPARATING AND DELETING EXEMPT INFORMATION FROM NONEXEMPT INFORMATION IN THE PARTICULAR INSTANCE AS PROVIDED IN SECTION 14 AS DETERMINED BY THE PUBLIC BODY'S FOIA COORDINATOR ON A CASE-BY-CASE BASIS, IT MAY TREAT NECESSARY CONTRACTED LABOR COSTS USED FOR THE SEPARATING AND DELETING OF EXEMPT INFORMATION FROM NONEXEMPT INFORMATION IN THE SAME MANNER AS EMPLOYEE LABOR COSTS WHEN CALCULATING CHARGES UNDER THIS SUBDIVISION IF IT CLEARLY NOTES THE NAME OF THE CONTRACTED PERSON OR FIRM ON THE DETAILED ITEMIZATION DESCRIBED UNDER SUBSECTION (4). TOTAL LABOR COSTS CALCULATED UNDER THIS SUBDIVISION FOR CONTRACTED LABOR COSTS SHALL NOT EXCEED AN AMOUNT EQUAL TO 6 TIMES THE STATE MINIMUM HOURLY WAGE RATE DETERMINED UNDER SECTION 4 OF THE WORKFORCE OPPORTUNITY WAGE ACT, 2014 PA 138, MCL 408.411 TO 408.424. LABOR COSTS UNDER THIS SUBDIVISION SHALL BE ESTIMATED AND CHARGED IN INCREMENTS OF 15 MINUTES OR MORE, WITH ALL PARTIAL TIME INCREMENTS ROUNDED DOWN. A PUBLIC BODY SHALL NOT CHARGE FOR LABOR DIRECTLY ASSOCIATED WITH REDACTION UNDER SECTION 14 IF IT KNOWS OR HAS REASON TO KNOW THAT IT PREVIOUSLY REDACTED THE PUBLIC RECORD IN QUESTION AND THE REDACTED VERSION IS STILL IN THE PUBLIC BODY'S POSSESSION.

(C) FOR PUBLIC RECORDS PROVIDED TO THE REQUESTOR ON NONPAPER PHYSICAL MEDIA, THE ACTUAL AND MOST REASONABLY ECONOMICAL COST OF THE COMPUTER DISCS, COMPUTER TAPES, OR OTHER DIGITAL OR SIMILAR MEDIA. THE REQUESTOR MAY STIPULATE THAT THE PUBLIC RECORDS BE PROVIDED ON NONPAPER PHYSICAL MEDIA, ELECTRONICALLY MAILED, OR OTHERWISE ELECTRONICALLY PROVIDED TO HIM OR HER IN LIEU OF PAPER COPIES. THIS SUBDIVISION DOES NOT APPLY IF A PUBLIC BODY LACKS THE TECHNOLOGICAL CAPABILITY NECESSARY TO PROVIDE RECORDS ON THE PARTICULAR NONPAPER PHYSICAL MEDIA STIPULATED IN THE PARTICULAR

INSTANCE.

(D) FOR PAPER COPIES 1 OF PUBLIC RECORDS PROVIDED TO THE REQUESTOR, THE ACTUAL TOTAL INCREMENTAL COST OF NECESSARY DUPLICATION OR PUBLICATION, NOT INCLUDING LABOR. THE COST OF PAPER COPIES SHALL BE CALCULATED AS A TOTAL COST PER SHEET OF PAPER AND SHALL BE ITEMIZED AND NOTED IN A MANNER THAT EXPRESSES BOTH THE COST PER SHEET AND THE NUMBER OF SHEETS PROVIDED. THE FEE SHALL NOT EXCEED 10 CENTS PER SHEET OF PAPER FOR COPIES OF PUBLIC RECORDS MADE ON 8-1/2- BY 11-INCH PAPER OR 8-1/2- BY 14-INCH PAPER. A PUBLIC BODY SHALL UTILIZE THE MOST ECONOMICAL MEANS AVAILABLE FOR MAKING COPIES OF PUBLIC RECORDS, INCLUDING USING DOUBLE-SIDED PRINTING, IF COST SAVING AND AVAILABLE.

(E) THE COST OF LABOR DIRECTLY ASSOCIATED WITH DUPLICATION OR PUBLICATION, INCLUDING MAKING PAPER COPIES, MAKING DIGITAL COPIES, OR TRANSFERRING DIGITAL PUBLIC RECORDS TO BE GIVEN TO THE REQUESTOR ON NONPAPER PHYSICAL MEDIA OR THROUGH THE INTERNET OR OTHER ELECTRONIC MEANS AS STIPULATED BY THE REQUESTOR. THE PUBLIC BODY SHALL NOT CHARGE MORE THAN THE HOURLY WAGE OF ITS LOWEST-PAID EMPLOYEE CAPABLE OF NECESSARY DUPLICATION OR PUBLICATION IN THE PARTICULAR INSTANCE, REGARDLESS OF WHETHER THAT PERSON IS AVAILABLE OR WHO ACTUALLY PERFORMS THE LABOR. LABOR COSTS UNDER THIS SUBDIVISION MAY BE ESTIMATED AND CHARGED IN TIME INCREMENTS OF THE PUBLIC BODY'S CHOOSING; HOWEVER, ALL PARTIAL TIME INCREMENTS SHALL BE ROUNDED DOWN.

(F) THE ACTUAL COST OF MAILING, IF ANY, FOR SENDING THE PUBLIC RECORDS IN A REASONABLY ECONOMICAL AND JUSTIFIABLE MANNER. THE PUBLIC BODY SHALL NOT CHARGE MORE FOR EXPEDITED SHIPPING OR INSURANCE UNLESS SPECIFICALLY STIPULATED BY THE REQUESTOR, BUT MAY OTHERWISE CHARGE FOR THE LEAST EXPENSIVE FORM OF POSTAL DELIVERY CONFIRMATION WHEN MAILING PUBLIC RECORDS.

