

## Michigan South Central Power Agency

### **FREEDOM OF INFORMATION ACT PROCEDURES AND GUIDELINES**

#### I. INTRODUCTION

The Michigan Freedom of Information Act, 1976 P.A. 442, MCL §15.231 *et seq.*, (“FOIA” or the “Act”) was enacted by the Michigan Legislature to provide for public access to certain public records of public bodies with the express intent “that all Persons, ... are entitled to full and complete information regarding the affairs of the government and the official acts of those who represent them as public officials and public employees...”.

FOIA sets requirements for the disclosure of public records by public bodies upon written request by a requester. The Public Body is a public body under the Act, and shall comply with its requirements. The Board shall designate a FOIA Coordinator to accept, process, track, grant, and/or deny requests in writing as required by the Act.

Terms not defined herein shall have the meaning given under FOIA.

#### II. THE FOIA COORDINATOR

- a. Designation of the FOIA Coordinator: The FOIA Coordinator shall be the General Manager, or his or her designee. The FOIA Coordinator is authorized to designate other employees to act on his or her behalf.
- b. Receiving and Processing Requests. The FOIA Coordinator shall be responsible for accepting and processing all FOIA requests. The FOIA Coordinator shall make all determinations regarding whether the FOIA requests are granted or denied, and whether the response time should be extended. If the FOIA Coordinator issues a notice extending the period to respond, he or she shall specify a reason and the date by which the Public Body will respond.
- c. Determination of Exempt Material. The FOIA Coordinator shall determine whether any of the information in the requested public records is exempt from disclosure. The FOIA Coordinator shall also determine whether there is a Public Body employee capable of redacting the necessary information. If there is no such employee, the FOIA Coordinator shall arrange for a person or firm of the FOIA Coordinator’s choosing to provide this service.
- d. Determination of Cost and Fees. The FOIA Coordinator shall determine the costs of complying with each FOIA request by completing the Fee Itemization Form in compliance with the cost guidelines provided in Section IX. The FOIA Coordinator shall also determine whether each FOIA request would result in an unreasonably high cost to the Public Body and whether a fee may be charged for the request. The FOIA Coordinator shall also determine if a deposit shall be required in accordance with Section X herein.

- e. Revising Forms. The FOIA Coordinator is authorized to make reasonable revisions to and create necessary forms to implement these Procedures and Guidelines and administer the FOIA Program.
- f. Compliance. All actions taken by the FOIA Coordinator or his or her designee under this section shall be consistent with the requirements of FOIA and these Procedures and Guidelines.

### III. RIGHT TO INSPECT, COPY, OR RECEIVE PUBLIC RECORD

A requester has a right to inspect, copy, or receive copies of requested public records. If a person requests to inspect public records without having the public records duplicated, the following shall apply:

- a. The requester shall make an appointment with the FOIA Coordinator, who shall provide the requester a reasonable opportunity for inspection and examination of the public records during usual business hours. If requester arrives without an appointment the FOIA Coordinator shall endeavor to accommodate the public records inspection.
- b. The Public Body shall make reasonable accommodations to a person requesting the opportunity to inspect public records, but at all times shall protect public records from loss, unauthorized alteration, mutilation, or destruction, and shall also prevent the excessive and unreasonable interference with the discharge of its functions. To this extent, any person requesting to inspect the public records shall be under the direct supervision of the FOIA Coordinator or his or her designee at all times.
- c. If the requested public records contain exempt information, the FOIA Coordinator will make copies for inspection with the exempt material redacted.

### IV. PROCEDURES AND GUIDELINES

- a. Procedures and Guidelines Available at No Cost. The Public Body will keep copies of these Procedures and Guidelines, including a written public summary, available at its public office and will provide a copy, at no cost, to any person requesting the Procedures and Guidelines.
- b. Maintaining Procedures and Guidelines on Website. The public body shall post and maintain these Procedures and Guidelines on its website.
- c. Responses to Written Requests. A copy of these Procedures and Guidelines, including a written public summary, shall be included with all responses. If the Procedures and Guidelines are maintained on the Public Body's website, a link to the documents may be provided in lieu of providing paper copies.

