

Freedom of Information Act (FOIA) – District Guidelines

Introduction. These guidelines are published by the District to inform the public of its rights under FOIA as well as the District's obligations and prerogatives. These guidelines are not intended to, and should not be read or used to, create or limit the rights actually created by FOIA. Accordingly, to the extent these guidelines are inconsistent with FOIA, or inconsistent with a future amendment to FOIA, the Act governs. The District retains the right to revise these guidelines.

Requesting Public Records. Public records may be requested by providing the District's FOIA coordinator with a written request that identifies the public records with enough specificity to permit the District to locate them. The District FOIA coordinator is Matthew McDaniel, Executive Director of Business Operations. The written request may be on paper or it may be electronic or digital. A person may also subscribe to public records that are created, issued or disseminated on a regular basis. A subscription is valid for up to six months and may be renewed. FOIA does not require or prohibit the District from granting a verbal request for public records; unless the District employee to whom the request is made is aware the public records are available on its web site, in which case the District employee or the District's FOIA Coordinator will so notify the requestor.

Response to Request for Public Records. The District is required to respond, in writing, to a written request for public records. The District may grant the request, deny the request or grant the request in part and deny the request in part.

Timeline. The District has five business days to respond to a written request for public records. However, if the request was sent by email and delivered to the District's spam or junk mail folder, the request is not considered received until the first day after the District actually becomes aware of it. The District must, in such cases, note the time the request was delivered to its spam or junk mail folder and the time it first became aware of the request. The District may extend the time for responding by 10 business days if the nature of the request justifies an extension by so notifying the person who made the request, in writing, and within the original five business day response window.

Types of District Responses.

Granting a Request. The District's FOIA coordinator will grant a request for public records by so notifying the requestor in a timely manner and in writing. The District will also provide notice if some or all of the public records are available on its web site and will include a specific webpage address, if practicable. The District's failure to grant a request in a timely manner is a denial of the request if: the late response is willful and intentional; or, the written request conveyed a request for information within the first 250 words or the request included the words, characters or abbreviations for "freedom of information," "information," "FOIA," or a recognizable misspelling of such, or appropriate legal

code reference on the front of the envelope or the subject line of the request.

Denying a Request. The District's FOIA coordinator may deny a request if the request is not specific enough to allow the District to locate the public records in question by so certifying that fact to the requestor in writing. The District's FOIA coordinator may also deny a request if the requested public records are exempt from disclosure under the Act. If only part of a public record is exempt, the FOIA coordinator will redact the exempt part and, otherwise, grant the request. Regardless, the FOIA coordinator's denial must be in writing, specific enough to permit a reasonable person to understand the basis or bases for the denial, whether exempt information was redacted and, if so, the basis or bases of the redaction. A denial, in whole or in part, must also include a full explanation of the requestor's appeal rights and, in addition, a copy of this Summary and Guidelines document.

Allowable Fees.

FOIA allows the District to charge certain fees incurred for processing and responding to FOIA requests. FOIA does not permit the District to charge labor costs for searching for, locating, examining, separating or reproducing public records, except as set forth in these guidelines.

Labor Costs. Generally, FOIA does not permit the District to charge labor costs for searching for, locating, examining, separating or reproducing public records unless a failure to charge a fee would result in unreasonably high costs to the District because of the nature of the request in the particular instance and the District specifically identifies the nature of these unreasonably high costs. Examples of requests that may cause such unreasonably high costs include, but are not limited to: voluminous requests; requests that require time consuming searches, significant separation or redaction of exempt documents or information, significant IT personnel time, etc. In cases where labor costs are allowable, they will be charged according to these guidelines.

Searching for, Locating and Examining Public Records.

The District may charge labor costs directly associated with searching for, locating and examining requested public records in conjunction with receiving and fulfilling a granted request. Except as provided by the Act, the District may not charge labor costs for searching for, locating and examining public records that are on the District's web site at the time the request is made.

Separating or Deleting Exempt Information. The District may charge labor costs directly associated with separating

or deleting information that is exempt from disclosure under the Act, unless the District has previously redacted the public record(s) and the redacted version is still in the District's possession. The District will not charge for separating documents that are available on its web site.

Reproducing Information. The District may charge labor costs directly associated with duplicating or publishing public records. This includes the time spent making paper copies, making digital copies and transferring public records to nonpaper physical media or through the internet, if so requested.

Limitations on Labor Costs. Subject to the Itemization of Allowable Fees section of this Summary and Guideline, the District may charge no more than the hourly rate and actual fringe benefits of the lowest paid employee capable of performing the particular task for which the District may charge labor costs, even if the District assigns a more highly paid employee to perform the task. The charge for fringe benefits may not exceed 50% of the employee's hourly rate. The District may not charge overtime except at the request or stipulation of the requestor. If the District's FOIA coordinator determines that no District employee is capable of separating or deleting exempt information with respect to a particular request, the District may hire contracted labor to perform the task. In such cases, the District will calculate the time spent by the contracted labor in the same manner it calculates the time of its own employees and the charge for the contracted labor will not exceed six times Michigan's minimum wage. In all cases, labor costs will be charged and estimated in increments of 15 minutes, with all partial time increments rounded down.

Reproduction Costs.

Nonpaper Physical Media. The District may charge the actual and most reasonably economical cost of reproducing public records on nonpaper physical media (e.g., computer discs, computer tapes or other digital or similar media). The District is not required to reproduce public records on nonpaper physical media if it does not have the technology necessary to do so.

Paper Copies. The District may charge the actual incremental cost of reproducing paper copies of public records using the most economical means available (e.g.,

double sided copies, if double sided copies are available and more economical than single sided copies). In no case will the District charge more than 10 cents per sheet. The District will not charge copying costs for copying documents on its web site or the on-site inspection of public records unless the requestor requests paper copies.