(2) WHEN CALCULATING LABOR COSTS UNDER SUBSECTION (1) (A), (B), OR (E), FEE COMPONENTS SHALL BE ITEMIZED IN A MANNER THAT EXPRESSES BOTH THE HOURLY WAGE AND THE NUMBER OF HOURS CHARGED. THE PUBLIC BODY MAY ALSO ADD UP TO 50% TO THE APPLICABLE LABOR CHARGE AMOUNT TO COVER OR PARTIALLY COVER THE COST OF FRINGE BENEFITS IF IT CLEARLY NOTES THE PERCENTAGE MULTIPLIER USED TO ACCOUNT FOR BENEFITS IN THE DETAILED ITEMIZATION DESCRIBED IN SUBSECTION (4). SUBJECT TO THE 50% LIMITATION, THE PUBLIC BODY SHALL NOT CHARGE MORE THAN THE ACTUAL COST OF FRINGE BENEFITS, AND OVERTIME WAGES SHALL NOT BE USED IN CALCULATING THE COST OF FRINGE BENEFITS. OVERTIME WAGES SHALL NOT BE INCLUDED IN THE CALCULATION OF LABOR COSTS UNLESS OVERTIME IS SPECIFICALLY STIPULATED BY THE REQUESTOR AND CLEARLY NOTED ON THE DETAILED ITEMIZATION DESCRIBED IN SUBSECTION (4). A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest because searching

for or furnishing copies of the public record can be considered as primarily benefiting the general public. A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request **BY EITHER OF THE FOLLOWING:**

(A) AN individual who is entitled to information under this act and who submits an affidavit stating that the individual is INDIGENT AND RECEIVING SPECIFIC public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency. IF THE REQUESTOR IS ELIGIBLE FOR A REQUESTED DISCOUNT, THE PUBLIC BODY SHALL FULLY NOTE THE DISCOUNT ON THE DETAILED ITEMIZATION DESCRIBED UNDER SUBSECTION (4). IF A REQUESTOR IS INELIGIBLE FOR THE DISCOUNT, THE PUBLIC BODY SHALL INFORM THE REQUESTOR SPECIFICALLY OF THE REASON FOR INELIGIBILITY IN THE PUBLIC BODY'S WRITTEN RESPONSE. AN INDIVIDUAL IS INELIGIBLE FOR THIS FEE REDUCTION IF ANY OF THE FOLLOWING APPLY:

(i) THE INDIVIDUAL HAS PREVIOUSLY RECEIVED DISCOUNTED COPIES OF PUBLIC RECORDS UNDER THIS SUBSECTION FROM THE SAME PUBLIC BODY TWICE DURING THAT CALENDAR YEAR.

(ii) THE INDIVIDUAL REQUESTS THE INFORMATION IN CONJUNCTION WITH OUTSIDE PARTIES WHO ARE OFFERING OR PROVIDING PAYMENT OR OTHER REMUNERATION TO THE INDIVIDUAL TO MAKE THE REQUEST. A PUBLIC BODY MAY REQUIRE A STATEMENT BY THE REQUESTOR IN THE AFFIDAVIT THAT THE REQUEST IS NOT BEING MADE IN CONJUNCTION WITH OUTSIDE PARTIES IN EXCHANGE FOR PAYMENT OR OTHER REMUNERATION.

(B) A NONPROFIT ORGANIZATION FORMALLY DESIGNATED BY THE STATE TO CARRY OUT ACTIVITIES UNDER SUBTITLE C OF THE DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT OF 2000, PUBLIC LAW 106-402, AND THE PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS ACT, PUBLIC LAW 99-319, OR THEIR SUCCESSORS, IF THE REQUEST MEETS ALL OF THE FOLLOWING REQUIREMENTS:

(i) IS MADE DIRECTLY ON BEHALF OF THE ORGANIZATION OR ITS CLIENTS.

(ii) IS MADE FOR A REASON WHOLLY CONSISTENT WITH THE MISSION AND PROVISIONS OF THOSE LAWS UNDER SECTION 931 OF THE MENTAL HEALTH CODE, 1974 PA 258, MCL 330.1931.

(iii) IS ACCOMPANIED BY DOCUMENTATION OF ITS DESIGNATION BY THE STATE, IF REQUESTED BY THE PUBLIC BODY.

(3) A fee AS DESCRIBED IN SUBSECTION (1) shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14 unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs.