### V. WRITTEN REQUESTS

- a. Submit in Writing. All requests for public records must be submitted in writing to the FOIA Coordinator. The writing may be submitted by mail, fax, electronic mail, or other electronic transmission. Requests for public records should be as specific as possible and must describe the public record sufficiently to enable the Public Body to find the public record.

- b. Subscription. A Person may subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall remain valid for up to six (6) months, at the request of the subscriber, and shall be renewable.
- c. Record Retention. The FOIA Coordinator will retain a copy of all written requests for public records for no less than 1 year.

## VI. TIME TO RESPOND

- a. When a Request is Considered Received. Requests submitted by mail are considered received on the day they arrive at the Public Body. A request made by fax, electronic mail, or other electronic transmission is not considered received until 1 business day after the electronic transmission is made. If the electronic mail is delivered to the Public Body's spam or junk folder, the request is not considered received until 1 day after the Public Body becomes aware of the request. The Public Body shall keep a record of when the request is delivered to the spam or junk mail folder and when the Public Body first becomes aware of the request.
  - i. The FOIA Coordinator shall review the spam and/or junk mail folders for public record requests at reasonably frequent intervals, but in any event not less frequently than once every fourteen calendar days.
  - ii. Employees of the Public Body who maintain email addresses through the Public Body are required to review the spam and/or junk mail folders for public record requests at reasonably frequent intervals, but in any event not less frequently than once every fourteen calendar days. Public Body Employees must promptly forward all FOIA requests to the FOIA Coordinator.
- b. Response within Five Business Days; Extension. Unless otherwise agreed to in writing by the requester, the Public Body shall respond to the request within five (5) business days after receipt. However, the Public Body may issue a notice extending the time to respond for not more than ten (10) business days, which shall include the reason for the extension and the date by which the Public Body will respond. The Public Body shall not issue more than one (1) notice of extension for a particular request.

## VII. FORM OF RESPONSE

- a. Within five (5) business days after the Public Body receives a request, the FOIA Coordinator shall respond to the request by:
  - i. Granting the request;
  - ii. Issuing a written notice denying the request;
  - iii. Granting the request in part and issuing a written notice denying the request in part; or
  - iv. Issuing a notice extending the time to respond by ten (10) business days.

- b. Failure to respond to a request shall only constitute a final determination to deny the request if:
  - i. Failure was willful and intentional; OR
  - ii. Written request included language requesting information within first 250 words of body of request or the envelope or subject line of the email, letter, or fax included the following words, characters or abbreviations, or recognizable misspellings: “Freedom of Information”, “Information”, “FOIA”, “Copy”.
- c. Denial of Request. To the extent a request, or any portion thereof, is denied, the written response shall be signed by the FOIA Coordinator and shall contain all of the following:
  - i. An explanation of the basis for denial under FOIA or another statute, if that is the reason for denying the request;
  - ii. A certificate that the public record does not exist under the name given or by another name reasonably known, if that is the reason or denying the request;
  - iii. A description of a public record or information on a public record that is separated or deleted, if such separation or deletion is so made;
  - iv. A full explanation of the requestor’s right to appeal to the Chairperson of the Board of Commissioners (the “Chairperson”) or to seek judicial review of the denial; and
  - v. Notice of the right to receive attorney’s fees and damages if the court determines the Public Body has not complied.

#### VIII. EXEMPTIONS and PROTECTION OF CONFIDENTIAL INFORMATION

- a. Exempt Material Policy. In order to protect individuals from an invasion of privacy, to ensure there is no interference with the safety of the public, and to ensure the safe and efficient operations of the Public Body, it is the policy of the Public Body to exempt from disclosure all information that may be exempted in accordance with FOIA.
- b. Mandatory Exemptions. The Public Body must exempt information that, if released, would prevent the Public Body from complying with the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g.

