City of Birmingham
A Walkable Community

MEMORANDUM

City Clerk's Office

DATE: **June 16, 2015**

TO: **Joseph A. Valentine, City Manager**

FROM: **Laura M. Pierce, City Clerk**

SUBJECT: **Public Records Request Policy**
Freedom of Information Act

The State recently made changes to the Freedom of Information Act (FOIA) which are effective on July 1, 2015. Municipalities are now required to establish written Procedures and Guidelines to implement FOIA, including a standard fee itemization form and a separate summary of the Procedures and Guidelines.

The Procedures and Guidelines and Summary explain how to submit a FOIA, how to understand the City's response, deposit requirements, fee calculations, and avenue for challenge or appeal.

The Detailed Cost Itemization Form breaks down the fee into six detailed categories such as the labor to research, redact, and copy the information, charge for copies and mailing the information and copying, labor, and mailing cost for files on the City website. Labor charges are broken down into fifteen minute increments.

The changes in FOIA also allow for a waiver of the fees if the City determines the information is primarily benefitting the general public. It also allows for a discount for indigent individuals or those receiving special assistance and for nonprofit organizations designated by the state under subtitle C of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the federal Protection and Advocacy of Individuals with Mental Illness Act. These categories are listed on the Detailed Cost Itemization Form.

The FOIA law allows a deposit to be required for requests that exceed $50.00, however the amended law now allows the City to require an deposit of up to 100% from a requestor who has not picked up and paid for their previous request.

In addition, if the City fails to respond in the designated timeframe, the labor costs are reduced by 5% per day up to a maximum of 50%.

The Michigan Township Association has assembled Procedures and Guidelines, the Summary, and Detailed Cost Itemization Form which the City has used as a template for its policy. The City Attorney has also reviewed the attached information and determined that the Procedure and forms are in compliance with state law.

SUGGESTED RESOLUTION:
To adopt the City of Birmingham FOIA Procedures and Guidelines and Summary of FOIA Procedures and Guidelines.

City of Birmingham
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151 Martin, Birmingham, MI 48009
Phone: 248.530.1800
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www.bhamgov.org/foia

CITY OF BIRMINGHAM
FOIA PROCEDURES AND GUIDELINES

Preamble: Statement of Principles

It is the policy of the City of Birmingham 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 government 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.

The City'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.

The City acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The City acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

City of Birmingham will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The City's policy is to disclose public records consistent with and in compliance with State law.

The City Commission has established the following written procedures and guidelines to implement the FOIA and will create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests to the public body and explaining how to understand a public body's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal. The written public summary will be written in a manner so as to be easily understood by the general public.

Section 1: General Policies

The City Commission, acting pursuant to the authority at MCL 15.236, designates the City Clerk as the FOIA Coordinator. He or she is authorized to designate other City staff to act on his or her behalf to accept and process written requests for the City's public records and approve denials.

If a request for a public record is received by fax 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 City spam and junk-mail folders on a regular basis, which shall be no less than once a month. The FOIA Coordinator shall work with City Information Technology staff to develop administrative rules for handling spam and junk-mail so as to protect City systems from computer attacks which may be imbedded in an electronic FOIA request.

The FOIA Coordinator may, in 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.

The City is not obligated to create a new public record or make a compilation or summary of information which does not already exist. Neither the FOIA Coordinator nor other City staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

The FOIA Coordinator shall keep a copy of all written requests for public records received by the City on file for a period of one year.

The City will make this Procedures and Guidelines document and the Written Public Summary publicly available without charge.

A copy of this Procedures and Guidelines document and the City's Written Public Summary must be publicly available by providing free copies both in the City's response to a written request and upon request by visitors at the City's office.

This Procedures and Guidelines document and the City's Written Public Summary will be maintained on the City's website at **www.bhamgov.org/foia** so a link to those documents will be provided in lieu of providing paper copies of those documents.

Section 2: Requesting a Public Record

No specific form to submit a request for a public record is required. However the FOIA Coordinator may make available a FOIA Request Form for use by the public.

Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the City may be submitted on the City's FOIA Request Form, in any other form of writing (letter, fax, email, etc.), or by verbal request.

Verbal requests for records may be documented by the City on the City's FOIA Request Form.

If a person makes a verbal, non-written request for information believed to be available on the City's website, where practicable and to the best ability of the employee receiving the request, shall be informed of the pertinent website address.

A request must sufficiently describe a public record so as to enable City personnel to identify and find the requested public record.

Written requests for public records may be submitted in person or by mail to any City office. Requests may also be submitted electronically by fax and email. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for processing.

A person may request that public records be provided on non-paper physical media, emailed or other otherwise provided to him or her in digital form in lieu of paper copies. The City will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.

A person may subscribe to future issues of public records that are created, issued or disseminated by the City of Birmingham on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber. A person can receive email notifications when City Board and Commission minutes and agendas are available by signing up for the "Email Notify" feature on the City website.

A person serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinator will deny all such requests. (15.232, section 2(c))

Section 3: Processing a Request

Unless otherwise agreed to in writing by the person making the request, the City will issue a response within 5 business days of receipt of a FOIA request. If a request is received by fax, email or other electronic transmission, the request is deemed to have been received on the following business day.

The City will respond to a request in one of the following ways:

- Grant the request.
- Issue a written notice denying the request.
- Grant the request in part and issue a written notice denying in part the request.
- Issue a notice indicating that due to the nature of the request the City needs an additional 10 business days to respond for a total of no more than 15 business days. Only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on the City's website.

When a request is granted:

If the request is granted, or granted in part, the 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 FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request.

A copy of these Procedures and Guidelines and the Written Public Summary will be provided to the requestor free of charge with the response to a written request for public records, provided however, that because these Procedures and Guidelines, and the Written Public Summary are maintained on the City's website at: www.bhamgov.org/foia, a link to the Procedures and Guidelines and the Written Public Summary will be provided in lieu of providing paper copies of those documents.

If the cost of processing a FOIA request is $50.00 or less, the requester 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 $50.00 based on a good-faith calculation, or if the requestor has not paid in full for a previously granted request, the City will require a good-faith deposit pursuant to Section 4 of this policy 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.

When a request is denied or denied in part:

If the request is denied or denied in part, the FOIA Coordinator will issue a Notice of Denial which shall provide in the applicable circumstance:

- An explanation as to why a requested public record is exempt from disclosure; or
- A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the City; or
- An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and
- An explanation of the person's right to submit an appeal of the denial to either the office of the City Clerk or seek judicial review in the Oakland County Circuit Court;
- 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.
- The Notice of Denial shall be signed by the FOIA Coordinator.

If a request does not sufficiently describe a public record, the 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 person making the request. Any clarification or amendment will be considered a new request subject to the timelines described in this Section.

Requests to inspect public records:
The City shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinator is authorized to promulgate rules regulating the manner in which records may be viewed so as to protect City records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal City operations. (See Section 11 Appendix)

Section 4: Fee Deposits

If the fee estimate is expected to exceed $50.00 based on a good-faith calculation, the requestor will be asked to provide a deposit not exceeding one-half of the total estimated fee.