Mailing. The District may charge the actual cost of mailing requested public records and the least expensive method of confirming delivery. The District may not charge for expedited shipping or insurance unless specifically requested by the requestor.

Waiver, Reduction or Discount of Allowable Fees. The District may waive or reduce allowable fees if the District determines a waiver or reduction is in the public interest.

Indigence. The District will discount allowable fees by \$20.00 to a requestor who submits an affidavit stating that he or she is indigent and on public assistance or, if not receiving public assistance, stating facts showing inability to pay full allowable fees due to indigence. If the District determines a requestor who submits such an affidavit is not eligible for the discount, the District's written response will inform the requestor of the reason(s) for its determination. The District will not provide an indigence discount to an otherwise eligible requestor if: the requestor has already received discounted copies from the District twice during the calendar year; or, the requestor has been offered or received payment or other remuneration by or from another person.

Protection and Advocacy. The District will discount allowable fees and costs by \$20.00 if the requestor is a non-profit agency designated by the Governor under Section 931 of the Michigan Mental Health Code, MCL 330.1931, and the following additional conditions are met: the request is made on behalf of the agency or its clients; the request is made for reasons wholly consistent with the agency's mission, as described in Section 931; and, the request is accompanied by documentation of its designation, if so requested by the District.

Itemization of Allowable Fees. The District will itemize allowable fees on the attached Detailed Itemization of Allowable FOIA Fees form.

Good-Faith Deposit. The District may require a good-faith deposit from a requestor before providing public records if the total allowable fees exceed \$50.00 and the District provides the requestor with an estimate of total allowable fees using the Itemization of Allowable Fees and Costs form. The good-faith deposit may not exceed 50% of the total allowable fees and costs. The District's request for a good-faith deposit will include a reasonable and best efforts estimate of the time frame within which the District will provide public records after receiving the good-faith deposit. The District may charge an increased good-faith deposit of up to 100% of the estimated fee before it begins a full public record search for a person who has previously failed to pay allowable fees in full if: the final allowable fees were not more than 105% of the total estimated fees; the public records provided contained the information sought in the prior request and are still in the District's possession; the public records were provided within the District's reasonable best efforts estimate for the prior request; 90 days have passed since the District notified the requestor the public records were available for pickup or mailing; the requestor is not able to show proof of prior payment; and, the District calculates provides a completed Detailed Itemization of Allowable FOIA Fees form that is the basis of the increased good-faith deposit. However, the District may not insist on an increased good-faith deposit if: the requestor shows proof of prior payment; the District is paid in full for the prior request; or, 365 days have passed since the requestor made the request for which full payment was not remitted.

Reduction of Labor Charges for Untimely Response. The District will reduce otherwise permitted labor charges by 5% per day (to a maximum of 50%) for each day the District's response is untimely if: the late response was willful and intentional; or, the written request conveyed a request for information within the first 250 words or the request included the words, characters or abbreviations for "freedom of information," "information," "FOIA," or a recognizable misspelling of such, or appropriate legal code reference on the front of the envelope or the subject line of the request.

Appeals. The requestor may appeal the denial of all or part of a request in two ways: submit an appeal to the District's Superintendent or file a civil action in the circuit court where the District is located. The requestor may also appeal an allowable fee calculation that violates the Act or this Summary and Guidelines document.

Appeal to Superintendent. An appeal to the Superintendent must include the word "appeal" and identify the reason(s) the Superintendent should reverse the denial or reduce the allowable fee calculation. The Superintendent will respond to the

appeal, in writing, within 10 business days by reversing the denial or calculation, upholding the denial or calculation or reversing the denial or calculation, in part, and upholding the denial or calculation, in part. In unusual circumstances, the Superintendent may issue not more than one notice extending his/her time for responding by not more than 10 additional business days. If the appeal is based on the District's calculation of fees and the Superintendent upholds the calculation, in whole or in part, the Superintendent must certify and explain the District's calculation.

Civil Action. The requestor may, in addition to appealing to the Superintendent, file a civil action in the circuit court where the District is located. The civil action may be based on the District's failure to timely provide public records or the District's calculation of allowable fees. If the requestor prevails in a case concerning the timely provision of public records, he or she is entitled to reasonable attorneys' fees, costs and disbursements. If the requestor or the District prevails in part the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs and disbursements. Additionally, if the court determines the District has arbitrarily and capriciously violated the Act by refusing or delaying the request, the court will order the District to pay a fine of \$1,000.00, which will be deposited in the Department of Treasury's general fund, and, in addition to any actual or compensatory damages, punitive damages to the requestor in the amount of \$1,000.00. If the requestor prevails in a case concerning the District's calculation of allowable fees by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award the requestor all or an appropriate portion of his or her attorneys' fees, costs and disbursements. If the court determines the District has arbitrarily and capriciously violated the Act by charging an excessive fee, the court will order the District to pay a fine of \$500.00, which will be deposited in the Department of Treasury's general fund, and, in addition to any actual or compensatory damages, punitive damages to the requestor in the amount of \$500.00. Separately, if the court determines the District willfully and intentionally failed to comply with the Act or has otherwise acted in bad faith, the court will order the District to pay a civil fine of not less than \$2,500.00 and not more than \$7,500.00 per occurrence, which will be deposited in the Department of Treasury's general fund. A civil action based on a denial of public records must be filed within 180 days after the District's final determination. A civil action based on the District's calculation of allowable fees must be filed within 45 days of receiving the completed Detailed Itemization of Allowable FOIA Fees form or within 45 days of the Superintendent's decision concerning an appeal. If the requestor files a civil action based on the District's calculation of allowable fees, the District is not required to continue processing the request until the court resolves the fee dispute.