(4) A PUBLIC BODY SHALL ESTABLISH PROCEDURES AND GUIDELINES TO

IMPLEMENT THIS ACT AND SHALL CREATE A WRITTEN PUBLIC SUMMARY OF THE SPECIFIC PROCEDURES AND GUIDELINES RELEVANT TO THE GENERAL PUBLIC REGARDING HOW TO SUBMIT WRITTEN REQUESTS TO THE PUBLIC BODY AND EXPLAINING HOW TO UNDERSTAND A PUBLIC BODY'S WRITTEN RESPONSES, DEPOSIT REQUIREMENTS, FEE CALCULATIONS, AND AVENUES FOR CHALLENGE AND APPEAL. THE WRITTEN PUBLIC SUMMARY SHALL BE WRITTEN IN A MANNER SO AS TO BE EASILY UNDERSTOOD BY THE GENERAL PUBLIC. IF THE PUBLIC BODY DIRECTLY OR INDIRECTLY ADMINISTERS OR MAINTAINS AN OFFICIAL INTERNET PRESENCE, IT SHALL POST AND MAINTAIN THE PROCEDURES AND GUIDELINES AND ITS WRITTEN PUBLIC SUMMARY ON ITS WEBSITE. A PUBLIC BODY SHALL MAKE THE PROCEDURES AND GUIDELINES PUBLICLY AVAILABLE BY PROVIDING FREE COPIES OF THE PROCEDURES AND GUIDELINES AND ITS WRITTEN PUBLIC SUMMARY BOTH IN THE PUBLIC BODY'S RESPONSE TO A WRITTEN REQUEST AND UPON REQUEST BY VISITORS AT THE PUBLIC BODY'S OFFICE. A PUBLIC BODY THAT POSTS AND MAINTAINS PROCEDURES AND GUIDELINES AND ITS WRITTEN PUBLIC SUMMARY ON ITS WEBSITE MAY INCLUDE THE WEBSITE LINK TO THE DOCUMENTS IN LIEU OF PROVIDING PAPER COPIES IN ITS RESPONSE TO A WRITTEN REQUEST. A PUBLIC BODY'S PROCEDURES AND GUIDELINES SHALL INCLUDE THE USE OF A STANDARD FORM FOR DETAILED ITEMIZATION OF ANY FEE AMOUNT IN ITS RESPONSES TO WRITTEN REQUESTS UNDER THIS ACT. THE DETAILED ITEMIZATION SHALL CLEARLY LIST AND EXPLAIN THE ALLOWABLE CHARGES FOR EACH OF THE 6 FEE COMPONENTS LISTED UNDER SUBSECTION (1) THAT COMPOSE THE TOTAL FEE USED FOR ESTIMATING OR CHARGING PURPOSES. OTHER PUBLIC BODIES MAY USE A FORM CREATED BY THE DEPARTMENT OF TECHNOLOGY, MANAGEMENT, AND BUDGET OR CREATE A FORM OF THEIR OWN THAT COMPLIES WITH THIS SUBSECTION. A PUBLIC BODY THAT HAS NOT ESTABLISHED PROCEDURES AND GUIDELINES, HAS NOT CREATED A WRITTEN PUBLIC SUMMARY, OR HAS NOT MADE THOSE ITEMS PUBLICLY AVAILABLE WITHOUT CHARGE AS REQUIRED IN THIS SUBSECTION IS NOT RELIEVED OF ITS DUTY TO COMPLY WITH ANY REQUIREMENT OF THIS ACT AND SHALL NOT REQUIRE DEPOSITS OR CHARGE FEES OTHERWISE PERMITTED UNDER THIS ACT UNTIL IT IS IN COMPLIANCE WITH THIS SUBSECTION. NOTWITHSTANDING THIS SUBSECTION AND DESPITE ANY LAW TO THE CONTRARY, A PUBLIC BODY'S PROCEDURES AND GUIDELINES UNDER THIS ACT ARE NOT EXEMPT PUBLIC RECORDS UNDER SECTION 13.

(5) IF THE PUBLIC BODY DIRECTLY OR INDIRECTLY ADMINISTERS OR MAINTAINS AN OFFICIAL INTERNET PRESENCE, ANY PUBLIC RECORDS AVAILABLE TO THE GENERAL PUBLIC ON THAT INTERNET SITE AT THE TIME THE REQUEST IS MADE ARE EXEMPT FROM ANY CHARGES UNDER SUBSECTION (1) (B). IF THE FOIA COORDINATOR KNOWS OR HAS REASON TO KNOW THAT ALL OR A PORTION OF THE REQUESTED INFORMATION IS AVAILABLE ON ITS WEBSITE, THE PUBLIC BODY SHALL NOTIFY THE REQUESTOR IN ITS WRITTEN RESPONSE THAT ALL OR A PORTION OF THE REQUESTED INFORMATION IS AVAILABLE ON ITS WEBSITE. THE WRITTEN RESPONSE, TO THE DEGREE PRACTICABLE IN THE SPECIFIC INSTANCE, SHALL INCLUDE A SPECIFIC WEBPAGE ADDRESS WHERE THE REQUESTED INFORMATION IS AVAILABLE. ON THE DETAILED ITEMIZATION DESCRIBED IN SUBSECTION (4), THE PUBLIC BODY SHALL SEPARATE THE REQUESTED PUBLIC RECORDS THAT ARE AVAILABLE ON ITS WEBSITE FROM THOSE THAT ARE NOT AVAILABLE ON THE WEBSITE AND SHALL INFORM THE REQUESTOR OF THE ADDITIONAL CHARGE TO RECEIVE COPIES OF THE PUBLIC RECORDS THAT ARE AVAILABLE ON ITS WEBSITE. IF THE PUBLIC BODY HAS INCLUDED THE WEBSITE ADDRESS FOR A RECORD IN ITS WRITTEN RESPONSE TO THE REQUESTOR AND THE REQUESTOR THEREAFTER STIPULATES THAT THE PUBLIC RECORD BE PROVIDED TO HIM OR HER IN A PAPER FORMAT OR OTHER FORM AS DESCRIBED UNDER SUBSECTION (1) (C), THE PUBLIC BODY SHALL PROVIDE THE PUBLIC RECORDS IN THE SPECIFIED

FORMAT BUT MAY USE A FRINGE BENEFIT MULTIPLIER 1 GREATER THAN THE 50% LIMITATION IN SUBSECTION (2), NOT TO EXCEED THE ACTUAL COSTS OF PROVIDING THE INFORMATION IN THE SPECIFIED FORMAT.