#### IX. COSTS

It shall be the policy of the Public Body to recover all costs associated with responding to FOIA requests to the extent permitted by FOIA. The Public Body hereby establishes the following fee schedule and rules relating to the collection of fees in connection with the processing and fulfillment of FOIA requests:

- a. Cost Components Associated With Requests Resulting In Unreasonably High Costs. The FOIA Coordinator may only charge a fee for the costs involved with searching for, locating and examining a public record, and the deletion and

separation of exempt from non-exempt information when it results in unreasonably high costs to the Public Body. In determining what is an unreasonably high cost to the Public Body the FOIA Coordinator shall consider each request on a case-by-case basis to determine how the nature of the particular request differs from the usual request received by the Public Body. If the request would result in a cost that is unreasonably high relative to the requests the Public Body usually receives, the Public Body may charge for completing the request. *See Bloch v Davison Community Schools*, 2011 WL 1564645 (Mich Ct App). The FOIA Coordinator shall also consider the following factors to determine whether the cost is unreasonably high:

1. Volume of public records requested;
  2. The estimated hours of labor required to complete the request;
  3. The complexity of searching for, examining, and reviewing, a public record, and the deletion and separation of exempt from non-exempt information;
  4. The need to search for, examine, and review public records from different departments, commissions, boards, or committees for the City;
  5. The available staffing for responding to the request; and
  6. Any other similar factors designated by the FOIA coordinator.
- i. Labor Costs – Search, Location, and Examination of Records. The labor costs of searching for, locating, and examining public records.
    1. This cost shall not exceed the hourly wage plus a fringe benefit multiplier of 50% of the hourly wage (but not to exceed the actual fringe benefit costs) of the lowest-paid employee capable of performing these tasks, regardless of whether that employee is available or who actually performs these tasks.
    2. This fee shall be charged in increments of 15 minutes or more. All partial time increments must be rounded down.
    3. Overtime wages shall not be included unless overtime is specifically stipulated by the requester.
  - ii. Labor Costs – Redacting Records. The labor costs directly associated with separating and deleting exempt information from non-exempt information.
    1. Performed by Public Body Employee. If this tasks is performed by an employee, the cost shall not exceed the hourly wage plus a fringe benefit multiplier of 50% of the hourly wage (but not to exceed the actual fringe benefit costs) of the lowest-paid employee capable of performing these tasks in the particular instance, regardless of whether that person is available or who actually performs the tasks.

2. Contracted Labor. If the Public Body does not employ a person capable of separating and deleting exempt from non-exempt information in the particular instance as determined by the FOIA Coordinator on a case-by-case basis, it may treat necessary contracted labor costs in the same manner as employee labor costs, if it clearly notes the name of the contracted person or firm on the Fee Itemization Form. The total labor costs under this subsection for contracted labor shall not exceed an amount equal to six (6) times the state minimum hourly wage.
  3. Labor costs shall be estimated and charged in increments of 15 minutes or more. All partial time increments must be rounded down.
  4. Overtime wages for employees shall not be included unless overtime is specifically stipulated by the requester.
  5. The Public Body shall not charge for the costs of redaction if it knows or has reason to know that it previously redacted the public record and the redacted version is still in the Public Body's possession.
- b. Cost Components Applicable to All FOIA Requests. The Public Body will charge for the actual cost of processing and fulfilling a FOIA request. The fee charged by the Public Body shall not exceed the sum of the following components:
- i. Non-paper Physical Media.
    1. Non-paper physical media may be used in lieu of paper copies, and the requester may stipulate that the public records be provided on non-paper physical media, electronically mailed, or otherwise electronically provided in lieu of paper copies.
    2. If the Public Body provides the public records on non-paper physical media, the Public Body shall charge the actual and most reasonably economical cost of the computer discs, computer tapes, or other digital or similar media.
    3. If the Public Body does not have the technological capability necessary to provide the requested record on non-paper physical media, this subsection does not apply.
    4. In order to ensure the integrity and security of the Public Body's technological infrastructure, the Public Body will procure any requested non-paper physical media and will not accept non-paper physical media from the requestor.
  - ii. Paper Copies. The actual total incremental cost of necessary duplication or publication, not including labor.
    1. The total cost per sheet of paper and the number of sheets used shall be itemized.