If a request for public records is from a person who has not paid the City in full for copies of public records made in fulfillment of a previously granted written request, the 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:

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

The FOIA Coordinator will not require an increased estimated fee deposit if any of the following apply:

- The person making the request is able to show proof of prior payment in full to the City;
- The City is subsequently paid in full for the applicable prior written request; or
- Three hundred sixty five (365) days have passed since the person made the request for which full payment was not remitted to the City.

Section 5: Calculation of Fees

A fee may be charged for the labor cost of copying/duplication.

A fee will ***not*** be charged for the labor cost of search, examination, review and the deletion and separation of exempt from nonexempt information ***unless*** failure to charge a fee would result in unreasonably high costs to the City because of the nature of the request in the particular instance, and the City specifically identifies the nature of the unreasonably high costs.

Costs for the search, examination review, and deletion and separation of exempt from non-exempt information are "unreasonably high" when they are excessive and beyond the normal or usual amount for those services (Attorney General Opinion 7083 of 2001) compared to the costs of the City's usual FOIA requests, not compared to the City's operating budget. (*Bloch v. Davison Community Schools*, Michigan Court of Appeals, Unpublished, April 26, 2011)

The following factors shall be used to determine an unreasonably high cost to the City:

- Volume of the public record requested
- Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
- Whether the public records are from more than one City department or whether various City offices are necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

The Michigan FOIA statute permits the City to charge for the following costs associated with processing a request:

- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
- Labor costs associated with searching for, locating and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the City.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the City.
- The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the City's website if you ask for the City to make copies.
- The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media. This may include the cost for copies of records already on the City's website if you ask for the City to make copies.
- The cost to mail or send a public record to a requestor.

Labor costs will be calculated based on the following requirements:

- All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down. If the time involved is less than 15 minutes, there will be no charge.
- Labor costs 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 work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits.
- The City may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
- 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.
- Contracted labor costs will be charged at the hourly rate of 6 times the state minimum hourly wage.

The cost to provide records on non-paper physical media when so requested will be based on the following requirements:

- Computer disks, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will only be assessed if the City has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- The City will procure any non-paper media and will not accept media from the requestor in order to ensure integrity of the City's technology infrastructure.

The cost to provide paper copies of records will be based on the following requirements:

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed $.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
- The City will provide records using double-sided printing, if it is cost-saving and available.

The cost to mail records to a requestor will be based on the following requirements:

- The actual cost to mail public records using a reasonably economical and justified means.
- The City may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless specified by the requestor.

If the FOIA Coordinator does not respond to a written request in a timely manner, the City must:

- Reduce the labor costs by 5% for each day the City exceeds the time permitted under FOIA up to a 50% maximum reduction, if ***any*** of the following applies:
    - The City's late response was willful and intentional,
    - The written request conveyed a request for information within the first 250 words of the body of a letter facsimile, email or email attachment, or
    - 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 email, letter or facsimile cover page.

- Fully note the charge reduction in the Detailed Itemization of Costs Form.

Section 6: Waiver of Fees

The cost of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced fee is in the public interest because it can be considered as primarily benefitting the general public. The City Commission may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

Section 7: Discounted Fees

Indigence

The FOIA Coordinator will discount the first $20.00 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are:

- Indigent and receiving specific public assistance, or
- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

An individual is not eligible to receive the waiver if:

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

The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

Nonprofit organization advocating for developmentally disabled or mentally ill individuals
The FOIA Coordinator will discount the first $20.00 of the processing fee for a request from:

- 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, 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 meets all of the following requirements:
    - 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 mental health code, 1974 PA 258, MCL 330.1931.
    - Is accompanied by documentation of its designation by the state~~, if requested by the public body~~.

Section 8: Appeal of a Denial of a Public Record

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 appeal to the City Commission by filing an appeal of the denial with the office of the City Clerk.

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. The City FOIA Appeal Form (To Appeal a Denial of Records), may be used.

The City Commission is not considered to have received a written appeal until the first regularly scheduled City Commission meeting following submission of the written appeal.

Within 10 business days of receiving the appeal the City Commission will respond in writing by:

- Reversing the disclosure denial;
- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part; or
- Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the City Commission shall respond to the written appeal. The City Commission shall not issue more than 1 notice of extension for a particular written appeal.

If the City Commission fails to respond to a written appeal, or if the City Commission upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action in Circuit Court.

Whether or not a requestor submitted an appeal of a denial to the City Commission, he or she may file a civil action in Oakland County Circuit Court within 180 days after the City's final determination to deny the request.

If a court that determines a public record is not exempt from disclosure, it shall order the City to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Failure to comply with an order of the court may be punished as contempt of court.

If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in such an action, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or City prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.

If the court determines that the City has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the City to pay a civil fine of $1,000.00,

which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of $1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

Section 9: Appeal of an Excessive FOIA Processing Fee

"Fee" means the total fee or any component of the total fee calculated under section 4 of the FOIA, including any deposit.

If a requestor believes that the fee charged by the City to process a FOIA request exceeds the amount permitted by state law or under this policy, he or she must first appeal to the City Commission by submitting a written appeal for a fee reduction to the office of the City Clerk.

The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted. The City FOIA Appeal Form (To Appeal an Excess Fee) may be used.

The City Commission is not considered to have received a written appeal until the first regularly scheduled City Commission meeting following submission of the written appeal.

Within 10 business days after receiving the appeal, the City Commission will respond in writing by:

- Waiving the fee;
- Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee;
- Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or
- Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the City Commission will respond to the written appeal. The City Commission shall not issue more than 1 notice of extension for a particular written appeal.

Where the City Commission reduces or upholds the fee, the determination must include a certification from the City Commission that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and Section 4 of the FOIA.

Within 45 days after receiving notice of the City Commission's determination of an appeal, the requesting person may commence a civil action in Oakland County Circuit Court for a fee reduction.

If a civil action is commenced against the City for an excess fee, the City is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.

An action shall not be filed in circuit court unless ***one*** of the following applies:

- The City does not provide for appeals of fees,
- The City Commission failed to respond to a written appeal as required, or
- The City Commission issued a determination to a written appeal.

If a court determines that the City required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or Section 4 of the FOIA, the court shall reduce the fee to a permissible amount. Failure to comply with an order of the court may be punished as contempt of court.

If the requesting person prevails in court 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 reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages.

If the court determines that the City has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order the City to pay a civil fine of $500.00, which shall be deposited in the general fund of the state treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of $500.00 to the person seeking the fee reduction. The fine and any damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

Section 10: Conflict with Prior FOIA Policies and Procedures; Effective Date

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by City Commission or the City Administration these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the City Commission or the City Administration, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the City Commission or the City Administration, and to adopt such administrative rules as he or she may deem necessary, to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA statute, provided that such modifications and rules are consistent with State law. The FOIA Coordinator shall inform the City Commission of any change these Policies and Guidelines.

These FOIA Policies and Guidelines become effective July 1, 2015.

Section 11: Appendix of City of Birmingham FOIA Forms

- Request for Public Records Form
- Rules regarding the Public Inspection of Records
- Detailed Cost Itemization Form
- Notice to Extend Response Time Form
- Notice of Denial Form
- Appeal of Denial of Records Form
- Appeal of Excess Fee Form

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CITY OF BIRMINGHAM
PUBLIC SUMMARY OF FOIA PROCEDURES AND GUIDELINES

It is the public policy of this state that all persons (except those persons incarcerated in state or local correctional facilities) are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees.