(6) A PUBLIC BODY MAY PROVIDE REQUESTED INFORMATION AVAILABLE IN PUBLIC RECORDS WITHOUT RECEIPT OF A WRITTEN REQUEST.

(7) IF A VERBAL REQUEST FOR INFORMATION IS FOR INFORMATION THAT A PUBLIC BODY BELIEVES IS AVAILABLE ON THE PUBLIC BODY'S WEBSITE, THE PUBLIC EMPLOYEE SHALL, WHERE PRACTICABLE AND TO THE BEST OF THE PUBLIC EMPLOYEE'S KNOWLEDGE, INFORM THE REQUESTOR ABOUT THE PUBLIC BODY'S PERTINENT WEBSITE ADDRESS.

(8) IN EITHER THE PUBLIC BODY'S INITIAL RESPONSE OR SUBSEQUENT RESPONSE AS DESCRIBED UNDER SECTION 5(2)(D), THE PUBLIC BODY MAY REQUIRE A GOOD-FAITH DEPOSIT FROM THE PERSON REQUESTING INFORMATION BEFORE PROVIDING THE PUBLIC RECORDS TO THE REQUESTOR IF THE ENTIRE FEE ESTIMATE OR CHARGE AUTHORIZED UNDER THIS SECTION EXCEEDS \$50.00, BASED ON A GOOD-FAITH CALCULATION OF THE TOTAL FEE DESCRIBED IN SUBSECTION (4). SUBJECT TO SUBSECTION (10), THE DEPOSIT SHALL NOT EXCEED 1/2 OF THE TOTAL ESTIMATED FEE, AND A PUBLIC BODY'S REQUEST FOR A DEPOSIT SHALL INCLUDE A DETAILED ITEMIZATION AS REQUIRED UNDER SUBSECTION (4). THE RESPONSE SHALL ALSO CONTAIN A BEST EFFORTS ESTIMATE BY THE PUBLIC BODY REGARDING THE TIME FRAME IT WILL TAKE THE PUBLIC BODY TO COMPLY WITH THE LAW IN PROVIDING THE PUBLIC RECORDS TO THE REQUESTOR. THE TIME FRAME ESTIMATE IS NONBINDING UPON THE PUBLIC BODY, BUT THE PUBLIC BODY SHALL PROVIDE THE ESTIMATE IN GOOD FAITH AND STRIVE TO BE REASONABLY ACCURATE AND TO PROVIDE THE PUBLIC RECORDS IN A MANNER BASED ON THIS STATE'S PUBLIC POLICY UNDER SECTION 1 AND THE NATURE OF THE REQUEST IN THE PARTICULAR INSTANCE. IF A PUBLIC BODY DOES NOT RESPOND IN A TIMELY MANNER AS DESCRIBED UNDER SECTION 5(2), IT IS NOT RELIEVED FROM ITS REQUIREMENTS TO PROVIDE PROPER FEE CALCULATIONS AND TIME FRAME ESTIMATES IN ANY TARDY RESPONSES. PROVIDING AN ESTIMATED TIME FRAME DOES NOT RELIEVE A PUBLIC BODY FROM ANY OF THE OTHER REQUIREMENTS OF THIS ACT.

(9) IF A PUBLIC BODY DOES NOT RESPOND TO A WRITTEN REQUEST IN A TIMELY MANNER AS REQUIRED UNDER SECTION 5(2), THE PUBLIC BODY SHALL DO THE FOLLOWING:

(A) REDUCE THE CHARGES FOR LABOR COSTS OTHERWISE PERMITTED UNDER THIS SECTION BY 5% FOR EACH DAY THE PUBLIC BODY EXCEEDS THE TIME PERMITTED UNDER SECTION 5(2) FOR A RESPONSE TO THE REQUEST, WITH A MAXIMUM 50% REDUCTION, IF EITHER OF THE FOLLOWING APPLIES:

(i) THE LATE RESPONSE WAS WILLFUL AND INTENTIONAL.

(ii) THE WRITTEN REQUEST INCLUDED LANGUAGE THAT CONVEYED A REQUEST FOR INFORMATION WITHIN THE FIRST 250 WORDS OF THE BODY OF A LETTER, FACSIMILE, ELECTRONIC MAIL, OR ELECTRONIC MAIL ATTACHMENT, OR SPECIFICALLY INCLUDED THE WORDS, CHARACTERS, OR ABBREVIATIONS FOR "FREEDOM OF

INFORMATION", "INFORMATION", "FOIA", "COPY", OR A RECOGNIZABLE MISSPELLING OF SUCH, OR APPROPRIATE LEGAL CODE REFERENCE FOR THIS ACT, ON THE FRONT OF AN ENVELOPE, OR IN THE SUBJECT LINE OF AN ELECTRONIC MAIL, LETTER, OR FACSIMILE COVER PAGE.

(B) IF A CHARGE REDUCTION IS REQUIRED UNDER SUBDIVISION (A), FULLY NOTE THE CHARGE REDUCTION ON THE DETAILED ITEMIZATION DESCRIBED UNDER SUBSECTION (4).

(10) This section 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.

