



CITY OF ITHACA

FREEDOM OF INFORMATION ACT PROCEDURES AND GUIDELINES

These procedures and guidelines are adopted pursuant to the Freedom of Information Act, MCL 15.231, et seq, as amended (Act).

Definitions.

- A. **FOIA** acronym for Freedom of Information Act.
 - B. **FOIA Coordinator** means the City Clerk or designee. Unless otherwise indicated, any reference in this policy to the “FOIA Coordinator” shall include any designee.
 - C. **Indigent or Indigency**, for purposes of determining whether an individual is entitled to a reduced fee under Section 4 of the Act, shall mean an individual who by proper affidavit demonstrates that he or she meets both the income and the asset standards set forth in the City’s Poverty Exemption Policy adopted pursuant to MCL 211.7u, as that Poverty Exemption Policy is amended annually. An affidavit of indigency filed under Section 4 of the Act shall be effective for a period of 3 months from the date it is filed with the FOIA Coordinator.
 - D. **Person** means an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. Unless it is one of the foregoing, an assumed name, an unincorporated voluntary association, a media outlet or other similar group without recognized legal status is not a “person” within the meaning of this Policy. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.
 - E. **Public Record** means a writing prepared, owned, used, in the possession of, or retained by the City in the performance of an official function, from the time it is created. Public record does not include computer software. The City is not obligated to create a new public record or make a compilation or summary of information which does not already exist.
 - F. **Writing** means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, discs or other means of recording or retaining meaningful content.
 - G. **Written Request** means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means. All requests, in whatever form, received from the same person within a 24-hour period shall be considered a single request, requiring only a single response from the FOIA Coordinator. All written FOIA requests shall be retained for a period of not less than one (1) year.
 - H. **Governmental Entity** means any state, municipality, county, township, or any department or branch thereof, or any branch, agency or department of the federal government.
1. **FOIA Request.** All requests for inspection or copies of public records shall be in writing, except where waived by the FOIA Coordinator, and shall describe the public record(s) sufficiently to enable the FOIA Coordinator

to find the public record(s). Nothing in this policy shall be construed to prohibit the FOIA Coordinator from communicating with the requesting person to seek clarification of an ambiguous, obscure or doubtful request. If clarified by the requesting person, the FOIA request shall be deemed amended to include the clarification. The FOIA Coordinator will document all verbal clarifications. If, in the reasonable opinion of the FOIA Coordinator, multiple or duplicative requests from one or more persons who appear to be acting in concert in an effort to evade the cost reimbursement or circumvent other material provisions of this policy or the Act are received, the FOIA Coordinator may treat such requests as a single request or take other action as the FOIA Coordinator deems reasonable in the circumstances to prevent excessive and unreasonable interference with the discharge of the City's functions or the functioning of its departments, or to protect its public records from loss, unauthorized alteration, mutilation or destruction.

A person may request that public records be provided on non-paper physical media, electronically mailed or otherwise provided to him or her 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 who 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.

2. Conditions for Inspection. The FOIA Coordinator may impose such reasonable restrictions and conditions, and may implement additional rules, as may be necessary to protect the public records and to prevent excessive or unreasonable interference with the conduct of the affairs of the City or employee functions. In order to preserve or protect original written records, or to preserve the integrity of records on microfilm, microfiche or computers, the FOIA Coordinator shall determine the format of all public records to be made available for inspection or copying under this Policy. Without limiting the generality of the foregoing, the FOIA Coordinator may require that copies of the requested records be made available for inspection, rather than the originals, and may charge the requesting person standard rates for the copies. Alternatively, the FOIA Coordinator may electronically scan original records and provide the requesting person with a digital copy, either by email delivery or by copying the records to a CD or other memory device, and charge the requesting person for the actual incremental cost of the storage media and for the labor costs to scan the original records. Unless otherwise determined by the FOIA Coordinator in a particular case, all electronically stored records (including emails) that are requested to be transmitted in digital form shall first be converted to .pdf or other similar format that prevents alteration and preserves the integrity of the record at the time of its release. The City shall not be required to make a compilation, summary or report of information, nor shall the City be required to create any new public record.
3. Processing Response. A written request made by fax, e-mail or other electronic transmission shall not be deemed received until one (1) business day after the electronic transmission is received. Unless otherwise agreed in writing, the FOIA Coordinator shall respond to a request within five (5) business days after the City receives the request by doing one of the following:
 - A. Granting the request.
 - B. Issuing a written notice to the requesting party denying the request.
 - C. Granting the request in part and issuing a written notice to the requesting party denying the request in part.
 - D. Issuing a notice extending for not more than ten (10) business days the period during which the City shall respond to the request.
 - E. Issue a written notice indicating that the public record requested is available at no charge on the City's website.