The people shall be informed so that they may fully participate in the democratic process.

Consistent with the Michigan Freedom of Information Act (FOIA), Public Act 442 of 1976, the following is the Written Public Summary of the City's FOIA Procedures and Guidelines relevant to the general public.

This is only a summary of the City's FOIA Procedures and Guidelines. For more details and information, copies of the City's FOIA Procedures and Guidelines are available at no charge at the City Clerk's office and on the City's website: www.bhamgov.org/foia.

1. How do I submit a FOIA request to the City?

- A request must sufficiently describe a public record so as to enable the City to find it.
- Please include the words "FOIA" or "FOIA Request" in the request to assist the City in providing a prompt response.
- Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the City may be submitted on the City's FOIA Request Form, in any other form of writing (letter, fax, email, etc.), or by verbal request.
    - Any verbal request will be documented by the City on the City's FOIA Request Form.
    - No specific form to submit a written request is required. However a FOIA Request Form and other FOIA-related forms are available for your use and convenience on the City's website at www.bhamgov.org/foia, and at the City Clerk's Office.
- Written requests may be delivered to the City Hall in person or by mail to:
  City Birmingham, City Clerk's Office – FOIA Coordinator
  151 Martin, Birmingham, MI 48009
- Requests may be faxed to: (248) 530-1080. To ensure a prompt response, faxed requests should contain the term "FOIA" or "FOIA Request" on the first/cover page.
- Requests may be emailed to the FOIA Coordinator: Lpierce@bhamgov.org. To ensure a prompt response, email requests should contain the term "FOIA" or "FOIA Request" in the subject line.

2. What kind of response can I expect to my request?

- Within 5 business days after receiving a FOIA request the City will issue a response. If a request is received by fax or email, the request is deemed to have been received on the following business day. The City will respond to your request in one of the following ways:

- Grant the request,
- Issue a written notice denying the request,
- Grant the request in part and issue a written notice denying in part the request,
- Issue a notice indicating that due to the nature of the request the City needs an additional 10 business days to respond, or
- Issue a written notice indicating that the public record requested is available at no charge on the City's website

- If the request is granted, or granted in part, the City will ask that payment be made for the allowable fees associated with responding to the request before the public record is made available.

- If the cost of processing the request is expected to exceed $50.00, or if you have not paid for a previously granted request, the City will require a deposit before processing the request.

- If the request is to inspect or view records, such inspection of public records must be done in accordance with the Rules for Public Inspection of Records (Section 11 Appendix of the FOIA Procedures and Guidelines).

3. What are the City's deposit requirements?

- If the City has made a good faith calculation that the total fee for processing the request will exceed $50.00, the City will require that you provide a deposit in the amount of 50% of the total estimated fee. When the City requests the deposit, it will provide you a non-binding best efforts estimate of how long it will take to process the request after you have paid your deposit.

- If the City receives a request from a person who has not paid the City for copies of public records made in fulfillment of a previously granted written request, the City will require a deposit of 100% of the estimated processing fee before it begins to search for the public record for any subsequent written request when **all** of the following conditions exist:

  - The final fee for the prior written request is not more than 105% of the estimated fee;
  - The public records made available contained the information sought in the prior written request and remain in the City's possession;
  - The public records were made available to the individual, subject to payment, within the best effort time frame estimated by the City to provide the records;
  - Ninety (90) days have passed since the City notified the individual in writing that the public records were available for pickup or mailing;
  - The individual is unable to show proof of prior payment to the City; and
  - The City has calculated an estimated detailed itemization that is the basis for the current written request's increased fee deposit.

- The City will not require the 100% estimated fee deposit if any of the following apply:

  - The person making the request is able to show proof of prior payment in full to the City;
  - The City is subsequently paid in full for all applicable prior written requests; or
  - Three hundred sixty five (365) days have passed since the person made the request for which full payment was not remitted to the City.

4. How does the City calculate FOIA processing fees?

The Michigan FOIA statute permits the City to charge for the following costs associated with processing a request:

- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.

- Labor costs associated with searching for, locating and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the City.

- Labor costs associated with a review of a record to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the City.

- The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the City's website if you ask for the City to make copies.

- The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media. This may include the cost for copies of records already on the City's website if you ask for the City to make copies.

- The cost to mail or send a public record to a requestor.

Labor Costs

- All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down. If the time involved is less than 15 minutes, there will be no charge.

- Labor costs 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 work.

- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. City may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
- 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.

- Contracted labor costs will be charged at the hourly rate of 6 times the state minimum hourly wage.

A labor cost will not be charged for the search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the City. Costs are unreasonably high when they are excessive and beyond the normal or usual amount for those services compared to the City's usual FOIA requests, because of the nature of the request in the particular instance. The City must specifically identify the nature of the unreasonably high costs in writing.

Copying and Duplication

The City must use the most economical method for making copies of public records, including using double-sided printing, if cost-saving and available.

Non-paper Copies on Physical Media

- The cost for records provided on non-paper physical media, such as computer discs, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will be charged only if the City has the technological capability necessary to provide the public record in the requested non-paper physical media format.

Paper Copies

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper is $.10 per sheet of paper.
- Copies for non-standard sized sheets will paper will reflect the actual cost of reproduction.

Mailing Costs

- The cost to mail public records will use a reasonably economical and justified means.
- The City may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless you request it.

Waiver of Fees

The cost of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced fee is in the public interest because it can be considered as primarily benefitting the general public. The City Commission may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

5. How do I qualify for an indigence discount on the fee?

The City will discount the first $20.00 of fees for a request if you submit an affidavit stating that you are:

- Indigent and receiving specific public assistance; or
- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

You are **not** eligible to receive the $20.00 discount if you:

- Have previously received discounted copies of public records from the City twice during the calendar year; or

- Are requesting information on behalf of other persons who are offering or providing payment to you to make the request.

For your convenience, the City has provided an Affidavit of Indigence for the waiver of FOIA fees on the back of the City FOIA Request Form, which is available on the City's website: www.bhamgov.org/foia.

6. May a nonprofit organization receive a discount on the fee?

A nonprofit organization advocating for developmentally disabled or mentally ill individuals that is 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, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, may receive a $20.00 discount if the request meets all of the following requirements in the Act:

- 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 mental health code, 1974 PA 258, MCL 330.1931.
- Is accompanied by documentation of its designation by the state, if requested by the public body.

6. How may I challenge the denial of a public record or an excessive fee?

Appeal of a Denial of a Public Record
If you believe that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, you may appeal to the City Commission by filing a written appeal of the denial with the office of the City Clerk.

The appeal must be in writing, specifically state the word "appeal," and identify the reason or reasons you are seeking a reversal of the denial. You may use the City FOIA Appeal Form (To Appeal a Denial of Records), which is available on the City's website: www.bhamgov.org/foia.

The City Commission is not considered to have received a written appeal until the first regularly scheduled City Commission meeting following submission of the written appeal. Within 10 business days of receiving the appeal the City Commission will respond in writing by:

- Reversing the disclosure denial;
- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part.

Whether or not you submitted an appeal of a denial to the City Commission, you may file a civil action in Oakland County Circuit Court within 180 days after the City's final determination to deny your request. If you prevail in the civil action the court will award you reasonable attorneys' fees, costs and disbursements. If the court determines that the City acted arbitrarily and capriciously in refusing to disclose or provide a public record, the court shall award you damages in the amount of $1,000.00.