(11) SUBJECT TO SUBSECTION (12), AFTER A PUBLIC BODY HAS GRANTED AND FULFILLED A WRITTEN REQUEST FROM AN INDIVIDUAL UNDER THIS ACT, IF THE PUBLIC BODY HAS NOT BEEN PAID IN FULL THE TOTAL AMOUNT UNDER SUBSECTION (1) FOR THE COPIES OF PUBLIC RECORDS THAT THE PUBLIC BODY MADE AVAILABLE TO THE INDIVIDUAL AS A RESULT OF THAT WRITTEN REQUEST, THE PUBLIC BODY MAY REQUIRE A DEPOSIT OF UP TO 100% OF THE ESTIMATED FEE BEFORE IT BEGINS A FULL PUBLIC RECORD SEARCH FOR ANY SUBSEQUENT WRITTEN REQUEST FROM THAT INDIVIDUAL IF ALL OF THE FOLLOWING APPLY:

(A) THE FINAL FEE FOR THE PRIOR WRITTEN REQUEST WAS NOT MORE THAN 105% OF THE ESTIMATED FEE.

(B) THE PUBLIC RECORDS MADE AVAILABLE CONTAINED THE INFORMATION BEING SOUGHT IN THE PRIOR WRITTEN REQUEST AND ARE STILL IN THE PUBLIC BODY'S POSSESSION.

(C) THE PUBLIC RECORDS WERE MADE AVAILABLE TO THE INDIVIDUAL, SUBJECT TO PAYMENT, WITHIN THE TIME FRAME ESTIMATE DESCRIBED UNDER SUBSECTION (7).

(D) NINETY DAYS HAVE PASSED SINCE THE PUBLIC BODY NOTIFIED THE INDIVIDUAL IN WRITING THAT THE PUBLIC RECORDS WERE AVAILABLE FOR PICKUP OR MAILING.

(E) THE INDIVIDUAL IS UNABLE TO SHOW PROOF OF PRIOR PAYMENT TO THE PUBLIC BODY.

(F) THE PUBLIC BODY CALCULATES A DETAILED ITEMIZATION, AS REQUIRED UNDER SUBSECTION (4), THAT IS THE BASIS FOR THE CURRENT WRITTEN REQUEST'S INCREASED ESTIMATED FEE DEPOSIT.

(12) A PUBLIC BODY SHALL NO LONGER REQUIRE AN INCREASED ESTIMATED FEE DEPOSIT FROM AN INDIVIDUAL AS DESCRIBED UNDER SUBSECTION (11) IF ANY OF THE FOLLOWING APPLY:

(A) THE INDIVIDUAL IS ABLE TO SHOW PROOF OF PRIOR PAYMENT IN FULL TO THE PUBLIC BODY.

(B) THE PUBLIC BODY IS SUBSEQUENTLY PAID IN FULL FOR THE APPLICABLE PRIOR WRITTEN REQUEST.

(C) THREE HUNDRED SIXTY-FIVE DAYS HAVE PASSED SINCE THE INDIVIDUAL MADE THE WRITTEN REQUEST FOR WHICH FULL PAYMENT WAS NOT REMITTED TO THE PUBLIC BODY.

(13) A DEPOSIT REQUIRED BY A PUBLIC BODY UNDER THIS ACT IS A FEE.

Sec. 5. (1) Except as provided in section 3, a person desiring to inspect or receive a copy of a public record shall make a written request for the public record to the FOIA coordinator of a public body. A written request made by facsimile, electronic mail, or other electronic transmission is not received by a public body's FOIA coordinator until 1 business day after the electronic transmission is made. HOWEVER, IF A WRITTEN REQUEST IS SENT BY ELECTRONIC MAIL AND DELIVERED TO THE PUBLIC BODY'S SPAM OR JUNK MAIL FOLDER, THE REQUEST IS NOT RECEIVED UNTIL 1 DAY AFTER THE PUBLIC BODY FIRST BECOMES AWARE OF THE WRITTEN REQUEST. THE PUBLIC BODY SHALL NOTE IN ITS RECORDS BOTH THE TIME A WRITTEN REQUEST IS DELIVERED TO ITS SPAM OR JUNK-MAIL FOLDER AND THE TIME THE PUBLIC BODY FIRST BECOMES AWARE OF THAT REQUEST.

(2) Unless otherwise agreed to in writing by the person making the request, a public body shall respond to a request for a public record within 5 business days after the public body receives the request by doing 1 of the following:

- (a) Granting the request.**
- (b) Issuing a written notice to the requesting person denying the request.**
- (c) Granting the request in part and issuing a written notice to the requesting person denying the request in part.**
- (d) Issuing a notice extending for not more than 10 business days the period during which the public body shall respond to the request. A public body shall not issue more than 1 notice of extension for a particular request.**

(3) Failure to respond to a request pursuant to subsection (2) constitutes a public body's final determination to deny the request IF EITHER OF THE FOLLOWING APPLIES:

- (A) THE FAILURE WAS WILLFUL AND INTENTIONAL.**
- (B) THE WRITTEN REQUEST INCLUDED LANGUAGE THAT CONVEYED A REQUEST FOR INFORMATION WITHIN THE FIRST 250 WORDS OF THE BODY OF A LETTER, FACSIMILE, ELECTRONIC MAIL, OR ELECTRONIC MAIL ATTACHMENT, OR SPECIFICALLY INCLUDED THE WORDS, CHARACTERS, OR ABBREVIATIONS FOR "FREEDOM OF INFORMATION", "INFORMATION", "FOIA", "COPY", OR A RECOGNIZABLE MISPELLING OF SUCH, OR APPROPRIATE LEGAL CODE REFERENCE TO THIS ACT, ON THE FRONT OF AN ENVELOPE OR IN THE SUBJECT LINE OF AN ELECTRONIC MAIL, LETTER, OR FACSIMILE COVER PAGE.**

(4) In a **CIVIL** action to compel a public body's disclosure of a public record under section 10, the court shall assess damages against the public body pursuant to section 10(7) if the court has done both of the following:

- (a) Determined that the public body has not complied with subsection (2).
- (b) Ordered the public body to disclose or provide copies of all or a portion of the public record.