4. Denial. A written notice denying a request in whole or in part shall contain the following:

- A. An explanation of the basis of the denial.
- B. The statement that the public record does not exist.
- C. A statement that the written request does not describe a public record sufficiently to enable the City to find it.
- D. A brief description of public records not provided because of a claimed exemption.
- E. An explanation of the requesting person's right to make an appeal to the City Manager to seek judicial review and other rights available to such person. Such explanation shall include notice of the requesting person's right to recover attorneys' fees and damages as provided at MCL 15.240 if, after judicial review, the court determines that the public body has not complied with MCL 15.235 and orders disclosure of all or part of a public record.

The FOIA Coordinator shall sign such denial.

5. Charges. Subject to any limitations in the Freedom of Information Act, the FOIA Coordinator shall impose the following charges:

- A. The FOIA Coordinator shall require, at the time of a request, a good faith deposit from the person requesting the public record, if it is estimated that the fees for responding to the request would exceed \$50.00. 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. The deposit shall not exceed one-half of the total estimated fees. The FOIA Coordinator shall not process a FOIA request until the requestor pays the good faith deposit. The FOIA Coordinator shall not deliver copies of public records or permit their inspection until the fees have been paid in full.
- B. If a request for public records is from a person who has not fully paid the City for copies of public records made in fulfillment of a previously granted 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:
 - i. the final fee for the prior written request is not more than 105% of the estimated fee;
 - ii. the public records made available contained the information sought in the prior written request and remain in the City's possession;
 - iii. the public records were made available to the individual, subject to payment, within the time frame estimated by the City to provide the records;
 - iv. 90 days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
 - v. the individual is unable to show proof of prior payment to the City; and
 - vi. the FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.
- C. The charges under this policy shall not apply where a statute specifically authorizes a different charge.
- D. The FOIA Coordinator may waive the above fees for requests by governmental entities or agencies or, the first \$20.00 in fees in the case of indigency, as required by the Act.

- E. A fee will not be charged for the 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. The following factors shall be used to determine an unreasonably high cost to the City:
 - i. The particular request incurs costs greater than incurred from the typical or usual request received by the City. See *Bloch v Davison Community Schools*, 2011 Mich App Lexis 771, 2011 WL 1564645 6.
 - ii. Volume or size of the public record requested.
 - iii. Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested exceeds 30 minutes.
 - iv. Whether public records from more than one City department or various City offices is necessary to respond to the request.
 - v. The available staffing to respond to the request.
 - vi. Any other similar factors identified by the FOIA Coordinator in responding to the particular request.
- F. The City may charge for the following costs associated with processing a FOIA request:
 - i. Labor costs directly associated with searching for, locating and examining a requested public record.
 - ii. Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed.
 - iii. The actual cost of computer discs, computer tapes or other digital or similar media.
 - iv. The cost of duplication of publication, not including labor, of paper copies of public records.
 - v. The cost of labor associated with duplication or publication, including making paper copies, making digital copies or transferring digital public records to non-paper physical media or through the Internet or other electronic means.
 - vi. The actual cost of mailing or sending a public record.
- G. Labor costs will be calculated based on the following requirements:
 - i. All labor costs will be estimated and charged in 15 minute increments with all partial time increments rounded down.
 - ii. 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 the work.
 - iii. 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.
 - iv. Overtime wages will not be included in labor costs until agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.
- H. The cost to provide records on non-paper physical media when so requested will be based on the following requirements:
 - i. 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.
 - ii. 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.
 - iii. In order to ensure the integrity and security of the City's technological infrastructure, the City will

procure any requested non-paper media and will not accept non-paper media from the requestor.