Appeal of an Excess FOIA Processing Fee
If you believe that the fee charged by the City to process your FOIA request exceeds the amount permitted by state law, you must first appeal to the City Commission by filing a written appeal for a fee reduction to the office of the City Clerk.

The appeal must specifically state the word "appeal" and identify how the required fee exceeds the amount permitted. You may use the City FOIA Appeal Form (To Appeal an Excess Fee), which is available at the City Hall and on the City's website: www.bhamgov.org/foia.

The City Commission is not considered to have received a written appeal until the first regularly scheduled City Commission meeting following submission of the written appeal. Within 10 business days after receiving the appeal, the City Commission will respond in writing by:

- Waiving the fee;
- Reducing the fee and issue a written determination indicating the specific basis that supports the remaining fee;
- Upholding the fee and issue a written determination indicating the specific basis that supports the required fee; or
- Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the City Commission will respond to the written appeal.

Within 45 days after receiving notice of the City Commission's determination of the processing fee appeal, you may commence a civil action in Oakland County Circuit Court for a fee reduction. If you prevail in the civil action 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 the City acted arbitrarily and capriciously by charging an excessive fee, court may also award you punitive damages in the amount of $500.

SUBMITTED: ___ IN-PERSON ___BY MAIL ___ BY FAX/EMAIL _____SPAM FOLDER

DATE FILED:_____

5-DAY DUE DATE:_____

10-DAY EXTENSION DUE DATE:_____

REQUEST # _____

City of Birmingham
City Clerk's Office
151 Martin, Birmingham, MI 48009
Phone: 248.530.1800
Fax: 248.530.1080
www.bhamgov.org/foia

City of Birmingham
A Walkable Community

FOIA Request for Public Records

Michigan Freedom of Information Act,
Public Act 442 of 1976, MCL 15.231, *et seq*.

(Please Print or Type)

Name		Phone
Firm/Organization		Fax
Street		Email
City	State	Zip

Request for: ☐ Copy ☐ Record inspection ☐ Other _____

Delivery Method: ☐ Will pick up ☐ Will make own copies onsite ☐ Mail to address above ☐ Email to address above

Describe the public record(s) as specifically as possible. PLEASE BE SPECIFIC. If the request is unclear, it could prevent the City from providing the information. Include information such as property address, sidwell number, incident number, date of occurrence, time frame of records requested, etc. Attach additional page if necessary.

Consent to Non-Statutory Extension of City's Response Time

I have requested a copy of records or the opportunity to inspect records, pursuant to the Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, *et seq*. I understand that the City must respond to this request within five (5) business days after receiving it, and that response may include taking a 10-business day extension.

Based on the City of Birmingham's approved FOIA policy, I agree to submit 50% of the estimated total costs if the estimate fee exceeds $50.00 and confirm the balance of the fees incurred will be paid before the public record(s) are released to me. The City must grant or deny all, or a portion of my request, or issue a notice extending for ten (10) business days, the period in which the City must respond to my request.

I hereby certify that the above information is correct and agree to reimburse the City of Birmingham for any costs incurred in processing this request that are allowable under the Michigan Freedom of Information Act. I further acknowledge that my identity is subject to disclosure.

I understand that a copy of the City's Procedure and Guidelines and Summary of the Procedure and Guidelines will be provided to me at no charge if requested at the City Clerk's Office. The information is also available at www.bhamgov.org/foia.

Requestor's Signature	Date

(Complete both sides of form)

Records Located on Website

If the City directly or indirectly administers or maintains an official internet presence, any public records available to the general public on that internet site at the time the request is made are exempt from any labor charges to redact (*separate exempt information from non-exempt information*).

If the FOIA coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the City must notify the requestor in its written response that all or a portion of the requested information is available on its website. The written response, to the degree practicable in the specific instance, must include a specific webpage address where the requested information is available. On the detailed cost itemization form, the City must separate the requested public records that are available on its website from those that are not available on the website and must inform the requestor of the additional charge to receive copies of the public records that are available on its website.

If the City has included the website address for a record in its written response to the requestor and the requestor thereafter stipulates that the public record be provided to him or her in a paper format or other form, including digital media, the City must provide the public records in the specified format (if the City has the technological capability) but may use a fringe benefit multiplier greater than the 50%, not to exceed the actual costs of providing the information in the specified format.

Request for Copies/Duplication of Records on City Website

I hereby stipulate that, even if some or all of the records are located on a City website, I am requesting that the City make copies of those records on the website and deliver them to me in the format I have requested above. I understand that some FOIA fees may apply.

Requestor's Signature	Date

Overtime Labor Costs

Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted on the detailed cost itemization form.

Consent to Overtime Labor Costs

I hereby agree and stipulate to the City using overtime wages in calculating the following labor costs as itemized in the following categories:

1. ☐ Labor to copy/duplicate 2. ☐ Labor to locate 3a. ☐ Labor to redact 3b. ☐ Contract labor to redact
6b. ☐ Labor to copy/duplicate records already on City's website

Requestor's Signature	Date

Request for Discount: Indigence

A public record search **must** be made and a copy of a public record **must** be furnished **without charge for the first $20.00 of the fee** for each request by an individual who is entitled to information under this act and who:

1) Submits an affidavit stating that the individual is indigent and receiving specific public assistance, OR
2) If not receiving public assistance, stating facts showing inability to pay the cost because of indigence.

If a requestor is ineligible for the discount, the public body shall inform the requestor specifically of the reason for ineligibility in the public body's written response. An individual is ineligible for this fee reduction if ANY of the following apply:

(i) The individual has previously received discounted copies of public records from the same public body twice during that calendar year,
(ii) The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. A public body may require a statement by the requestor in the affidavit that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.

Office Use: ☐ Affidavit Received ☐ Eligible for Discount ☐ Ineligible for Discount

I am submitting an affidavit and requesting that I receive the discount for indigence for this FOIA request: Requestor's Signature:	Date:

Request for Discount: Nonprofit Organization

A public record search **must** be made and a copy of a public record **must** be furnished **without charge for the first $20.00 of the fee** for each request by 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 and the Protection and Advocacy for Individuals with Mental Illness Act, if the request meets **ALL** of the following requirements:

(i) Is made directly on behalf of the organization or its clients.
(ii) Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931.
(iii) Is accompanied by documentation of its designation by the state, if requested by the City.

Office Use: ☐ Documentation of State Designation Received ☐ Eligible for Discount ☐ Ineligible for Discount

I stipulate that I am a designated agent for the nonprofit organization making this FOIA request and that this request is made directly on behalf of the organization or its clients and is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931: Requestor's Signature:	Date:

(JULY, 2015

City of Birmingham
City Clerk's Office
151 Martin, Birmingham, MI 48009
Phone: 248.530.1800
Fax: 248.530.1080
www.bhamgov.org/foia

CITY OF BIRMINGHAM
PUBLIC INSPECTION OF RECORDS

Public Inspection of Records

Upon receiving a verbal request to inspect City records, the City shall furnish the requesting person with a reasonable opportunity and reasonable facilities for inspection and examination of its public records.