(5) A written notice denying a request for a public record in whole or in part is a public body's final determination to deny the request or portion of that request. The written notice shall contain:

- (a) An explanation of the basis under this act or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.
- (b) A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion of the request.
- (c) A description of a public record or information on a public record that is separated or deleted pursuant to section 14, if a separation or deletion is made.
- (d) A full explanation of the requesting person's right to do either of the following:
 - (i) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial.
 - (ii) Seek judicial review of the denial under section 10.
- (e) Notice of the right to receive attorneys' fees and damages as provided in section 10 if, after judicial review, the circuit court determines that the public body has not complied with this section and orders disclosure of all or a portion of a public record.

(6) The individual designated in section 6 as responsible for the denial of the request shall sign the written notice of denial.

(7) If a public body issues a notice extending the period for a response to the request, the notice shall specify the reasons for the extension and the date by which the public body will do 1 of the following:

- (a) Grant the request.
- (b) Issue a written notice to the requesting person denying the request.
- (c) Grant the request in part and issue a written notice to the requesting person denying the request in part.

(8) If a public body makes a final determination to deny in whole or in part a request to inspect or receive a copy of a public record or portion of that public record, the requesting person may do either of the following:

- (a) Appeal the denial to the head of the public body pursuant to section 10.
- (b) Commence **A CIVIL ACTION**, pursuant to section 10.

15.236 FOIA coordinator.

Sec. 6.

(1) A public body that is a city, village, township, county, or state department, or under the control of a city, village, township, county, or state department, shall designate an individual as the public body's FOIA coordinator. The FOIA coordinator shall be responsible for accepting and processing requests for the public body's public records under this act and shall be responsible for approving a denial under section 5(4) and (5). In a county not having an executive form of government, the chairperson of the county board of commissioners is designated the FOIA coordinator for that county.

(2) For all other public bodies, the chief administrative officer of the respective public body is designated the public body's FOIA coordinator.

(3) An FOIA coordinator may designate another individual to act on his or her behalf in accepting and processing requests for the public body's public records, and in approving a denial under section 5(4) and (5).

Sec. 10. (1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(b) Commence **A CIVIL** action in the circuit court, **OR IF THE DECISION OF A STATE PUBLIC BODY IS AT ISSUE, THE COURT OF CLAIMS**, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 **BUSINESS** days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

- (a) Reverse the disclosure denial.
- (b) Issue a written notice to the requesting person upholding the disclosure denial.
- (c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.
- (d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing **A CIVIL ACTION** under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. **VENUE FOR AN ACTION AGAINST A**

LOCAL PUBLIC BODY IS PROPER IN THE circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall **ORDER THE**

PUBLIC BODY TO PAY A CIVIL FINE OF \$1,000.00, WHICH SHALL BE DEPOSITED INTO THE GENERAL FUND OF THE STATE TREASURY. THE COURT

SHALL award, in addition to any actual or compensatory damages, punitive damages in the amount of **\$1,000.00** to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

SEC. 10A. (1) IF A PUBLIC BODY REQUIRES A FEE THAT EXCEEDS THE AMOUNT PERMITTED UNDER ITS PUBLICLY AVAILABLE PROCEDURES AND GUIDELINES OR SECTION 4, THE REQUESTING PERSON MAY DO ANY OF THE FOLLOWING:

(A) IF THE PUBLIC BODY PROVIDES FOR FEE APPEALS TO THE HEAD OF THE PUBLIC BODY IN ITS PUBLICLY AVAILABLE PROCEDURES AND GUIDELINES, SUBMIT TO THE HEAD OF THE PUBLIC BODY A WRITTEN APPEAL FOR A FEE REDUCTION THAT SPECIFICALLY STATES THE WORD "APPEAL" AND IDENTIFIES HOW THE REQUIRED FEE EXCEEDS THE AMOUNT PERMITTED UNDER THE PUBLIC BODY'S AVAILABLE PROCEDURES AND GUIDELINES OR SECTION 4.

(B) COMMENCE A CIVIL ACTION IN THE CIRCUIT COURT, OR IF THE DECISION OF A STATE PUBLIC BODY IS AT ISSUE, IN THE COURT OF CLAIMS, FOR A FEE REDUCTION. THE ACTION MUST BE FILED WITHIN 45 DAYS AFTER RECEIVING THE NOTICE OF THE REQUIRED FEE OR A DETERMINATION OF AN APPEAL TO THE HEAD OF A PUBLIC BODY. IF A CIVIL ACTION IS COMMENCED AGAINST THE PUBLIC BODY UNDER THIS SUBDIVISION,

THE PUBLIC BODY IS NOT OBLIGATED TO COMPLETE THE PROCESSING OF THE WRITTEN REQUEST FOR THE PUBLIC RECORD AT ISSUE UNTIL THE COURT RESOLVES THE FEE DISPUTE. AN ACTION SHALL NOT BE FILED UNDER THIS SUBDIVISION UNLESS 1 OF THE FOLLOWING APPLIES:

(i) THE PUBLIC BODY DOES NOT PROVIDE FOR APPEALS UNDER SUBDIVISION (A) .

(ii) THE HEAD OF THE PUBLIC BODY FAILED TO RESPOND TO A WRITTEN APPEAL AS REQUIRED UNDER SUBSECTION (2) .

(iii) THE HEAD OF THE PUBLIC BODY ISSUED A DETERMINATION TO A WRITTEN APPEAL AS REQUIRED UNDER SUBSECTION (2) .

