

BAY CITY DEPARTMENT OF PUBLIC SAFETY OPERATIONAL PROCEDURE

ADMINISTRATIVE - SUPPORT OPERATIONS

O.P. AS-1

05/04/2022

FOIA PROCEDURES AND GUIDELINES

GENERAL ORDERS:

None

ORDINANCES AND STATE STATUTES:

Public Act 442 of 1976 MCL 15.231 - 15.246

Public Act 563 of 2014

I. PURPOSE

- A. It is the policy of the Bay City Department of Public Safety that all persons, except those incarcerated, consistent with the Michigan Freedom of Information Act (FOIA), are entitled to full and complete information regarding the affairs of the department 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.
- B. The Bay City Department of Public Safety'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.
- C. The Bay City Department of Public Safety acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The Department acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of the Department and to protect the privacy of individuals.
- D. The Bay City Department of Public Safety will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The Bay City Department of Public Safety's policy is to disclose public records consistent with and in compliance with State law.

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II. POLICY

- A. The City Commission, acting pursuant to the authority at MCL 15.236, designates the Public Safety Director as the Public Safety FOIA Coordinator. The Public Safety Director is authorized to designate other department staff to act on his or her behalf to accept and process written requests for the Department's public records and to approve or deny requests.
- B. 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 Public Safety FOIA Coordinator first becomes aware of the request.
- C. The Public Safety FOIA Coordinator will date stamp all FOIA requests and note the receipt in a FOIA Request Log. The Public Safety FOIA Coordinator shall keep a copy of all written requests for public records received by the Department on file for a period of one year. The Public Safety FOIA Coordinator shall note in the FOIA Request Log both the date a request was delivered to the spam or junk-mail folder and the date the Public Safety FOIA Coordinator became aware of the request.
- D. The Public Safety FOIA Coordinator may, at his or her discretion, implement administrative rules, consistent with State law and these Procedures and Guidelines, to administer the acceptance and processing of FOIA requests.
- E. The Department is not obligated to create a new public record or make a compilation or summary of information which does not already exist. Neither the Public Safety FOIA Coordinator nor other department staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

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III. REQUESTING A PUBLIC RECORD

- A. Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the Department must be submitted in writing. The request must sufficiently describe a public record so as to enable department personnel to identify and find the requested public record.
- B. No specific form to submit a request for a public record is required. However, a Department FOIA Request Form is available for use by the public.
- C. A request from a person, other than an individual who qualifies as indigent, 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. An address must be written in compliance with United States Postal Service addressing standards. Contact information must include a valid telephone number or electronic email address.
- D. Written requests for public records may be submitted in person or by mail to the Law Enforcement Center. Requests may also be submitted electronically by facsimile and e-mail. Upon their receipt, requests for public records shall be promptly forwarded to the Public Safety FOIA Coordinator for processing.
- E. A person may request public records be provided on non-paper physical media. The Department will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.
- F. A person may subscribe to future issues of public records that are created, issued or disseminated by the Department on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

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IV. PROCESSING A REQUEST

- A. Unless otherwise agreed to in writing by the person making the request, the Department will issue a response within five (5) business days of receipt of a FOIA request. If a request is received by fax or email, unless received in a spam or junk mail folder, the request is deemed to have been received on the following business day. The Department will respond to a request in one of the following ways:
1. Grant the request;
 2. Issue a written notice denying the request;
 3. Grant the request in part and issue a written notice denying the request in part;
 4. Issue a notice indicating that due to the nature of the request the Department needs an additional ten (10) business days to respond. Only one (1) such extension is permitted.
 5. Issue a written notice indicating that the public record requested is available at no charge on the City's website.
- B. If the request is granted, or granted in part, the Public Safety 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 Public Safety FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request, along with the link to these Procedures and Guidelines and the Written Public Summary on the City's website. Paper copies of these documents will be provided free of charge on request.
- C. If the cost of processing a FOIA request is \$50 or less, the requestor will be notified of the amount due and where the documents can be obtained. If the cost of processing a FOIA request is expected to exceed \$50 based on a good-faith calculation, or if the requestor has not paid in full for a previously granted request, the Department will require a good-faith deposit before

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processing the request. In making the request for a good-faith deposit the Public Safety FOIA Coordinator shall provide the requestor with a detailed

itemization of the allowable costs estimated to be incurred by the Department to process the request and also provide a best efforts estimate of the time frame it will take the Department to provide the records to the requestor. The best efforts estimate shall be nonbinding on the Department, 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 Freedom of Information Act.