2. The fee shall not exceed \$0.10 per sheet of paper for copies made on 8 ½ by 11-inch paper or 8 ½ by 14 inch paper.
  3. The fee for other sized paper shall be charged at the actual total incremental cost.
  4. The Public Body shall utilize the most economical means available for making copies of public records, including using double-sided printing, if cost saving and available.
- iii. Labor Costs – Duplication or Publication of Public records. The cost of labor associated with duplication or publication of the public records, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on non-paper physical media through the internet or other electronic means as stipulated by the requestor.
1. This cost shall not exceed the hourly wage plus a fringe benefit multiplier of 50% of the hourly wage (but not to exceed the actual fringe benefit costs) of the lowest-paid employee capable of performing these tasks, regardless of whether that person is available or who actually performs these tasks.
  2. This fee shall be charged in increments of 1 (one) minute. All partial time increments must be rounded down.
  3. Overtime wages shall not be included unless overtime is specifically stipulated by the requester.
- iv. Mailing. The actual cost of mailing the public records in a reasonably economical and justifiable manner.
1. Expedited shipping or insurance costs shall not be included unless specifically stipulated by the requester.
  2. The Public Body may charge for the least expensive form of postal delivery confirmation.
- c. Public Records May Be Provided Without Charge or at Reduced Cost. A search for public records may be conducted or copies of public records may be furnished without charge or at a reduced charge if the FOIA Coordinator determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public records can be considered as primarily benefiting the general public.
- d. Fee Waiver. A public record search shall be made and a copy of the public record shall be furnished without charge for the first \$20.00 of the fee for each request made that satisfies either of the following:
- i. Indigence.
    1. An individual who is entitled to information under FOIA and who submits an affidavit stating the individual is not requesting the information in conjunction with any outside parties who are

offering the individual payment or other compensation for making the request, and:

- A. Certifying the individual is indigent and receiving public assistance; OR
  - B. Stating facts showing inability to pay the cost because of indigency.
2. If the requestor is eligible for this discount, it shall be noted on the Fee Itemization Form.
  3. If the requestor is ineligible for the discount, the Public Body shall inform the requester specifically of the reason for ineligibility in the Public Body's written response. A requester is ineligible if the individual has previously received discounted copies of public records based on indigency from the Public Body twice during that calendar year.
- ii. Non-Profit Organization. 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 2000, 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:
    1. Is made directly on behalf of the organization or its clients;
    2. Is made for a reason wholly consistent with the mission and provisions of the above referenced statutes; AND
    3. Is accompanied by documentation of its designation by the State.
    4. If the requestor is eligible for this discount, it shall be noted on the Fee Itemization Form.
- e. Fee Reduction for Untimely Responses. For each day the Public Body exceeds the five business day response requirement, the Public Body will reduce the labor costs charged by 5% per day up to a maximum 50% reduction, if:
    - i. The late response was willful and intentional; OR
    - ii. Written request included language requesting information within first 250 words of body of request or the envelope or subject line of the email, letter, or fax included the following words, characters or abbreviations, or recognizable misspellings: "Freedom of Information", "Information", "FOIA", "Copy".
  - f. Statutorily Determined Cost of Records. If a statute expressly provides for the sale of or fee for providing the requested public records the statute shall govern the cost and in such case the fees and costs provided herein, to the extent they conflict with the statute, shall not apply.

## X. DEPOSIT



- a. Good Faith Deposit. If the FOIA Coordinator estimates that the costs associated with responding to a specific FOIA request will exceed \$50.00, the FOIA Coordinator may request a good faith deposit, not to exceed fifty-percent (50%) of the total cost, prior to compiling the public records.
  - i. The response requesting the deposit must include a non-binding best efforts estimate regarding the time it will take to comply with the request, and a detailed estimate of cost for complying with the request using the Fee Itemization Form.
- b. Deposit Due to Unpaid Balance. If a requester has not paid in full for a previously completed request, the FOIA Coordinator may take the following actions:
  - i. Require a deposit of up to 100% of the estimated fee before it begins a full search for an subsequent request from the requester if:
    - 1. The final fee for the prior request was not more than 105% of the estimated fee;
    - 2. Records made available contained the information being sought in the prior written request and are still in public body's possession;
    - 3. Public records were made available to the requester subject to payment within the time frame estimate;
    - 4. 90 days have passed since notifying the requester the records were available;
    - 5. Requester is unable to show proof of prior payment to public body; AND
    - 6. Public body provides a detailed itemization calculating the cost of the current request.
  - ii. The FOIA Coordinator shall no longer require a deposit under this subsection if:
    - 1. Individual can show proof of prior payment in full;
    - 2. Public body is subsequently paid in full; or
    - 3. Three hundred sixty-five (365) days have passed since the written request for which full payment was not remitted.
- c. Best Efforts Time Estimate. All responses requiring a deposit shall also include a best efforts estimate of the time it will take to comply with the request. This estimate is not binding, but shall be provided in good faith.