A person shall be allowed to inspect public records during usual business hours, not less than four hours per day. The public does not have unlimited access to City offices or facilities, and a person may be required to inspect records at a specified counter or table, and in view of City personnel.

City officials, appointees, staff or consultants/contractors assisting with inspection of public records shall inform any person inspecting records that only pencils, and no pens or ink, may be used to take notes.

In coordination with the official responsible for the records, the FOIA coordinator shall determine on a case-by-case basis when the City will provide copies of original records, to allow for blacking out exempt information, to protect old or delicate original records, or because the original record is a digital file or database not available for public inspection.

The FOIA Coordinator is responsible for identifying if records or information requested by the public is stored in digital files or e-mail, even if the public does not specifically request a digital file or e-mail.

A person cannot remove books, records or files from the place the City has provided for the inspection.

No documents shall be removed from the office of the custodian of those documents without permission of that custodian, except by court order, subpoena or for audit purposes. The official shall be given a receipt listing the records being removed. Documents may be removed from the office of the custodian of those documents with permission of that custodian to accommodate public inspection of those documents.

Copies May Be Required to Enable Public Inspection of Records

In coordination with the official responsible for the records, the FOIA Coordinator will determine when the City will provide copies of original records, to allow for blacking out exempt information, to protect old or delicate original records, or because the original record is a digital file or database not available for public inspection.

A fee will be charged for copies made to enable public inspection of records, according to the City's FOIA policy.

REQUEST # _____

DATE COMPLETED _____

COMPLETED BY _____

REQUESTOR CONTACTED BY ____ EMAIL ____ PHONE ____ MAIL

City of Birmingham
City Clerk's Office
151 Martin, Birmingham, MI 48009
Phone: 248.530.1800
Fax: 248.530.1080
www.bhamgov.org/foia

City of Birmingham
A Walkable Community

Michigan Freedom of Information Act,
Public Act 442 of 1976, MCL 15.231, *et seq.*

Freedom of Information Act Request Detailed Cost Itemization

The following costs are being charged in compliance with Section 4 of the Michigan Freedom of Information Act, MCL 15.234, according to the City's FOIA Policies and Guidelines.		
1. Labor Cost for Copying / Duplication This is the cost of labor directly associated with duplication of publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on non-paper physical media or through the Internet or other electronic means as stipulated by the requestor. This shall not be more than the hourly wage of the City's lowest-paid employee capable of necessary duplication or publication in this particular instance, regardless of whether that person is available or who actually performs the labor. These costs will be estimated and charged in __15__-minute time increments as set by the City Commission *(for example: 15-minutes or more)*; all partial time increments must be rounded down. *If the number of minutes is less than one increment, there is no charge.* Hourly Wage Charged: $_____ Charge per increment: $_____ OR Hourly Wage with Fringe Benefit Cost: $_____ OR Multiply the hourly wage by the percentage multiplier: __50__% (*up to 50% of the hourly wage*) and add to the hourly wage for a total per hour rate. Charge per increment: $_____ ☐ Overtime rate charged as stipulated by Requestor *(overtime is not used to calculate the fringe benefit cost)*	To figure the number of increments, take the *number of minutes:* ____, *divide by* __15_ *-minute increments, and round down. Enter below:* Number of increments x _____ =	1. Labor Cost $_____
2. Labor Cost to Locate: This is the cost of labor directly associated with the necessary searching for, locating, and examining public records in conjunction with receiving and fulfilling a granted written request. This fee is being charged because failure to do so will result in unreasonably high costs to the City that are excessive and beyond the normal or usual amount for those services compared to the City's usual FOIA requests, because of the nature of the request in this particular instance, specifically:_____ _____ The City will not charge more than the hourly wage of its lowest-paid employee capable of searching for, locating, and examining the public records in this particular instance, regardless of whether that person is available or who actually performs the labor. These costs will be estimated and charged in _15__-minute time increments *(must be 15-minutes or more)*; all partial time increments must be rounded down. *If the number of minutes is less than 15, there is no charge.* Hourly Wage Charged: $_____ Charge per increment: $_____ OR Hourly Wage with Fringe Benefit Cost: $_____ OR Multiply the hourly wage by the percentage multiplier: __50____% (*up to 50% of the hourly wage*) and add to the hourly wage for a total per hour rate. Charge per increment: $_____ ☐ Overtime rate charged as stipulated by Requestor *(overtime is not used to calculate the fringe benefit cost)*	To figure the number of increments, take the *number of minutes:* ____, *divide by* __15__ *-minute increments, and round down. Enter below:* Number of increments x _____ =	2. Labor Cost $_____

3a. Employee Labor Cost for Separating Exempt from Non-Exempt (Redacting): *(Fill this out if using a City employee. If contracted, use No. 3b instead).* The City will not charge for labor directly associated with redaction if it knows or has reason to know that it previously redacted the record in question and still has the redacted version in its possession. This fee is being charged because failure to do so will result in unreasonably high costs to the City that are excessive and beyond the normal or usual amount for those services compared to the City's usual FOIA requests, because of the nature of the request in this particular instance, specifically:_____ _____ This is the cost of labor of a City employee, including necessary review, directly associated with separating and deleting exempt from nonexempt information. This shall not be more than the hourly wage of the City's lowest-paid employee capable of separating and deleting exempt from nonexempt information in this particular instance, regardless of whether that person is available or who actually performs the labor. These costs will be estimated and charged in __15_-minute time increments *(must be 15-minutes or more)*; all partial time increments must be rounded down. *If the number of minutes is less than 15, there is no charge.* Hourly Wage Charged: $_____ Charge per increment: $_____ OR Hourly Wage with Fringe Benefit Cost: $_____ OR Multiply the hourly wage by the percentage multiplier: _50___% (*up to 50% of the hourly wage*) and add to the hourly wage for a total per hour rate. Charge per increment: $_____ ☐ Overtime rate charged as stipulated by Requestor *(overtime is not used to calculate the fringe benefit cost)*	To figure the number of increments, take the *number of minutes:* ____, *divide by* __15__ *-minute increments, and round down. Enter below:* Number of increments x _____ =	3a. Labor Cost $_____
3b. Contracted Labor Cost for Separating Exempt from Non-Exempt (Redacting): *(Fill this out if using a contractor, such as the attorney. If using in-house employee, use No. 3a instead.)* The City will not charge for labor directly associated with redaction if it knows or has reason to know that it previously redacted the record in question and still has the redacted version in its possession. This fee is being charged because failure to do so will result in unreasonably high costs to the City that are excessive and beyond the normal or usual amount for those services compared to the City's usual FOIA requests, because of the nature of the request in this particular instance, specifically:_____ _____ As this City does not employ a person capable of separating exempt from non-exempt information in this particular instance, as determined by the FOIA Coordinator, this is the cost of labor of a contractor (i.e.: outside attorney), including necessary review, directly associated with separating and deleting exempt information from nonexempt information. This shall not exceed an amount equal to 6 times the state minimum hourly wage rate of _____ (*currently $8.15*). Name of contracted person or firm: _____ These costs will be estimated and charged in _15__-minute time increments *(must be 15-minutes or more)*; all partial time increments must be rounded down. *If the number of minutes is less than 15, there is no charge.* Hourly Cost Charged: $_____ Charge per increment: $_____	To figure the number of increments, take the *number of minutes:* ____, *divide by* __15__ *-minute increments, and round down to:* ____ *increments. Enter below:* Number of increments x _____ =	3b. Labor Cost $_____