- D. If the request is denied or denied in part, the Public Safety FOIA Coordinator will issue a Notice of Denial which shall provide in the applicable circumstance:
1. An explanation as to why a requested public record is exempt from disclosure; or
 2. A written response that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the Department; or
 3. An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and
 4. An explanation of the person's right to submit an appeal of the denial to either the City Manager or seek judicial review in the Bay County Circuit Court; and
 5. An explanation of the right to receive attorney's fees, costs, and disbursements as well as actual or compensatory damages, and punitive damages of \$1000, should they prevail in Circuit Court.
 6. The Notice of Denial shall be signed by the Public Safety FOIA Coordinator or their designee.
- E. If a request does not sufficiently describe a public record, the Public Safety 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

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person making the request. Any clarification or amendment will be considered a new request subject to the timelines described in this Section.

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

V. FEE DEPOSITS

- A. If the fee estimate is expected to exceed \$50 based on a good-faith calculation, the requestor will be required to provide a deposit not exceeding one-half of the total estimated fee.
- B. If a request for public records is from a person who has not fully paid the Department for copies of public records made in fulfillment of a previously granted written request, the Public Safety 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:
 - 1. The final fee for the prior written request is not more than 105% of the estimated fee;
 - 2. The public records made available contained the information sought in the prior written request and remain in the Department's possession;
 - 3. The public records were made available to the individual, subject to payment, within the time frame estimated by the Department to provide the records;
 - 4. Ninety (90) days have passed since the Public Safety FOIA Coordinator notified the individual that the public records were available for pickup or mailing;
 - 5. The individual is unable to show proof of prior payment to the Department; and

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6. The Public Safety FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.
- C. The Public Safety FOIA Coordinator will not require an increased estimated fee deposit if any of the following apply:
 1. The person making the request is able to show proof of prior payment in full to the Department;
 2. The Department is subsequently paid in full for the applicable prior written request; or
 3. Three hundred sixty five (365) days have passed since the person made the request for which full payment was not remitted to the Department.
- D. If a deposit is required and not received by the Department of Public Safety within 45 days from receipt by the requesting person of the notice that a deposit is required, and if the requesting person has not filed an appeal of the deposit amount, the request shall be considered abandoned by the requesting person and the Department of Public Safety is no longer required to fulfill the request. Notice of a deposit requirement is considered received 3 days after it is sent, regardless of the means of transmission. Notice of a deposit requirement must include the date by which the deposit must be received, which date is 48 days after the notice is sent.

VI. CALCULATION OF FEES

- A. A fee will not be charged for the cost of search, examination, review and the deletion and separation of exempt material from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the department because of the nature of the request in the particular instance, and the Department specifically identifies the nature of the unreasonably high costs.
- B. The following factors shall be used to determine an unreasonably high cost to the Department:
 1. Volume of the public record requested.

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2. Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
 3. The available staffing to respond to the request.
 4. Any other similar factors identified by the Public Safety FOIA Coordinator in responding to the particular request.
- C. The Department may charge for the following costs associated with processing a FOIA request:
1. Labor costs directly associated with searching for, locating and examining a requested public record.
 2. Labor costs associated with a review of a record to separate and delete information exempt from disclosure from information which is disclosed.
 3. The actual cost of computer disks or flash drives.
 4. The cost of duplication of publication, not including labor, of paper copies of public records.
 5. The cost of labor associated with duplication or publication, including making paper copies, transferring digital public records to non-paper physical media or other electronic means.
 6. The actual cost of mailing or sending a public record.
- D. Labor costs will be calculated based on the following requirements:
1. Labor costs, excluding duplication, will be estimated and charged in fifteen (15) minute increments with all partial time increments rounded down.
 2. Labor costs will be charged at the hourly wage of the lowest-paid department employee capable of doing the work in the specific fee category, regardless of who actually performs the work.
 3. Labor costs will also include a charge to cover the cost of fringe benefits. This cost will not exceed 50% of the employee's actual hourly, labor cost.
 4. Overtime wages will not be included in labor costs unless agreed to by the requestor, overtime costs will not be used to calculate the fringe benefit cost.

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- E. The cost to provide records on non-paper physical media when so requested will be based on the following requirements:
1. Computer disks and flash drives will be at the actual and most reasonably economical cost for the non-paper media.
 2. This cost will only be assessed if the Department has the technological capability necessary to provide the public record in the requested non-paper physical media format.
 3. In order to ensure the integrity and security of the Department's technological infrastructure, the Department will procure any requested non-paper media and will not accept non-paper media from the requestor.
- F. The cost to provide paper copies of records will be based on the following requirements:
1. Paper copies of public records made on standard letter (8½ x 11) or legal (8½ x 14) sized paper will not exceed \$0.10 per sheet of paper.
 2. The Department may provide records using double-sided printing, if cost-saving and available.
- G. The cost to mail records to a requestor will be based on the following requirements:
1. The actual cost to mail public records using a reasonably economical and justified means.
 2. The Department may charge for the least expensive form of postal delivery confirmation.
 3. No cost will be made for expedited shipping or insurance unless requested.

