

CITY OF IONIA
Written Summary of Freedom of Information Act (FOIA) Policy

Pursuant to Public Act 563 of 2014 amending the Michigan Freedom of Information Act (FOIA), the following is a Written Summary of the City's FOIA Policy.

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

- Requests to inspect/obtain copies of public records prepared, owned, used, possessed or retained by the City must be submitting 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. A request should be as descriptive as possible.
- Written requests can be made in person by delivery to City Hall or the Public Safety Facility or by mail.
- Requests can also be by facsimile by calling (616) 527-0810 for non-Public Safety records or (616) 527-5717 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 Request in the subject line and e-mailed to the City Manager for non-Public Safety records or the Public Safety Department Administrative Assistant for Public safety records.

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 receive regarding 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:
 - o Grant the request.
 - o Issue a written notice denying the request.
 - o Grant the request in part and issue a written notice denying in part the request.
 - o Issue a notice indicating that due to the nature of the request the City needs an additional 10 business days to respond.
 - o Issue a written notice indicating 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 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:
 - o The final fee for the prior written request not more than 100% of the estimated fee;
 - o The public records made available contained the information sought in the prior written request and remain in the City's possession;
 - o The public records were made available to the individual, subject to payment, within the time frame estimated by the City to provide the records;
 - o 90 days have passed since the City notified the individual in writing that the public records were available for pick-up or mailing;
 - o The individual is unable to show proof of prior payment to the City; and,
 - o 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:
 - o The person making the request is able to show proof of prior payment in full to the City;
 - o The City is subsequently paid in full for all applicable prior written requests; or
 - o 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 non-exempt information unless failure to charge a fee would result in unreasonably high costs to the City because of

- the nature of the request in the particular instance, and the City specifically identifies the nature of the unreasonably high 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:
 - o Labor costs associated with searching for, location and examining a requested public record.
 - o Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed.
 - o The cost of computer discs, computer tapes or other digital or similar media when the requestor asks for records in non-paper physical media.
 - o The cost of duplication or publication, not including labor, of paper copies of public records.
 - o 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.
 - o The cost to mail or send a public record to a requestor.

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 the City determines that to do so is in the public interest because release of the information is considered as primarily benefitting the 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:
 - o Indigent and receiving specific public assistance; or
 - o If not receiving public assistance, stating facts demonstrating an inability to pay because of being indigent.
- You are not eligible to receive the \$20.00 waiver if you:
 - o Have previously received discounted copies of public records from the City twice during the calendar year; or
 - o Are requesting information on behalf of other persons who are offering or providing payment to you to make the request.
- The City will waive the fee for a non-profit organization which meets all of the following conditions:
 - o 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.
- 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 Mayor. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons you are seeking a reversal of a denial.

Subject to certain conditions, whether or not you submitted an appeal of a denial to the Mayor, you may file a civil action in Ionia County Circuit Court.

- 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 Mayor. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

Subject to certain conditions, whether or not you submitted an appeal of a denial to the Mayor, you may file a civil action in Ionia County Circuit Court.

This is a summary of the City's FOIA Policy. A copy of the complete FOIA Policy is available from the City Manager at no charge or on the City's website at www.ci.ionia.mi.us.

FREEDOM OF INFORMATION ACT (FOIA) POLICY

PREAMBLE – Statement of Principals

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

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

PURPOSE

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

DEFINITIONS

Act: Shall mean the Michigan Freedom of Information Act, Act No. 442 of the Public Acts of 1976, as amended.

City: This includes the City of Ionia and its duly constituted departments, commissions, boards, or committees. The City is also the “public body” as defined in the Act.

FOIA Coordinator: The City Manager is responsible for accepting and processing requests for public records as outlined in this Policy and the Act and is responsible for issuing approvals or denials of requests. He or she is authorized to designate other City staff to act on his or her behalf to accept and process written requests for the City’s public records and approve denials.

Policy: This policy adopted by the City Council which is intended to serve as the “Procedures and Guidelines” referenced in Act No. 563 of the Public Acts of 2014.

REQUESTING A PUBLIC RECORD

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

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

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

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

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

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

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

PROCESSING A REQUEST

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

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

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

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

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

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

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

If the request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial indicating that the request is deficient, seek

clarification or amendment of the request by the person making the request. Any clarification or amendment shall be considered a new request subject to the timelines described in this policy.

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

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

FEE DEPOSITS

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

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

- the final fee for the prior written request is not more than 100% of the estimated fee;
- the public records made available contained the information sought in the prior written request and remain the City's possession;
- the public records were made available to the individual, subject to payment, within the time frame estimated by the City to provide the records;
- 90 days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pick-up or mailing;
- the individual is unable to show proof of prior payment to the City; and,
- the FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

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

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

FEE CALCULATION

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

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

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

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

- Labor costs directly associated with searching for, locating and examining a requested public record.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed.
- The actual cost of computer discs, computer tapes or other digital or similar media.
- The cost of duplication of publication, not including labor, of paper copies of public records.
- The cost of labor associated with duplication or publication, including making paper copies, making digital copies or transferring digital public records to non-paper physical media or through the Internet or other electronic means.
- The actual cost of mailing or sending a public record.