XI. FEE ITEMIZATION FORM

- a. Itemization. All fees, charges, fee waivers, fee reductions, and deposit requests must be individually itemized using the attached Fee Itemization Form.

XII. PUBLIC RECORDS AVAILABLE ON WEBSITE

- a. Written Requests for Public Records Available on Website. There will be no charge for records which are available on the Public Body's website if the FOIA

Coordinator knows or has reason to know they are available on the website. Instead, the FOIA Coordinator will notify the requester in writing that all or a portion of the requested public records are available on the website. This notification will also provide the specific webpage address, to the degree practicable, of these public records and will include a detailed itemization of the estimated cost (using the Fee Itemization Form) to the requester if that person chooses to have the documents provided in another format, such as paper format or non-paper physical media.

- i. If, after receiving the above referenced written notification and itemization, the requester requests the documents to be provided in another format, the requester shall be charged for the cost of providing these documents, which cost shall include the actual cost of fringe benefits of the lowest paid employee capable of providing the requested public records and shall not be subject to the 50% multiplier limitation.
- b. Verbal Requests for Information Available on Website. Any verbal request for information that the Public Body employee knows or has reason to know is available on the website shall be responded to where practicable by informing the requester about the website address.

### XIII. APPEALS

- a. Appealing a Denial of Public Records.
  - i. If the Public Body makes a final determination to deny all or a portion of a request, the requester may:
    1. Submit a written appeal to the Chairperson specifically stating the word “appeal” and the reasons for reversal; OR
    2. File a civil action in circuit court to compel disclosure. This action must be filed within 180 days after the Public Body’s final determination to deny the request.
  - ii. If the requester appeals to the Chairperson, within ten (10) business days after receiving a written appeal, the Chairperson shall do one of the following:
    1. Reverse the denial;
    2. Issue a written notice to the requester upholding the disclosure denial;
    3. Reverse the denial in part and issue a written notice to the requester upholding the denial in part; OR
    4. If either of the following apply, issue a notice extending for up to 10 business days, the period during which the Chairperson shall respond to the written appeal:
      - A. The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request; or

- B. The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.
  - iii. Within 180 days after receiving a final determination from the Chairperson the requester may commence a civil action.
- b. Appealing an Excessive Fee.
  - i. If the Public Body requires a fee that exceeds the amount permitted, the requester may:
    - 1. Submit to the Chairperson a written appeal for a fee reduction that specifically states the word “appeal” and identifies how the fee exceeds the amount permitted; OR
    - 2. Commence civil action. This action must be filed within 45 days after notice of the fee is received, or determination of an appeal to the Chairperson is received. If a civil action is commenced, the Public Body will not complete the request until the action is resolved. Such action shall not be filed unless:
      - A. The Chairperson failed to respond to the written appeal; OR
      - B. The Chairperson issued a determination to a written appeal.
  - ii. If the requester submits an appeal to the Chairperson, within ten (10) business days of receiving the written appeal, the public body shall do one of the following:
    - 1. Waive the fee;
    - 2. Reduce the fee and issue a written determination indicating the specific basis supporting the remaining fee, with a certification from the Chairperson that the statements are accurate and the fee amount complies with these publicly available procedures and guidelines;
    - 3. Uphold the fee and issue a written determination indicating the specific basis that supports the fee with a certification from the Chairperson that the statements are accurate and the fee amount complies with publicly available procedures and guidelines; OR
    - 4. Issue notice extending for up to ten (10) days the period during which the Chairperson must respond to the written appeal. The notice must detail why the extension is necessary, and the Public Body may only issue one (1) notice of extension.
  - iii. Within 45 days after receiving a final determination from the Chairperson, the requester may commence a civil action.