

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. Copies or inspection of 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 enable the District to locate them. The District FOIA coordinator is, Daniel Durkin, Director, Community Relations, 850 Ladd Road, Bldg. D, Walled Lake, MI 48390 or DanielDurkin@wlcsd.org. 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. If a District employee other than the FOIA coordinator receives a request for a public record, the employee is required to promptly forward that request to the FOIA coordinator. A request from a person, other than an individual who qualifies as indigent under the Act, must include the requesting person's complete name, address, and contact information, and, if the request is made by a person other than an individual, the complete name, address, and contact information of the person's agent who is an individual. The address must be written in compliance with United States Postal Service addressing standards. Contact information must include a valid telephone number or electronic mail address. FOIA does not require or prohibit the District from granting a verbal request for public records, and individual departments and schools within the District may fill verbal requests if they enact a policy which explains the process for doing so. If the District employee to whom the verbal request is made is aware the public records are available on the District's web-site, the District employee or the District's FOIA Coordinator will so notify the requestor about the District's pertinent website address where practicable and to the best of the employee's knowledge. Additionally, if a verbal request cannot be filled in its entirety with minimal disruption of staff time, or if redaction is necessary, a written request will be required. If a requesting person is disabled, either temporarily or permanently, to the extent that he or she is unable to make a written request, then District personnel must write out the request for the individual as an accommodation under the Americans with Disabilities Act.

Response to Request for Public Records. The District is required to respond, in writing, to a written request for public records. The District will grant the request, deny the request, deny the request in part, or extend for no more than 10 business days the period during which the District will respond to the request.

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. All written requests will be time-stamped upon receipt, and the date of the request and the date it is discovered will be documented on the response form. The District may extend the time for

responding by up to 10 business days if the nature of the request justifies an extension by so notifying the person who made the request, in writing of the reasons for the extension and the estimated date by which the District will send its final determination.

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. If a requested public record is available to the general public on the District's website, the FOIA coordinator must notify the requestor in the District's written response that all or a portion of the requested information is available on the District's website. The specific website address where the information can be found must also be provided. If a requestor still wants copies of those records after being notified of their availability online, the requestor may be charged for the records in accordance with the fee components itemized in this Guidelines document, except the fringe benefit multiplier may be greater than 50% if the District has calculated the fringe benefit multiplier to be greater than 50%. 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 (deemed a denial in part). 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 for redaction. A denial, in whole or in part, must also include a full explanation of the requestor's appeal rights and, in addition, a link to the District's website, where this Guidelines document and a Public Summary will be kept publicly available.

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. Unreasonably high costs will be deemed to occur, and will be charged, at the point when an employee spends 15 minutes or more to search for, locate, examine, and/or redact the requested record(s). 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. Employees should track the amount of time they spend on each request in increments of 15 minutes, rounding down if the final increment is less than 15 minutes, except the time spent actually making copies (using any media) should be kept in increments of 6 minutes, also rounding down if the final increment is less than 6 minutes.

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 or other electronic means, if so requested.

Limitations on Labor Costs. Subject to the Itemization of Allowable Fees section of these Guidelines, 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 (finding the records, redacting the records, and copying the records), even if the District assigns a more highly paid employee to perform the task. That charge should then be multiplied by the fringe benefits multiplier calculated by the District (different multipliers may apply to different employee categories) in order to recoup the District's fringe benefit costs up to 50% of the employee's hourly rate, whichever is less. The District may not charge overtime except at the request or stipulation of the requestor, and overtime wages may not be used to calculate the fringe benefit multiplier. 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.

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. In order to ensure the integrity and security of the District's technological infrastructure, the District will procure any requested non-paper media and will not accept or utilize any non-paper media from the requestor.

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 receiving specific public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency. 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 specifically of the reason(s) for ineligibility. An individual is ineligible for this fee reduction 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. The requestor's affidavit must include a statement indicating that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.

Protection and Advocacy. The District will discount allowable fees and costs by \$20.00 if the requestor is a nonprofit organization formally designated by the state to carry out activities under subtitle C of the developmental disabilities assistance and bill of rights act of 200, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, or their successors, if the request 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 Michigan Mental Health Code, MCL 330.1931, and the request is accompanied by documentation of its designation by the state.

Itemization of Allowable Fees. The District will itemize allowable fees on the attached Detailed Fee Itemization [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 Detailed Fee Itemization 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 notice of the date by which the deposit must be received, which date is 48 days after the date the notice is sent, as well as a reasonable and best efforts estimate of the time frame within which the District will provide public records after receiving the good-faith deposit. If the requested deposit is not received by the District within 45 days from receipt by the requestor (deemed to be 3 days after the deposit request was sent), and the requestor has not filed an appeal of the deposit amount pursuant to the appeal provisions of the Act (set forth below), the request is considered abandoned and the District is no longer required to fulfill the request. The District will require a good-faith deposit of 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 for the prior written request were not more than 105% of the total estimated fees; the public records made available contained the information sought in the prior written request and are still in the District's possession; the public records were made available to the individual, subject to payment, within the time frame estimate for the prior request; 90 days have passed since the District notified the individual in writing that the public records were available for pickup or mailing; the individual is not able to show proof of prior payment; and, the District calculates a detailed itemization of fees that is the basis for the increased estimated fee 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," "copy," or a recognizable misspelling of such, or appropriate legal code reference for the Act on the front of the envelope or the subject line of the request. If a charge reduction is required for an untimely response, the District will fully note the charge reduction on the detailed fee itemization form.

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 Oakland County Circuit Court within 180 days after the District's final determination. The requestor may also appeal an allowable fee calculation that violates the Act or this Guidelines document by submitting a written appeal for fee reduction to the District's Superintendent or, if the District's Superintendent failed to respond to the written appeal within 10 business days of receipt or issued a determination to the written appeal, commencing a civil action in the Oakland County Circuit Court within 45 days.

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 how the fee exceeds the amount permitted by this Guidelines document or the Act. The Superintendent will respond to the appeal, in writing, within 10 business days by: (1) reversing the denial or waiving the fees; (2) upholding the denial or fee or reversing the denial or fee, in part, and upholding the denial or fee, in part; or issuing not more than one notice, with detailed reason(s), extending his/her time for responding to the written appeal 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 that the statements in the fee appeal determination are accurate and that the fee amount complies with this Guidelines document and the Act.

Civil Action. If the requestor prevails in a civil action 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 refusal or delay in disclosing or providing copies of a public record, the court will order the District to pay a civil 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 person seeking the right to inspect or receive a copy of a public record in the amount of \$1,000.00. If the requestor prevails in an action 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 all or an appropriate portion of 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 civil 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, the court may also award punitive damages to the person seeking the fee reduction 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 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.