- I. The cost to provide paper copies of records will be based on the following requirements:
 - i. 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 nonstandard sized sheets of paper or colored copies will reflect the actual cost of reproduction.
 - ii. The City may provide records using double-sided printing, if cost-saving and available.
 - J. The cost to mail records to a requestor will be based on the following requirements:
 - i. The actual cost to mail public records using a reasonably economical and justified means.
 - ii. The City may charge for the least expensive form of postal delivery confirmation.
 - iii. No cost will be made for expedited shipping or insurance unless requested.
 - K. If the FOIA Coordinator does not respond to a written request in a timely manner, the Coordinator shall 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:
 - i. the late response was willful and intentional;
 - ii. the written request, within the first 250 words of the body of a letter facsimile, e-mail or e-mail attachment conveyed a request for information. The written request included the words, characters, or abbreviations for "freedom of information", "information", "and FOIA", "copy" or a recognizable misspelling of such, or legal code reference to MCL 15. 231 et seq or 1976 Public Act 442 on the front of an envelope or in the subject line of an e-mail, letter or facsimile cover page; or
 - iii. fully notes the charge reduction in the Detailed Itemization of Costs Form.
6. Waiver of Fees. Absent a waiver by the FOIA Coordinator in whole or in part, all charges associated with processing a FOIA request shall be paid in full before the release of any public records. The cost of the search for and copying of a public record may be waived or reduced if in the sole judgement of the FOIA Coordinator a waiver or reduced fee is in the public interest because such can be considered as primarily benefitting the general public.
- A. In determining whether the general public is primarily benefited, the FOIA Coordinator shall consider the following factors, none of which shall be determinative:
 - i. Whether the public record being disclosed serves the public policy purposes set forth at Section 1 of the FOIA;
 - ii. Whether the release primarily serves a private or commercial purpose;
 - iii. Whether the release implicates the rights of third persons;
 - iv. Whether waiver of the fee is in the best interest of the City; and
 - v. The manner in which similar requests have been treated.
 - B. The entire cost of the search for and copying of a public record may be waived or reduced for requests made by any governmental entity.

- C. The first \$20 of the fee for a request from a nonprofit organization designated by the State to carry out activities under subtitle C of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 (P.L. 106-402) and the federal Protection and Advocacy for Individuals with Mental Illness Act of 1986, or their successors, 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, MCL 330.1931; and
 - iii. Is accompanied by documentation of its designation by the State.

- D. The first \$20.00 of the fee for a person submitting an affidavit stating that they are:
 - i. Indigent and receiving specific public assistance; or
 - ii. If not receiving public assistance stating facts demonstrating an inability to pay because of indigency.

An individual is not eligible to receive the waiver if:

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

The affidavit shall be a sworn statement made under the penalty of perjury. The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

- 7. Appeal of a Denial of a Public Record. The City Manager is designated by the City Council as the head of the public body for the purpose of responding to appeals of a denial of all or a portion of a public record and appeals of processing fees. If the FOIA Coordinator makes a final determination to deny all or a portion of a request, the person making the request may appeal to the City Manager as provided in the Act by submitting to the FOIA Coordinator a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial. Within 10 days after receiving a written appeal, the City Manager shall do one 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 City Manager shall respond to the written appeal. The City Manager shall not issue more than one notice of extension for a particular written appeal.

If the City Manager fails to respond to a written appeal, or if the City Manager 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 an action in circuit court pursuant to the Act.

- 8. Appeal of an Excessive FOIA Processing Fee. If a requestor believes that the fee charged by the City to process a FOIA request exceeds the amount permitted by state law, he or she must first submit a written appeal for a fee reduction to the City Manager.

The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

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

- A. Waiving of the fee;
- B. Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee, accompanied by a certification by the City Manager that the statements in the determination are accurate and the reduced fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA;
- C. Upholding the fee and issuing a written determination indicating the specific basis under Section 4 of the FOIA that supports the required fee, accompanied by a certification by the City Manager that the statements in the determination are accurate and the fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA; or
- D. Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the City Manager will respond to the written appeal.

Within 45 days after receiving notice of the City Manager’s determination of a fee appeal, a requestor may commence a civil action in Gratiot County Circuit Court for a fee reduction. If a civil action is filed appealing the fee, the City is not obligated to process the request for the public record until the Court resolves the fee dispute.

If the court determines that the City required a fee that exceeds the amount permitted, it shall reduce the fee to a permissible amount. If the appellant in the civil action prevails by receiving a reduction of 50% or more of the total fee, the court may award all or appropriate amount of reasonable attorneys’ fees, costs and disbursements.

If the court determines that the City has acted arbitrarily and capriciously by charging an excessive fee, the court shall also award the appellant punitive damages in the amount of \$500.

- 9. Exempt Public Records. All records identified in Section 13 of the Act, a copy of which Section is attached, shall be exempt from disclosure on the conditions and under the circumstances described in such Section 13. All records, the disclosure of which is prohibited by any other statute, rule, regulation or court order shall also be exempt from disclosure.
- 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 the City Council or 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 policy is found to be in conflict with any previous policy promulgated by the City Council 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 Council 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 Council of any change to these Policies and Guidelines.

These FOIA Policies and Guidelines were adopted by the City of Ithaca City Council on July 7, 2015.