4. Copying / Duplication Cost: Copying costs may be charged if a copy of a public record is requested, or for the necessary copying of a record for inspection (*for example, to allow for blacking out exempt information, to protect old or delicate original records, or because the original record is a digital file or database not available for public inspection*). No more than the actual cost of a sheet of paper for: • Letter (8 ½ x 11-inch, single and double-sided): _$0.10___ cents per sheet • Legal (8 ½ x 14-inch, single and double-sided): _$0.10___ cents per sheet No more than the actual cost of a sheet of paper for other paper sizes: • Other paper sizes (single and double-sided): _____ cents / dollars per sheet Actual and most reasonably economical cost of non-paper physical digital media: • *Circle applicable:* Disc / Tape / Drive / Other Digital Medium Cost per Item: _____ The cost of paper copies must be calculated as a total cost per sheet of paper. The fee cannot exceed 10 cents per sheet of paper for copies of public records made on 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper. A City must utilize the most economical means available for making copies of public records, including using double-sided printing, if cost saving and available.	Number of Sheets: x _____ = x _____ = x _____ = No. of Items: x _____ =	Costs: $_____ $_____ $_____ $_____ 4. Total Copy Cost $_____
5. Mailing Cost: The City will charge the actual cost of mailing, if any, for sending records in a reasonably economical and justifiable manner. Delivery confirmation is not required. • The City *may* charge for the least expensive form of postal delivery confirmation. • The City *cannot* charge more for expedited shipping or insurance unless specifically requested by the requestor.* Actual Cost of Envelope or Packaging: $_____ Actual Cost of Postage: $_____ per stamp $_____ per pound $_____ per package Actual Cost (least expensive) Postal Delivery Confirmation: $_____ *Expedited Shipping or Insurance as Requested: $_____ ☐ * Requestor has requested expedited shipping or insurance	Number of Envelopes or Packages: x _____ = x _____ = x _____ = x _____ = x _____ = x _____ =	Costs: $_____ $_____ $_____ $_____ $_____ $_____ 5. Total Mailing Cost $_____
6a. Copying/Duplicating Cost for Records Already on City's Website: If the public body has included the website address for a record in its written response to the requestor, and the requestor thereafter stipulates that the public record be provided to him or her in a paper format or non-paper physical digital media, the City will provide the public records in the specified format and may charge copying costs to provide those copies. No more than the actual cost of a sheet of paper, up to maximum 10 cents per sheet for:	Number of Sheets: x _____ =	Costs: $_____

• Letter (8 ½ x 11-inch, single and double-sided): __$0.10__ cents per sheet • Legal (8 ½ x 14-inch, single and double-sided): __$0.10__ cents per sheet No more than the actual cost of a sheet of paper for other paper sizes: • Other paper sizes (single and double-sided): _____ cents / dollars per sheet Actual and most reasonably economical cost of non-paper physical digital media: • *Circle applicable:* Disc / Tape / Drive / Other Digital Medium Cost per Item: _____ ☐ Requestor has stipulated that some / all of the requested records that are already available on the City's website be provided in a paper or non-paper physical digital medium.	x _____ = x _____ = No. of Items: x _____ =	$_____ $_____ $_____ 6a. Web Copy Cost $_____
6b. Labor Cost for Copying/Duplicating Records Already on City's Website: This shall not be more than the hourly wage of the City's lowest-paid employee capable of necessary duplication or publication in this particular instance, regardless of whether that person is available or who actually performs the labor. These costs will be estimated and charged in _15__-minute time increments *(i.e.: 15-minutes or more)*; all partial time increments must be rounded down. *If the number of minutes is less than 15, there is no charge.* Hourly Wage Charged: $_____ Charge per increment: $_____ OR Hourly Wage with Fringe Benefit Cost: $_____ OR Multiply the hourly wage by the percentage multiplier: __50____% and add to the hourly wage for a total per hour rate. Charge per increment: $_____ The City may use a fringe benefit multiplier greater than the 50% limitation, not to exceed the actual costs of providing the information in the specified format. ☐ Overtime rate charged as stipulated by Requestor	To figure the number of increments, take the *number of minutes:* ____, *divide by* __15__ *-minute increments, and round down. Enter below:* Number of increments x _____ =	6b. Web Labor Cost $_____
6c. Mailing Cost for Records Already on City's Website: Actual Cost of Envelope or Packaging: $_____ Actual Cost of Postage: $_____ per stamp / per pound / per package Actual Cost (least expensive) Postal Delivery Confirmation: $_____ *Expedited Shipping or Insurance as Requested: $_____ ☐ * Requestor has requested expedited shipping or insurance	Number: x _____ = x _____ = x _____ = x _____ =	Costs: $_____ $_____ $_____ $_____ 6c. Web Mailing Cost $_____
Subtotal Fees Before Waivers, Discounts or Deposits: ☐ Cost estimate ☐ Bill Estimated Time Frame to Provide Records: _____ (*days or date*) The time frame estimate is nonbinding upon the City, but the City is providing the estimate in good faith. Providing an estimated time frame does not relieve the City from any of the other requirements of this act.	1. Labor Cost for Copying: 2. Labor Cost to Locate: 3a. Labor Cost to Redact: 3b. Contract Labor Cost to Redact: 4. Copying/Duplication Cost: 5. Mailing Cost: 6a. Copying/Duplication of Records on Website: 6b. Labor Cost for Copying Records on Website: 6c. Mailing Costs for Records on Website: Subtotal Fees:	$_____ $_____ $_____ $_____ $_____ $_____ $_____ $_____ $_____ $_____

Waiver: Public Interest A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the City determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public. ☐ All fees are waived OR ☐ All fees are reduced by: _____%	Subtotal Fees After Waiver:	$_____
Discount: Indigence A public record search must be made and a copy of a public record must be furnished without charge for the first $20.00 of the fee for each request by an individual who is entitled to information under this act and who: 1) Submits an affidavit stating that the individual is indigent and receiving specific public assistance, OR 2) If not receiving public assistance, stating facts showing inability to pay the cost because of indigence. If a requestor is ineligible for the discount, the public body shall inform the requestor specifically of the reason for ineligibility in the public body's written response. An individual is ineligible for this fee reduction if ANY of the following apply: (i) The individual has previously received discounted copies of public records from the same public body twice during that calendar year, OR (ii) The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. A public body may require a statement by the requestor in the affidavit that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration. ☐ Eligible for Indigence Discount	Subtotal Fees After Discount (subtract $20):	$_____
Discount: Nonprofit Organization A public record search must be made and a copy of a public record must be furnished without charge for the first $20.00 of the fee for each request by 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 federal Protection and Advocacy for Individuals with Mental Illness Act, if the request meets ALL of the following requirements: (i) Is made directly on behalf of the organization or its clients. (ii) Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Michigan Mental Health Code, 1974 PA 258, MCL 330.1931. (iii) Is accompanied by documentation of its designation by the state. ☐ Eligible for Nonprofit Discount	Subtotal Fees After Discount (subtract $20):	$_____
Deposit: Good Faith The City may require a good-faith deposit in either its initial response or a subsequent response before providing the public records to the requestor if the entire fee estimate or charge authorized under this section exceeds $50.00, based on a good-faith calculation of the total fee. The deposit cannot exceed 1/2 of the total estimated fee. Percent of Deposit: _____%	Date Paid: _____	Deposit Amount Required: $_____
Deposit: Increased Deposit Due to Previous FOIA Fees Not Paid In Full After a City has granted and fulfilled a written request from an individual under this act, if the City has not been paid in full the total amount of fees for the copies of public records that the City made available to the individual as a result of that written request, the City may require an increased estimated fee deposit of up to 100% of the estimated fee before it begins a full public record search for any subsequent written request from that individual if ALL of the following apply:		

