

**CITY OF LOWELL
FREEDOM OF INFORMATION ACT PROCEDURES & GUIDELINES**

Section 1: General Administration

1.1. Purpose. These Procedures and Guidelines provide for the administration of the Michigan Freedom of Information Act, 1976 PA 442, as amended, MCL 15.231 *et seq.* (the “FOIA”), within the City of Lowell.

1.2. FOIA Coordinator and Designees. The City Clerk is the FOIA Coordinator for the City. The FOIA Coordinator may designate other City staff to respond to FOIA requests from time to time. When used in the remainder of these Procedures and Guidelines, the term “FOIA Coordinator,” includes all authorized designees.

1.3. Administrative Rules and Forms. The FOIA Coordinator may implement additional administrative rules and promulgate forms to be used by the City in processing FOIA requests, provided those rules and forms are consistent with the FOIA and these Procedures and Guidelines. In accordance with the FOIA, the FOIA Coordinator shall promulgate: (1) a Detailed Itemization of Costs Form to be used whenever the City charges FOIA fees, and (2) a Public Summary of these Procedures and Guidelines.

1.4. Public Inspection. Reasonable facilities and opportunities will be provided for examination and inspection of public records during normal business hours. The FOIA Coordinator may promulgate rules regulating the inspection of records so as to protect against loss, alteration, mutilation, or destruction and to avoid excessive interference with City operations.

1.5. Records Retention. The FOIA Coordinator shall ensure that City departments follow appropriate records retention policies, in compliance with applicable state requirements. Further, the FOIA Coordinator shall keep a copy of all written requests for public records received by the City for a period of at least one year.

1.6. Availability of Policies and Forms. The following documents are posted on the City’s website and available in all City offices: (1) these Procedures and Guidelines; (2) the Detailed Itemization of Costs Form; and (3) the Public Summary of these Procedures and Guidelines.

Section 2: Requests for Public Records

2.1. Requests in Writing. A person making a request pursuant to the FOIA to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the City must do so in writing. The request must sufficiently describe a public record so as to enable City personnel to identify and find the requested public record. There is no required form for submitting requests.

2.2. Method of Submission. To ensure proper receipt, the City prefers that FOIA requests be made by one of the following methods:

Mail / Hand Delivery	Email	Facsimile
Lowell City Hall Attn: Clerk’s Office - FOIA 301 E. Main Street. Lowell, MI 49331	sullery@ci.lowell.mi.us	(616) 897-4089

However, requests may be submitted in person or by mail to any City office, and shall be forwarded to the FOIA Coordinator or appropriate designee.

2.3. Receipt of Emails and Facsimiles. If the City receives a request for a public record by facsimile

or email, the request is deemed to have been received on the following business day. If a request is sent by email 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 FOIA Coordinator shall review his or her spam and junk-mail folders on a regular basis, no less than once a week.

2.4. Requesting Non-Paper Disclosure. A person may request that public records be provided by email or on non-paper physical media. The City will comply with the requests for the use of non-paper physical media only if it has the technological capacity to do so, without acquiring additional hardware.

2.5. Subscriptions to Public Records. A person may request to subscribe to future public records that are created, issued, or disseminated by the City on a regular basis (e.g. agendas, minutes, and other periodic reports). A subscription is valid for up to 6 months and may be renewed by the subscriber.

2.6. Incarcerated Persons. The City is not obligated under the FOIA to respond to records requests from persons serving a sentence of imprisonment in a local, state or federal correctional facility. However, in the interest of transparency, the City may choose to respond to requests from incarcerated persons if there are compelling reasons to do so. An incarcerated person who receives a response from the City is not entitled to the appeal rights or legal causes of action provided in the FOIA.

Section 3: Responding to a Request

3.1. No Obligation to Create New Records. The FOIA does not require the City to create a new public record, make a compilation or summary of information which does not already exist, or answer questions contained in requests for public records. The City's response obligations are as described in this Section.

3.2. Time Period for Responding. Unless otherwise agreed to in writing by the person making the request, the FOIA Coordinator will either: (1) issue a response to a FOIA request within 5 business days of receipt, or (2) issue a notice indicating that, due to the nature of the request, the City needs an additional 10 business days to respond. The City's normal procedure is to respond within 5 days, and to issue a 10-day extension only in unusual circumstances such as when the FOIA Coordinator is unavailable, or when legal counsel is required to determine whether requested information is exempt from disclosure.

3.3. Form of Response. A response granting a FOIA request may be delivered in any form acceptable to or specified by the requester. A response denying a FOIA request shall be delivered in writing and signed by the FOIA Coordinator. The FOIA Coordinator shall deliver a copy of these Procedures and Guidelines and the City's Public Summary thereof simultaneously with all responses or, if responding by email, shall include a link to those documents on the City's website.

