

CITY OF MADISON HEIGHTS

FREEDOM OF INFORMATION ACT POLICY, PROCEDURES & GUIDELINES

Preamble: Statement of Principles

It is the policy of the City of Madison Heights 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 people shall be informed so that they fully participate in the democratic process.

The City of Madison Heights'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 Madison Heights acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The City of Madison Heights 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 Madison Heights will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The City of Madison Heights's policy is to disclose public records consistent with and in compliance with State law.

Section 1: General Policies

The City Council acting pursuant to the authority at MCL 15.236 designates the City Clerk as the Principal FOIA Coordinator. The City Clerk shall designate, with Department Head concurrence, FOIA Coordinator positions for each department, to perform their duties under the FOIA and this Administrative Policy. Each FOIA Coordinator shall be responsible for responding to their respective requests, and shall be responsible for entering the data regarding each response into the Master FOIA Database. Due to the high volume and sensitive nature of the FOIA requests received by the Fire and Police Departments, these departments may maintain their own Master FOIA Database separate from the other City departments.

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 Principal FOIA Coordinator may, at their discretion, implement additional Administrative Rules as consistent with State law and these Procedures and Guidelines to administer the acceptance and processing of FOIA requests.

FOIA does not require the City to create documents. However, under some circumstances, the City will create a document or compile information, if the information can be reasonably generated using existing personnel while maintaining other services, and the charges under Section 5 are paid.

Neither the FOIA Coordinator nor other City staff is obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

FOIA Coordinators 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 Madison Heights 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, for convenience purposes; a FOIA Request form is available on the City's website.

A valid FOIA request shall contain the requestor's: (1) complete name; (2) address written in compliance with United States Postal Service Standards; and (3) telephone number or e-mail address. Corporate entities who request records under FOIA must provide this information for a company's agent who is an individual. A request that does not contain this information may be denied as invalid.

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 and appropriate department for processing.

A person may request that public records be provided on non-paper physical

media, electronically mailed or other otherwise provided to the requestor 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 Madison Heights 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.

FOIA allows the City to obtain sufficient information to determine if the request involves documents related to pending civil actions to which the City is a party. If it does, the City can deny the FOIA request. The City FOIA Request form gathers this information through a statement certifying that the requester is not asking for documents which are related to any civil action where the requester is a party to the action either against the City, or by the City against the requestor, and they are not acting on behalf of such a party. If the requester does not use the City FOIA Request form, and if the FOIA Coordinator suspects that the requested documents are related to a civil action to which the City and the requester are parties, the FOIA Coordinator may contact the City Attorney's office immediately for advice and consultation.

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.

Each FOIA Coordinator (or, in the case of multi-departmental FOIA requests, the City Clerk) is responsible for transmitting to the requester the City's official response to each FOIA request within their area of responsibility. In the case of a multi-departmental FOIA request, the City Clerk shall receive from departments the transmittal of documents, proposed response letter and computed costs. In all

cases, the FOIA Coordinator shall review the transmittal for both compliance with the City policy and consistency of the City's response to similar requests.

The appropriate FOIA Coordinator will respond to the request in one of the following ways (See Appendix for FOIA Response Letter):

- 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 and/or other websites.

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 and the Written Public Summary shall be provided to the requestor by including the website link to these documents in the City's written response.

In the case of a multi-departmental FOIA request, if the documents are to be viewed at more than one department, the City Clerk shall notify each department of when the requester has paid the required fees. Each FOIA Coordinator shall retain records documenting when the review is complete, and enter such information into the appropriate FOIA Database.

The FOIA Coordinator is responsible for retrieving documents requested under FOIA, identifying portions that should be redacted (blocked out) or exempted, if any, computing all costs for retrieval, copying and sending the transmittal letters. In the event of a FOIA request which requires input from more than one department, each FOIA Coordinator will provide to the City Clerk the documentation from their department, together with costs for retrieval and copying. The City Clerk will then prepare and transmit the City's response to the requester. In the case of an appeal of a response to a FOIA request, the FOIA Coordinator for the department which processed the original request will have the same responsibilities delineated above, and shall provide costs and transmittal

letters to the City Manager. The FOIA Coordinator may consult with the City Attorney concerning any redaction or exemption.

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 Policy. The notice shall state that the deposit must be received within 48 days of the date the notice is sent.