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- H. The total cost of the FOIA request will be rounded down to the nearest quarter dollar (\$0.25).

- I. If the Public Safety FOIA Coordinator does not respond to a written request in a timely manner, the following shall be required:
 - 1. Reduce the labor costs by 5% for each day the Department exceeds the time permitted under FOIA up to a 50% maximum reduction, if any of the following applies:
 - a) The late response was willful and intentional.
 - b) 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.
 - c) The written request included the words, characters, or abbreviations for "freedom of information", "information", "FOIA", "copy" or a recognizable misspelling of such, or legal code reference 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.
 - 2. Fully note the charge reduction in the Detailed Itemization of Costs Form.

VII. WAIVER OF FEES

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

- B. The Public Safety FOIA Coordinator will waive the first \$20 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are:
 - 1. Indigent and receiving specific public assistance; or
 - 2. If not receiving public assistance stating facts demonstrating an inability to pay because of indigence.

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- C. An individual is not eligible to receive the waiver if:
 - 1. The requestor has previously received discounted copies of public records from the Department twice during the calendar year; or
 - 2. The requestor requests information in connection with other persons who are offering or providing payment to make the request.

- D. A nonprofit organization formally designated by the State to carry out activities under subtitle C of the Federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, and the Protection and Advocacy for Individuals with Mental Illness Act, or their successors, if the request meets all of the following requirements:
 - 1. Is made directly on behalf of the organizations or its clients;
 - 2. 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;
 - 3. Is accompanied by documentation of its designation by the State.

VIII. APPEAL OF A DENIAL OF A PUBLIC RECORD

- A. 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 City Manager. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons for reversal of the disclosure denial. Within ten (10) business days of receiving the appeal the City Manager will respond in writing by:
 - 1. Reversing the disclosure denial;
 - 2. Upholding the disclosure denial; or
 - 3. Reverse the disclosure denial in part and uphold the disclosure denial in part.

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4. 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 multiple facilities located apart from the office receiving or processing the request, the City Manager may issue not more than one (1) notice of extension for not more than ten (10) business days to respond to the appeal.
- B. Whether or not a requestor submitted an appeal of a denial to the City Manager, he or she may file a civil action in Bay County Circuit Court within 180 days after the City's final determination to deny the request.
- C. If the court determines that the public record is not exempt from disclosure, the court will award the appellant reasonable attorney's fees, costs and disbursements. If the court determines that the appellant prevails only in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorney's fees, costs and disbursements. The award shall not be assessed against any individual, but shall be assessed against the public body liable for damages.
- D. If the court determines that the City arbitrarily and capriciously violated the Freedom of Information Act by refusal or delay in disclosing or providing copies of a public record, it shall award the appellant punitive damages in the amount of \$1000. The court shall also order the City to pay a civil fine of \$1000, which shall be deposited into the general fund of the State treasury. The fine and any damages shall not be assessed against any individual, but shall be assessed against the public body liable for damages.

IX. APPEAL OF AN EXCESSIVE FOIA PROCESSING FEE

- A. If a requestor believes that the fee charged by the Department to process a FOIA request exceeds the amount permitted by the publicly available procedures and guidelines, he or she must first file an appeal for a fee reduction to the City Manager. The appeal must be in writing, specifically

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state the word "appeal" and identify how the required fee exceeds the amount permitted. Within ten (10) business days after receiving the appeal, the City Manager will respond in writing by:

1. Waiving the fee;
 2. Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee;
 3. Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or
 4. Issuing not more than one (1) notice detailing the reason or reasons for extending for not more than ten (10) business days the period during which the City Manager will respond to the written appeal.
- B. Where the fee is reduced or upheld, the determination must include a certification from 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 Freedom of Information Act.
- C. Within forty five (45) days after receiving notice of the City Manager's determination of a fee appeal, a requestor may commence a civil action in Bay 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.
- D. 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, in its discretion, award all or an appropriate portion of the reasonable attorney's fees, costs and disbursements. The award shall not be assessed against any individual, but shall be assessed against the public body liable for damages.
- E. If the court determines that the City arbitrarily and capriciously violated the Freedom of Information Act by charging an excessive fee, it shall award the appellant punitive damages in the amount of \$500. The court shall also order the City to pay a civil fine of \$500, which shall be deposited into the general

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fund of the State treasury. The fine and any damages shall not be assessed against any individual, but shall be assessed against the public body liable for damages.