3.4. Options for Disposition. The City will respond to a request by:

- A. Granting the request;
- B. Issuing a written notice denying the request;
- C. Granting the request in part and issuing a written notice denying the request in part; or
- D. Issuing a written notice indicating that the public record requested is available at no charge on the City's website.

3.5. Delivery or Inspection of Records After Grant. A response granting a request in whole or in part shall do one of the following: (1) provide the requested records; (2) provide information as to when and how the requester can inspect the requested record in a City facility, if the requestor asked for an opportunity for inspection; (3) inform the requester that payment of applicable fees is required before the City will provide the requested records; or (4) inform the requester that the City is requiring a fee deposit before searching for the requested records and separating exempt material. Certified copies of public records shall be provided at no additional cost upon request.

3.6. Contents of Denial Notice. If request is denied or denied in part, the FOIA Coordinator will issue a denial notice which shall provide, as applicable:

- A. An explanation as to why the record (or material redacted from the record) is exempt from disclosure; or
- B. A certification stating that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the City; and
- C. A description of any material redacted from the record; and
- D. An explanation of the person's right to submit an appeal of the denial to the City Manager, or to seek judicial review in the Kent County Circuit Court; and
- E. An explanation of the right to receive attorneys' fees, costs, and disbursements as well actual or compensatory damages, and punitive damages of \$1,000, should they prevail in Circuit Court.

3.7. Denial of Deficient Requests. If a request does not sufficiently describe a public record, the FOIA Coordinator may issue a denial notice seeking clarification. The requester's clarification will be considered a new request subject to the timelines described in this Section.

3.8. Receipt of Requests by Non-Designated Employees. Any employee receiving a written communication that conveys a request for information shall forward the communication to the FOIA Coordinator. City employees are not generally obligated to respond to verbal requests for information, but if the employee knows that requested information is available on the City's website, the employee shall inform a verbal requester of that fact.

Section 4: Fee Calculations

4.1. Fee Categories. Subject to the terms and conditions in this Section, the City may charge for the following costs associated with processing a FOIA request:

- A. Labor costs directly associated with searching for, locating and examining a requested public record (only when failure to charge a fee would result in unreasonably high costs).
- B. Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed (only when failure to charge a fee would result in unreasonably high costs).
- C. The actual cost of computer discs, computer tapes or other similar non-paper media.
- D. The cost of the duplication, not including labor, of paper copies of public records.
- E. 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.
- F. The actual cost of mailing or sending a public record.

4.2. Labor Fees. Fees for labor costs will be calculated in accordance with the following:

- A. All labor costs will be estimated and charged in 15 minute increments with all partial time increments rounded down.
- B. Labor costs for employees 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 the work.
- C. 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 total labor fee for the work may not exceed an amount 6 times the state minimum hourly wage. No fee shall be charged for contract or outside laborers performing any function other than those specified in this paragraph (e.g. no fee shall be charged for contract information technology personnel performing electronic searches for records).
- D. Labor costs may be charged to cover or partially cover the cost of fringe benefits for employees. The City may add up to 50% to the applicable labor charge to cover or partially cover the cost of fringe benefits, but the charge shall not exceed the actual cost of fringe benefits.
- E. Overtime wages may not be included in labor costs unless agreed to by the requestor. Overtime costs will not be used to calculate the fringe benefit cost.

4.3. “Unreasonably High Cost” Requirement. When charging a fee for the categories of labor described in 4.1.A and 4.1.B above, the FOIA Coordinator shall specifically identify why the failure to charge a fee would result in unreasonably high costs to the City, which are costs greater than those incurred in the typical or usual request received by the City. The following factors may be relevant:

- A. The volume of the public record requested
- B. The amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
- C. Whether public records from more than one City department or various City offices is necessary to respond to the request.
- D. The available staffing to respond to the request.
- E. Other similar factors identified by the FOIA Coordinator.

4.4. Non-Paper Media Fees. Fees for providing records on non-paper physical media are calculated based on the actual cost of procuring the non-paper physical media used. In order to ensure the integrity and security of the City's technology infrastructure, the City will procure the requested non-paper media and will not accept non-paper media from the requestor. The City will procure the needed non-paper media at the most reasonably economical cost.

4.5. Copying Fees. The fee for paper copies made on standard letter (8 1/2 x 11) or legal (8 1/2 x 14) sized paper is \$.01 per sheet. Copies for nonstandard 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.

4.6. Mailing Fees. Fees for mailing records to the requestor are based on the actual cost of mailing, using a reasonably economical and justified means. The City may charge for the least expensive form of postal delivery confirmation, but shall not charge for expedited shipping or insurance unless

requested.