(a) The final fee for the prior written request was not more than 105% of the estimated fee. (b) The public records made available contained the information being sought in the prior written request and are still in the City's possession. (c) The public records were made available to the individual, subject to payment, within the best effort estimated time frame given for the previous request. (d) Ninety (90) days have passed since the City notified the individual in writing that the public records were available for pickup or mailing. (e) The individual is unable to show proof of prior payment to the City. (f) The City calculates a detailed itemization, as required under MCL 15.234, that is the basis for the current written request's increased estimated fee deposit. A City **can no longer require an increased estimated fee deposit** from an individual if ANY of the following apply: (a) The individual is able to show proof of prior payment in full to the City, OR (b) The City is subsequently paid in full for the applicable prior written request, OR (c) Three hundred sixty-five (365) days have passed since the individual made the written request for which full payment was not remitted to the City.	Date Paid: _____	Percent Deposit Required: _____% Deposit Required: $_____
Late Response Labor Costs Reduction If the City does not respond to a written request in a timely manner as required under MCL 15.235(2), the City **must** do the following: (a) **Reduce the charges for labor costs** otherwise permitted by 5% for each day the City exceeds the time permitted for a response to the request, **with a maximum 50% reduction**, if EITHER of the following applies: (i) The late response was willful and intentional, OR (ii) The written request included language that conveyed a request for information within the first 250 words of the body of a letter, facsimile, electronic mail, or electronic mail attachment, or specifically 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 this act, on the front of an envelope, or in the subject line of an electronic mail, letter, or facsimile cover page.	Number of Days Over Required Response Time: _____ Multiply by 5% = Total Percent Reduction: _____	Total Labor Costs $_____ Minus Reduction $_____ = Reduced Total Labor Costs $_____
TOTAL DUE The Public Summary of the City's FOIA Procedures and Guidelines is available free of charge from: Website: __www.bhamgov.org/foia___ Email: _Lpierce@bhamgov.org_____ Phone: ___248.530.1880_____ Address:__151 Martin, Birmingham, MI 48009_____ Request Will Be Processed, But Balance Must Be Paid Before Copies May Be Picked Up, Delivered or Mailed	Date Paid: _____	Total Balance Due: $_____

(July, 2015)

CITY ADMINISTRATION:
Once fee is paid and documents reviewed or picked up, the FOIA Request Form must be attached to this form and returned to the City Clerk's Office.

SUBMITTED: ___ IN-PERSON ___BY MAIL ___ BY FAX/EMAIL _____SPAM FOLDER

DATE FILED:_____

5-DAY DUE DATE:_____

10-DAY EXTENSION DUE DATE:_____

REQUEST # _____

City of Birmingham
City Clerk's Office
151 Martin, Birmingham, MI 48009
Phone: 248.530.1800
Fax: 248.530.1080
www.bhamgov.org/foia

Notice to Extend Response Time for FOIA Request

Michigan Freedom of Information Act,
Public Act 442 of 1976, MCL 15.231, *et seq.*

NOTICE TO:

Name		Phone
Firm/Organization		Fax
Street		Email
City	State	Zip
Date of Notice		

Record(s) You Requested: (Listed here or see attached copy of original request) _____
_____
_____
_____

We are extending the date to respond to your FOIA request for no more than 10 business days, until _____ (*month, day, year*). Only one extension may be taken per FOIA request. If you have any questions regarding this extension, contact: _____ at _____

Estimated Time Frame to Provide Records: _____ (*days or date*)
The time frame estimate is nonbinding upon the City, but the City is providing the estimate in good faith. Providing an estimated time frame does not relieve a public body from any of the other requirements of this act.

Reason for Extension:

☐ 1. The City needs to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to your request. Specifically, the City must:
_____
_____

☐ 2. The City needs to collect the requested public records from numerous field offices, facilities, or other establishments that are located apart from the City office. Specifically, the City must coordinate documents from the following locations:
_____
_____

☐ 3. Other (describe): _____
_____

Signature of FOIA Coordinator:	Date:

(JULY, 2015)

SUBMITTED: ___ IN-PERSON ___BY MAIL ___ BY FAX/EMAIL _____SPAM FOLDER

DATE FILED:_____

5-DAY DUE DATE:_____

10-DAY EXTENSION DUE DATE:_____

REQUEST # _____

City of Birmingham
City Clerk's Office
151 Martin, Birmingham, MI 48009
Phone: 248.530.1800
Fax: 248.530.1080
www.bhamgov.org/foia

City of Birmingham
A Walkable Community

Notice of Denial of FOIA Request

Michigan Freedom of Information Act,
Public Act 442 of 1976, MCL 15.231, *et seq.*

NOTICE TO:

Name		Phone
Firm/Organization		Fax
Street		Email
City	State	Zip
Date of Notice		

Record(s) You Requested: *(Listed here or see attached copy of original request)* _____
_____
_____
_____

☐ All OR ☐ Part of your request for records has been denied. Please refer to this form for an explanation. If you have any questions regarding this denial, contact _____ at _____

Reason for Denial:

☐ 1. Exempt from Disclosure: This item is exempt from disclosure under FOIA Section 13, Subsection _____*(insert number)*, because: _____
_____

☐ 2. Record Does Not Exist: This item does not exist under the name provided in your request or by another name reasonably known to the City. If you believe this record does exist, provide a description that will enable us to locate the record: _____
_____

☐ 3. Redaction: A portion of the requested record had to be separated or deleted (redacted) as it is exempt under FOIA Section 13, Subsection _____ *(insert number)*, because: _____
_____
A brief description of the information that had to be separated or deleted: _____
_____

Notice of Requestor's Right to Seek Judicial Review

You are entitled under Section 10 of the Michigan Freedom of Information Act, MCL 15.240, to appeal this denial to the City Commission or to commence an action in the Circuit Court to compel disclosure of the requested records if you believe they were wrongfully withheld from disclosure. If, after judicial review, the court determines that the City has not complied with MCL 15.235 in making this denial and orders disclosure of all or a portion of a public record, you have the right to receive attorneys' fees and damages as provided in MCL 15.240. (*See back of this form for additional information on your rights*.)

Signature of FOIA Coordinator: Date:

(JULY, 2015)

FREEDOM OF INFORMATION ACT (EXCERPT)
Act 442 of 1976

15.240.amended Options by requesting person; appeal; actions by public body; receipt of written appeal; judicial review; civil action; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.

Sec. 10.
(1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 business days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Reverse the disclosure denial.