Labor costs will be calculated based on the following requirements:

- All labor costs will be estimated and charged in 15 minute increments with all partial time increments rounded down.
- Labor costs will be charged at the hourly wage rate of the lowest-paid City employee capable of doing the work in the specific fee category, regardless of who actually performs the work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. The City may add up to 50% to the applicable labor charge

amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.

- Overtime wages will not be included in labor costs until agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.

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

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

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

WAIVER OF FEES

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

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

APPEALS

Denial of a Public Record

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

- A. Within 10 business days of receiving the appeal the Mayor will respond in writing by:
 - Reversing the disclosure denial;
 - Upholding the disclosure denial; or
 - Reverse the disclosure in part and uphold the disclosure denial in part.
 - Under unusual circumstances, such as the need to examine or review a voluminous amount of separate and distinct public records or the need to collect the request records from numerous City offices/departments, the Mayor may issue not more than 1 notice of extension for not more than 10 business days to respond to the appeal.

- B. The appellant may choose to commence an action in the Circuit Court to compel the City's disclosure of the public records within 180 days after the Mayor's determination to deny a request.

Excessive FOIA Processing Fee

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

- A. Within 10 business days of receiving the appeal the Mayor will respond in writing by:
 - 1. Waive the fee;
 - 2. Reduce the fee and issue a written determination indicating the specific basis that supports the remaining fee, accompanied by a certification by the Mayor that the statements in the determination are accurate and the reduced fee amount complies with this policy;
 - 3. Uphold the fee and issue a written determination indicating the specific basis of the FOIA that supports the required fee, accompanied by a certification by the Mayor that the statements in the determination are accurate and the fee amount complies with this policy; or,
 - 4. Issue a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Mayor will respond to the written appeal.

- B. Within 45 days after receiving notice of the Mayor's determination of a fee appeal, the appellant may commence action in Ionia County Circuit Court for a fee reduction. If a civil infraction is filed appealing the fee, the City is not obligated to process the request for the public record until the Court resolves the fee dispute.

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

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

City of Ionia FOIA Fee Itemization Form

Effective July 1, 2015

Cost Calculations	Total
1. Labor Cost – 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 requestor 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: Enter the hourly wage of lowest paid employee capable of performing the redaction \$ _____ per hr.</p> <p>Multiply the wage by the fringe benefit multiplier (maximum of 50% of the hourly wage); OR, if the requestor 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. 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>Enter the hourly rate charged by the contractor (may not exceed six (6) times the State minimum wage (i.e. \$8.15x6=\$48.90) \$ _____ per hour</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>	

3. Non-Paper Physical Media	
Actual and most reasonably economical cost of: Flash Drive \$ _____ x number used _____ = \$ _____ Computer Discs \$ _____ x number used _____ = \$ _____ Other Media \$ _____ x number used _____ = \$ _____	\$ _____
4. Paper Copies	
Actual total incremental cost of duplication (not including labor) up to a max. of 10 cents per page: Letter paper (8 1/2" x 11") number of sheets _____ x \$0.____ = \$ _____ 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 \$ _____ = \$ _____ (NOTE: Must print double-sided if available and cost less.)	\$ _____
5. Labor Cost – Duplication Copying, and transferring records to non-paper physical media	
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 Multiply the wage by the fringe benefit multiplier (maximum of 50% of the hourly wage); OR, if the requestor 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) _____% Multiply the hourly wage times the fringe benefit multiplier \$ _____ x 1. _____ = \$ _____ If stipulated by the requestor, add the hourly overtime wage increment (but do not include in the calculation of fringe benefit costs) \$ _____ + _____ = \$ _____ Divide the resulting hourly wage by four (4) to determine the charge per fifteen (15) minute increment \$ _____ / 4 = \$ _____ (NOTE: May use any time increment for this category)	
Number of _____ minute increments (partial time increments must be rounded down) multiplied by the permitted rate _____ x \$ _____ = \$ _____	\$ _____
6. Mailing	
Actual cost of mailing records in a reasonable and economical manner: Cost of mailing: \$ _____ Cost of least expensive form of postal delivery confirmation: \$ _____ Cost of expedited shipping or insurance only if specifically stipulated by requestor: \$ _____	\$ _____
Subtotal	\$ _____
Waivers and Redactions	
Subtract any Fee Waiver or Reduction: \$20.00 for indigency or nonprofit organization as further described in the Public Body's procedures and guidelines. Any amount determined by the Public Body due to the search and furnishing of the Public Record determined to be in the public interest. \$ _____ The reduction amount due to the late response of the Public Body. 5% of fee x _____ days late = _____ % reduction (maximum reduction is 50%)	- \$ _____
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) <u>may not be charged</u> unless the failure to charge a fee would result in <u>unreasonably high costs</u> to the public body <u>because of the nature of the request in the particular instance</u> , 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. <i>Bloch v Davison Cmty Schools</i> , (Mich.App. Apr. 26, 2011), 2011 WL 1564645.	