4.7. Fee Reductions. The FOIA Coordinator shall reduce the amount of the applicable fee for labor costs by 5% for each day the City exceeds the applicable deadline for responding to a FOIA request, up to a maximum reduction of 50% of such fee, 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; or
- 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 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.

The FOIA Coordinator shall fully note any fee reduction in the Detailed Itemization of Costs Form.

Section 5: Fee Deposits

5.1. Good Faith Deposit. 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.

5.2. Deposits Due to High Estimated Fees. If a deposit is charged because the fee estimate is expected to exceed \$50.00, the deposit shall not exceed one half of the total estimated fee.

5.3. Deposits Due to Prior Non-Payment. If a deposit is charged because the requester has not fully paid the City for copies of public records made in fulfillment of a request, a deposit of 100% of the estimated processing fee may be charged if:

- A. The prior request was made within the last 365 days;
- B. The final fee for the prior request is not more than 105% of the estimated fee;
- C. The public records made available contained the information sought in the prior request and remain in the City’s possession;
- D. The public records were made available to the individual, subject to payment, within the time frame estimated by the City to provide the records;
- E. 90 days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
- F. The individual is unable to show proof of prior payment to the City; and
- G. The FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

Section 6: Fee Waivers

6.1. Public Interest Waiver. The FOIA Coordinator may, in his or her sole discretion, waive or reduce FOIA fees upon determining that the request is in the public interest.

6.2. Indigency Waiver. The FOIA Coordinator shall generally waive the first \$20.00 of a FOIA fee if the requester submits a sworn affidavit stating that the requester is indigent and receiving specific public assistance, or otherwise demonstrating an inability to pay because of indigence. However, fees shall not be waived if:

- A. The requestor has previously received discounted copies of public records from the City two times during the calendar year; or
- B. The requestor requests information in connection with other persons who are offering or providing payment to make the request.

6.3. Waiver for Certain Nonprofit Organizations. The FOIA Coordinator shall waive the first \$20.00 of a FOIA fee if the requester is 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 200 and the Protection and Advocacy for Individuals with Mental Illness Act, or their successors, if the request is:

- A. Made directly on behalf of the organization or its clients;
- B. 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; and
- C. Accompanied by documentation of its designation by the State.

Section 7: Appeals

7.1. Appeals to City Manager. A requester may appeal a decision of the FOIA Coordinator on the grounds that: (1) all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure; or (2) the fee charged to process a FOIA request exceeds the amount permitted by state law. Appeals shall be filed with the City Manager, who is the administrative head of the City pursuant to the City Charter. 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. If no appeal is taken within the applicable timeframe, the decision of the FOIA Coordinator shall be deemed to be the final decision of the City.

7.2. Decision on Nondisclosure Appeals. Within 10 business days of receiving an appeal asserting that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, the City Manager will respond in writing by:

- A. Reversing the disclosure denial;
- B. Upholding the disclosure denial; or
- C. Reversing the disclosure denial in part and upholding 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.

7.3. Decision on Fee Appeals. Within 10 business days after receiving an appeal asserting that the fee charged to process a FOIA request exceeds the amount permitted by state law, the City Manager will respond in writing by:

- A. Waive the fee;
- B. 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;
- C. 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
- D. 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.

7.4. Deadline for Circuit Court Actions. The requestor may file a civil action in Kent County Circuit Court to challenge the City's response to a FOIA request within: (1) 180 days after the City's final decision, if challenging nondisclosure; or (2) 45 days after the City's final decision, if challenging a requested fee. Notably, a requestor may challenge a determination of the FOIA coordinator in civil action in without first appealing to the City Manager, if the challenge is based on nondisclosure.

7.5. Circuit Court Remedies in Nondisclosure Cases. If a court determines that a public record is not exempt from disclosure, it will award the appellant reasonable attorneys' fees, costs, 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 will award the appellant punitive damages in the amount of \$1,000.

7.6. Circuit Court Remedies in Fee Cases. 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 will also award the appellant punitive damages in the amount of \$500.

Section 8: Miscellaneous

8.1. Effective Date. These Procedures and Guidelines shall take effect on July 1, 2015.

8.2. Repealer. As of their effective date, these Procedures and Guidelines repeal and supersede all previous FOIA policies promulgated by City Council or City staff.

8.3. Modifications by FOIA Coordinator. If any provision of these Procedures and Guidelines is found to be in conflict with any State statute, or if the FOIA is amended in a manner that creates a conflict, the FOIA Coordinator is authorized to modify the affected provisions of these Procedures and Guidelines. The FOIA Coordinator shall inform the City Council of any change.