If the request is denied or denied in part, the FOIA Coordinator will issue a FOIA Response Letter which includes the Notice of Denial and shall provide in the applicable circumstance:

- An explanation as to why a requested public record is exempt from disclosure; or
- A letter 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 City Manager or seek judicial review in the Oakland 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 \$1,000.00, 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.

If litigation arises regarding the City's response to a FOIA request, the City Attorney, or designee, will notify the appropriate FOIA Coordinator to retain the relevant records until such time as the City Attorney or designee notifies the FOIA Coordinator that the records may be destroyed or otherwise disposed of.

Documents related to requests shall be held for one (1) year plus one (1) day. If the Requester fails to pay the amount due or fails to pick up the documents (where pickup is requested), the documents may be recycled, destroyed, deleted or returned to the appropriate department.

Document Subpoenas

All subpoenas, FOIA requests and FOIA appeals shall receive a written response. It is the responsibility of the designated FOIA Coordinator to prepare a response to subpoenas (in consultation with the City Attorney) and FOIA requests, and provide a proposed response to any FOIA appeals. The proposed response to a FOIA appeal shall be forwarded to the City Clerk for signature and transmittal.

Any response to a subpoena may be reviewed by the City Attorney before sending. The designated FOIA Coordinator is responsible for transmitting the response letter to the City Attorney for review.

Exemption/Redaction

If the FOIA Coordinator identifies any exempt material, the requested documents and proposed response letter will be forwarded as soon as possible to the City Attorney for review and comment.

The proposed response letter will identify the specific reasons why any material is not being disclosed, if that is the case, as well as the costs, where the material may be received or reviewed and right to appeal or seek judicial review.

After the City Attorney's review, if there are any difference between the recommendations and that of the City Attorney, the FOIA Coordinator will be responsible to follow-up on the differences with the City Clerk in order to reach a decision.

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.

If the City does not receive the requested deposit by the date specified by the City in the deposit notice, the City shall consider the request abandoned. The specified date shall be 48 days after the notice is sent.

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. Please reference the current fiscal year FOIA Hourly Rate table.
- 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 of labor directly associated with duplication, publication or transferring records to non-paper 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.

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 (8½ x 14) sized paper and will be \$.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”, “and 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 FOIA Fee 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.

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 indigence.

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 a sworn statement. A Fee Waiver Affidavit form is available on the City's website.

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 2000 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;
- 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.

[§] 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.

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, they may file an appeal of the denial with the City Manager. 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 sample Appeal of Denial form can be found on the City's website.

The FIOA Coordinator is responsible for overseeing the gathering of all material needed by the City Manager for a decision on the appeal. A copy of all appeal result letters shall be filed with the copy of the original response being held by the appropriate FOIA Coordinator.

Within 10 business days of receiving the appeal the City Manager, or designee, 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 City Manager may issue not more than 1 notice of extension for not more than 10 business days to respond to the appeal.
- If the result is a reversal in whole or in part, the transmittal letter shall indicate where the Requester may pick up the newly released documents and pay the appropriate costs.

Whether or not a requestor submitted an appeal of a denial to the City Manager, they may file a civil action in Oakland 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 \$1,000.00. Court shall also order that the public body pay a civil fine of \$1000 to the general fund of the State treasury.

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, they must first submit a written appeal for a fee reduction to the City Manager. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted. A sample FOIA Appeal of Excess Fee form can be found on the City's website.

Within 10 business days after receiving the appeal, the City Manager, or designee, 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 City Manager 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 City Manager 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 City Manager will respond to the written appeal.

Within 45 days after receiving notice of the City Manager's determination of a fee appeal, a requestor may commence a civil action in Oakland 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 \$500.00.

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

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

To the extent that any provision of these Policies, 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 Principal FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the City Council or the City Administration, and to adopt such administrative rules as they 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 Principal FOIA Coordinator shall inform the City Council of any change these Policies, Procedures and Guidelines.

These FOIA Policies, Procedures and Guidelines become effective August 1, 2019.

Appendix of City of Madison Heights FOIA Forms

- FOIA Request Form
- FOIA Response Letter
- Fee Waiver Affidavit Form (for Affidavit of Indigence)
- FOIA Hourly Rates Table
- Detailed Itemization of Fees Form
- FOIA Appeal of Excess Fee Form
- FOIA Appeal of Denial Form