(2) WITHIN 10 BUSINESS DAYS AFTER RECEIVING A WRITTEN APPEAL UNDER SUBSECTION (1) (A) , THE HEAD OF A PUBLIC BODY SHALL DO 1 OF THE FOLLOWING:

(A) WAIVE THE FEE.

(B) REDUCE THE FEE AND ISSUE A WRITTEN DETERMINATION TO THE REQUESTING PERSON INDICATING THE SPECIFIC BASIS UNDER SECTION 4 THAT SUPPORTS THE REMAINING FEE. THE DETERMINATION SHALL INCLUDE A CERTIFICATION FROM THE HEAD OF THE PUBLIC BODY THAT THE STATEMENTS IN THE DETERMINATION ARE ACCURATE AND THAT THE REDUCED FEE AMOUNT COMPLIES WITH ITS PUBLICLY AVAILABLE PROCEDURES AND GUIDELINES AND SECTION 4.

(C) UPHOLD THE FEE AND ISSUE A WRITTEN DETERMINATION TO THE REQUESTING PERSON INDICATING THE SPECIFIC BASIS UNDER SECTION 4 THAT SUPPORTS THE REQUIRED FEE. THE DETERMINATION SHALL INCLUDE A CERTIFICATION FROM THE HEAD OF THE PUBLIC BODY THAT THE STATEMENTS IN THE DETERMINATION ARE ACCURATE AND THAT THE FEE AMOUNT COMPLIES WITH THE PUBLIC BODY'S PUBLICLY AVAILABLE PROCEDURES AND GUIDELINES AND SECTION 4.

(D) ISSUE A NOTICE EXTENDING FOR NOT MORE THAN 10 BUSINESS DAYS THE PERIOD DURING WHICH THE HEAD OF THE PUBLIC BODY MUST RESPOND TO THE WRITTEN APPEAL. THE NOTICE OF EXTENSION SHALL INCLUDE A DETAILED REASON OR REASONS WHY THE EXTENSION IS NECESSARY. THE HEAD OF A PUBLIC BODY SHALL NOT ISSUE MORE THAN 1 NOTICE OF EXTENSION FOR A PARTICULAR WRITTEN APPEAL.

(3) A BOARD OR COMMISSION THAT IS THE HEAD OF A PUBLIC BODY IS NOT CONSIDERED TO HAVE RECEIVED A WRITTEN APPEAL UNDER SUBSECTION (2) UNTIL THE FIRST REGULARLY SCHEDULED MEETING OF THAT BOARD OR COMMISSION FOLLOWING SUBMISSION OF THE WRITTEN APPEAL UNDER SUBSECTION (1) (A) .

(4) IN AN ACTION COMMENCED UNDER SUBSECTION (1) (B) , A COURT THAT DETERMINES THE PUBLIC BODY REQUIRED A FEE THAT EXCEEDS THE AMOUNT PERMITTED UNDER ITS PUBLICLY AVAILABLE PROCEDURES AND GUIDELINES OR SECTION 4 SHALL REDUCE THE FEE TO A PERMISSIBLE

AMOUNT. VENUE FOR AN ACTION AGAINST A LOCAL PUBLIC BODY IS PROPER IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE PUBLIC RECORD OR AN OFFICE OF THE PUBLIC BODY IS LOCATED. THE COURT SHALL DETERMINE THE MATTER DE NOVO, AND 1 THE BURDEN IS ON THE PUBLIC BODY TO ESTABLISH THAT THE REQUIRED FEE COMPLIES WITH ITS PUBLICLY AVAILABLE PROCEDURES AND GUIDELINES AND SECTION 4. FAILURE TO COMPLY WITH AN ORDER OF THE COURT MAY BE PUNISHED AS CONTEMPT OF COURT.

(5) AN ACTION COMMENCED UNDER THIS SECTION AND AN APPEAL FROM AN ACTION COMMENCED UNDER THIS SECTION SHALL BE ASSIGNED FOR HEARING AND TRIAL OR FOR ARGUMENT AT THE EARLIEST PRACTICABLE DATE AND EXPEDITED IN EVERY WAY.

(6) IF THE REQUESTING PERSON PREVAILS IN AN ACTION COMMENCED UNDER THIS SECTION BY RECEIVING A REDUCTION OF 50% OR MORE OF THE TOTAL FEE, THE COURT MAY, IN ITS DISCRETION, AWARD ALL OR AN APPROPRIATE PORTION OF REASONABLE ATTORNEYS' FEES, COSTS, AND DISBURSEMENTS. THE AWARD SHALL BE ASSESSED AGAINST THE PUBLIC BODY LIABLE FOR DAMAGES UNDER SUBSECTION (7).

(7) IF THE COURT DETERMINES IN AN ACTION COMMENCED UNDER THIS SECTION THAT THE PUBLIC BODY HAS ARBITRARILY AND CAPRICIOUSLY VIOLATED THIS ACT BY CHARGING AN EXCESSIVE FEE, THE COURT SHALL ORDER THE PUBLIC BODY TO PAY A CIVIL FINE OF \$500.00, WHICH SHALL BE DEPOSITED IN THE GENERAL FUND OF THE STATE TREASURY. THE COURT MAY ALSO AWARD, IN ADDITION TO ANY ACTUAL OR COMPENSATORY DAMAGES, PUNITIVE DAMAGES IN THE AMOUNT OF \$500.00 TO THE PERSON SEEKING THE FEE REDUCTION. THE FINE AND ANY DAMAGES SHALL NOT BE ASSESSED AGAINST AN INDIVIDUAL, BUT SHALL BE ASSESSED AGAINST THE NEXT SUCCEEDING PUBLIC BODY THAT IS NOT AN INDIVIDUAL AND THAT KEPT OR MAINTAINED THE PUBLIC RECORD AS PART OF ITS PUBLIC FUNCTION.