(b) Issue a written notice to the requesting person upholding the disclosure denial.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the public body to pay a civil fine of $1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of $1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

History: 1976, Act 442, Eff. Apr. 13, 1977 ;-- Am. 1978, Act 329, Imd. Eff. July 11, 1978 ;-- Am. 1996, Act 553, Eff. Mar. 31, 1997 ;-- Am. 2014, Act 563, Eff. July 1, 2015

SUBMITTED: ___ IN-PERSON ___BY MAIL ___ BY FAX/EMAIL _____SPAM FOLDER

DATE FILED:_____

RESPONSE DUE DATE: _____
(no more than10 business days)

REQUEST # _____

City of Birmingham
City Clerk's Office
151 Martin, Birmingham, MI 48009
Phone: 248.530.1800
Fax: 248.530.1080
www.bhamgov.org/foia

FOIA APPEAL FORM
To Appeal a Denial of Records

Michigan Freedom of Information Act,
Public Act 442 of 1976, MCL 15.231, *et seq*.

(Please Print or Type)

Name		Phone
Firm/Organization		Fax
Street		Email
City	State	Zip

Record(s) You Requested: *(Listed here or see attached copy of original request)* _____
_____
_____

Reason(s) for Appeal:

The appeal must identify the reason(s) for the denial. You may use this form or attach additional sheets:

_____
_____
_____

Requestor's Signature: _____Date: _____

City Response:

The City must provide a response within 10 business days after receiving this appeal, including a determination or taking one 10-day extension.

City Extension: We are extending the date to respond to your FOIA fee appeal for no more than 10 business days, until _____ (*month, day, year*). Only one extension may be taken per FOIA appeal.

Unusual circumstances warranting extension: _____
_____
If you have any questions regarding this extension, contact: _____

City Determination:

☐ Denial Reversed ☐ Denial Upheld ☐ Denial Reversed in Part and Upheld in Part

The following previously denied records will be released: _____
_____
_____

Notice of Requestor's Right to Seek Judicial Review

You are entitled under Section 10 of the Michigan Freedom of Information Act, MCL 15.240, to appeal this denial to the City Commission or to commence an action in the Circuit Court to compel disclosure of the requested records if you believe they were wrongfully withheld from disclosure. If, after judicial review, the court determines that the City has not complied with MCL 15.235 in making this denial and orders disclosure of all or a portion of a public record, you have the right to receive attorneys' fees and damages as provided in MCL 15.240. (*See back of this form for additional information on your rights*.)

Signature of FOIA Coordinator: Date:

(July, 2015)

FREEDOM OF INFORMATION ACT (EXCERPT)
Act 442 of 1976

15.240.amended Options by requesting person; appeal; actions by public body; receipt of written appeal; judicial review; civil action; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.
Sec. 10.
(1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 business days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Reverse the disclosure denial.

(b) Issue a written notice to the requesting person upholding the disclosure denial.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the public body to pay a civil fine of $1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of $1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

History: 1976, Act 442, Eff. Apr. 13, 1977 ;-- Am. 1978, Act 329, Imd. Eff. July 11, 1978 ;-- Am. 1996, Act 553, Eff. Mar. 31, 1997 ;-- Am. 2014, Act 563, Eff. July 1, 2015.

SUBMITTED: ___ IN-PERSON ___BY MAIL ___ BY FAX/EMAIL _____SPAM FOLDER

DATE FILED:_____

RESPONSE DUE DATE: _____
(no more than10 business days)

REQUEST # _____

City of Birmingham
City Clerk's Office
151 Martin, Birmingham, MI 48009
Phone: 248.530.1800
Fax: 248.530.1080
www.bhamgov.org/foia

FOIA APPEAL FORM
To Appeal an Excess Fee

Michigan Freedom of Information Act,
Public Act 442 of 1976, MCL 15.231, *et seq*.

(Please Print or Type)

Name		Phone
Firm/Organization		Fax
Street		Email
City	State	Zip

Record(s) You Requested: *(Listed here or see attached copy of original request)* _____
_____
_____

Reason(s) for Appeal:

The appeal must specifically identify how the required fee(s) exceed the amount permitted. You may use this form or attach additional sheets:
_____
_____
_____

Requestor's Signature: _____Date: _____

City Response:

The City must provide a response within 10 business days after receiving this appeal, including a determination or taking one 10-day extension.

City Extension: We are extending the date to respond to your FOIA fee appeal for no more than 10 business days, until _____ (*month, day, year*). Only one extension may be taken per FOIA appeal.

Unusual circumstances warranting extension: _____
_____
If you have any questions regarding this extension, contact: _____

City Determination: ☐ Fee Waived ☐ Fee Reduced ☐ Fee Upheld

Written basis for City determination: _____
_____
_____

Notice of Requestor's Right to Seek Judicial Review

You are entitled under Section 10a of the Michigan Freedom of Information Act, MCL 15.240a, to appeal a FOIA fee that you believe exceeds the amount permitted under the City's written Procedures and Guidelines to the City Commission or to commence an action in the Circuit Court for a fee reduction within 45 days after receiving the notice of the required fee or a determination of an appeal to the City board. If a civil action is commenced in court, the City is not obligated to compete processing the request until the court resolves the fee dispute. If the court determines that the City required a fee that exceeded the permitted amount, the court shall reduce the fee to a permissible amount. (*See back of this form for additional information on your rights*.)

Signature of FOIA Coordinator: Date:

(July, 2015)

FREEDOM OF INFORMATION ACT (EXCERPT)
Act 442 of 1976

15.240a.added Fee in excess of amount permitted under procedures and guidelines or MCL 15.234.
Sec. 10a.

(1) If a public body requires a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4, the requesting person may do any of the following:

(a) If the public body provides for fee appeals to the head of the public body in its publicly available procedures and guidelines, submit to the head of the public body a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under the public body's available procedures and guidelines or section 4.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, in the court of claims, for a fee reduction. The action must be filed within 45 days after receiving the notice of the required fee or a determination of an appeal to the head of a public body. If a civil action is commenced against the public body under this subdivision, the public body is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute. An action shall not be filed under this subdivision unless 1 of the following applies:

(i) The public body does not provide for appeals under subdivision (a).

(ii) The head of the public body failed to respond to a written appeal as required under subsection (2).

(iii) The head of the public body issued a determination to a written appeal as required under subsection (2).

(2) Within 10 business days after receiving a written appeal under subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Waive the fee.

(b) Reduce the fee and issue a written determination to the requesting person indicating the specific basis under section 4 that supports the remaining fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and section 4.

(c) Uphold the fee and issue a written determination to the requesting person indicating the specific basis under section 4 that supports the required fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the fee amount complies with the public body's publicly available procedures and guidelines and section 4.

(d) Issue a notice extending for not more than 10 business days the period during which the head of the public body must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a).

(4) In an action commenced under subsection (1)(b), a court that determines the public body required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4 shall reduce the fee to a permissible amount. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located. The court shall determine the matter de novo, and the burden is on the public body to establish that the required fee complies with its publicly available procedures and guidelines and section 4. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If the requesting person prevails in an action commenced under this section 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 reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by charging an excessive fee, the court shall order the public body to pay a civil fine of $500.00, which shall be deposited in the general fund of the state treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of $500.00 to the person seeking the fee reduction. The fine and any damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

(8) As used in this section, "fee" means the total fee or any component of the total fee calculated under section 4, including any deposit.

History: Add. 2014, Act 563, Eff. July 1, 2015