FOIA Appeal Form—To Appeal an Excess Fee

Date Received: _____ Check if received via: Email Fax Other Electronic Method

Date of This Notice: _____ Name: _____

Address: _____ Zip: _____

Phone Number: _(____)_____ E-Mail Address: _____

Request for: Copy Certified copy Record inspection Subscription to record issued on regular basis

Delivery Method: Pick up Make own copies onsite Mail to address above Email to address above Deliver on digital media provided by the City: _____

Record(s) You Requested: *(Listed here or see attached copy of original request)* _____

Reason(s) for Appeal:

The appeal must specifically identify how the required fee(s) exceed the amount permitted. You may use this form or attach additional sheets: _____

Requestor's Signature: _____ **Date:** _____

City Response:

The City must provide a response within 10 business days after receiving this appeal, including a determination or taking one 10-day extension.

City Extension: We are extending the date to respond to your FOIA fee appeal for no more than 10 business days, until _____ (*month, day, year*). Only one extension may be taken per FOIA appeal.

Unusual circumstances warranting extension: _____

If you have any questions regarding this extension, contact: _____

City Determination: Fee Waived Fee Reduced Fee Upheld

Written basis for City determination: _____

Notice of Requestor's Right to Seek Judicial Review

You are entitled under Section 10a of the Michigan Freedom of Information Act, MCL 15.240a, to appeal a FOIA fee that you believe exceeds the amount permitted under the City's written Procedures and Guidelines to the City Manager or to commence an action in the Circuit Court for a fee reduction within 45 days after receiving the notice of the required fee or a determination of an appeal to the City Manager. If a civil action is commenced in court, the City is not obligated to complete processing the request until the court resolves the fee dispute. If the court determines that the City required a fee that exceeded the permitted amount, the court shall reduce the fee to a permissible amount. *(See the next page of this form for additional information on your rights.)*

Signature of FOIA Coordinator: _____ **Date:** _____

FREEDOM OF INFORMATION ACT (EXCERPT)

Act 442 of 1976

15.240a.added Fee in excess of amount permitted under procedures and guidelines or MCL 5.234.

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 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 section 4, including any deposit. **History:** Add. 2014, Act 563, Eff. July 1, 2015



FOIA Appeal Form—To Appeal a Denial of Records

Date Received: _____ Check if received via: Email Fax Other Electronic Method

Date of This Notice: _____ Name: _____

Address: _____ Zip: _____

Phone Number: _(____)_____ E-Mail Address: _____

Request for: Copy Certified copy Record inspection Subscription to record issued on regular basis

Delivery Method: Pick up Make own copies onsite Mail to address above Email to address above Deliver on digital media provided by the City: _____

Record(s) You Requested: *(Listed here or see attached copy of original request)*

Reason(s) for Appeal:

The appeal must identify the reason(s) for the denial. You may use this form or attach additional sheets:

Requestor's Signature: _____ **Date:** _____

City Response:

The City must provide a response within 10 business days after receiving this appeal, including a determination or taking one 10-day extension.

City Extension: We are extending the date to respond to your FOIA fee appeal for no more than 10 business days, until _____ (*month, day, year*). Only one extension may be taken per FOIA appeal.

Unusual circumstances warranting extension: _____

If you have any questions regarding this extension, contact: _____

City Determination:

Denial Reversed Denial Upheld Denial Reversed in Part and Upheld in Part

The following previously denied records will be released: _____

Notice of Requestor's Right to Seek Judicial Review You are entitled under Section 10 of the Michigan Freedom of Information Act, MCL 15.240, to appeal this denial to the City Manager or to commence an action in the Circuit Court to compel disclosure of the requested records if you believe they were wrongfully withheld from disclosure. If, after judicial review, the court determines that the City has not complied with MCL 15.235 in making this denial and orders disclosure of all or a portion of a public record, you have the right to receive attorneys' fees and damages as provided in MCL 15.240. (*See back of this form for additional information on your rights.*)

Signature of FOIA Coordinator: _____ **Date:** _____

FREEDOM OF INFORMATION ACT (EXCERPT)

Act 442 of 1976

15.240.amended Options by requesting person; appeal; actions by public body; receipt of written appeal; judicial review; civil action; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.

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.

History: 1976, Act 442, Eff. Apr. 13, 1977 ;-- Am. 1978, Act 329, Imd. Eff. July 11, 1978 ;-- Am. 1996, Act 553, Eff. Mar. 31, 1997 ;-- Am. 2014, Act 563, Eff. July 1, 2015.