(8) AS USED IN THIS SECTION, "FEE" MEANS THE TOTAL FEE OR ANY COMPONENT OF THE TOTAL FEE CALCULATED UNDER 1 SECTION 4, INCLUDING ANY DEPOSIT.

SEC. 10B. IF THE COURT DETERMINES, IN AN ACTION COMMENCED UNDER THIS ACT, THAT A PUBLIC BODY WILLFULLY AND INTENTIONALLY FAILED TO COMPLY WITH THIS ACT OR OTHERWISE ACTED IN BAD FAITH, THE COURT SHALL ORDER THE PUBLIC BODY TO PAY, IN ADDITION TO ANY OTHER AWARD OR SANCTION, A CIVIL FINE OF NOT LESS THAN \$2,500.00 OR MORE THAN \$7,500.00 FOR EACH OCCURRENCE. IN DETERMINING THE AMOUNT OF THE CIVIL FINE, THE COURT SHALL CONSIDER THE BUDGET OF THE PUBLIC BODY AND WHETHER THE PUBLIC BODY HAS PREVIOUSLY BEEN ASSESSED PENALTIES FOR VIOLATIONS OF THIS ACT. THE CIVIL FINE SHALL BE DEPOSITED IN THE GENERAL FUND OF THE STATE TREASURY.

Sec. 11. (1) A state agency shall publish and make available to the public all of the following:

(a) Final orders or decisions in contested cases and the records on which they were made.

(b) Promulgated rules.

(c) Other written statements **THAT** implement or interpret laws, rules, or policy, including but not limited to guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions.

(2) Publications may be in pamphlet, loose-leaf, or other appropriate form in printed, mimeographed, or other written matter.

(3) Except to the extent that a person has actual and timely notice of the terms thereof, a person **IS NOT** required to resort to, **AND SHALL NOT** be adversely affected by, a matter required to be published and made available, if the matter is not so published and made available.

(4) This section does not apply to public records **THAT** are exempt from disclosure under section 13.

(5) A person may commence an action in the court **OF CLAIMS** to compel a state agency to comply with this section. If the court determines that the state agency has failed to comply, the court shall order the state agency to comply and shall award reasonable attorneys' fees, costs, and disbursements to the person commencing the action. The **COURT OF CLAIMS HAS EXCLUSIVE** jurisdiction to issue the order.

(6) As used in this section, "state agency", "contested case", and **"RULE" MEAN "AGENCY", "CONTESTED CASE", AND "RULE" AS** those terms **ARE DEFINED** in **THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328.**

15.243 Exemptions from disclosure; public body as school district or public school academy; withholding of information required by law or in possession of executive office.

Sec. 13.

(1) A public body may exempt from disclosure as a public record under this act 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.

(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.

(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, including protected health information, as defined in 45 CFR 160.103.

(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.

(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 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:

(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; the fact that the department 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 documents, 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.

(2) A public body shall exempt from disclosure information that, if released, would prevent the public body from complying with 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974. A public body that is a local or intermediate school district or a public school academy shall exempt from disclosure directory information, as defined by 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974, requested for the purpose of surveys, marketing, or solicitation, unless that public body determines that the use is consistent with the educational mission of the public body and beneficial to the affected students. A public body that is a local or intermediate school district or a public school academy may take steps to ensure that directory information disclosed under this subsection shall not be used, rented, or sold for the purpose of surveys, marketing, or solicitation. Before disclosing the directory information, a public body that is a local or intermediate school district or a public school academy may require the requester to execute an affidavit stating that directory information provided under this subsection shall not be used, rented, or sold for the purpose of surveys, marketing, or solicitation.

(3) This act does not authorize the withholding of information otherwise required by law to be made available to the public or to a party in a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) Except as otherwise exempt under subsection (1), this act does not authorize the withholding of a public record in the possession of the executive office of the governor or lieutenant governor, or an employee of either executive office, if the public record is transferred to the executive office of the governor or lieutenant governor, or an employee of either executive office, after a request for the public record has been received by a state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of government that is subject to this act.

15.243a Salary records of employee or other official of institution of higher education, school district, intermediate school district, or community college available to public on request.

Sec. 13a.

Notwithstanding section 13, an institution of higher education established under section 5, 6, or 7 of article 8 of the state constitution of 1963; a school district as defined in section 6 of Act No. 451 of the Public Acts of 1976, being section 380.6 of the Michigan Compiled Laws; an intermediate school district as defined in section 4 of Act No. 451 of the Public Acts of 1976, being section 380.4 of the Michigan Compiled Laws; or a community college established under Act No. 331 of the Public Acts of 1966, as amended, being sections 389.1 to 389.195 of the Michigan Compiled Laws shall upon request make available to the public the salary records of an employee or other official of the institution of higher education, school district, intermediate school district, or community college.

15.244 Separation of exempt and nonexempt material; design of public record; description of material exempted.

Sec. 14.

(1) If a public record contains material which is not exempt under section 13, as well as material which is exempt from disclosure under section 13, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

(2) When designing a public record, a public body shall, to the extent practicable, facilitate a separation of exempt from nonexempt information. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, the public body shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

15.245 Repeal of MCL 24.221, 24.222, and 24.223.

Sec. 15.

Sections 21, 22 and 23 of Act No. 306 of the Public Acts of 1969, as amended, being sections 24.221, 24.222 and 24.223 of the Michigan Compiled Laws, are repealed.

15.246 Effective date.

Sec. 16.

This act shall take effect 90 days after being signed by the governor.