

**CITY OF MIDLAND**  
**Public Summary of FOIA Procedures and Guidelines**  
**Effective July 1, 2015**  
**Updated April 1, 2019**

**It is the public policy of this state that all persons (except those persons incarcerated in state or local correctional facilities) are entitled to 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 as it pertains to the operation of government.**

Consistent with the Michigan Freedom of Information Act (FOIA), Public Act 442 of 1976, which is fully incorporated herein and can be found at <http://www.legislature.mi.gov/>, 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 and certain portions of the FOIA. For more details and information, copies of the City's FOIA Procedures and Guidelines, and the FOIA, are available at no charge at City Hall, Grace A. Dow Memorial Library, Law Enforcement Center and the Department of Public Services, and on the City's website: <http://cityofmidlandmi.gov/DocumentCenter/View/12108> and <http://www.legislature.mi.gov/>.

**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.
- A request, except when made by a person who qualifies as indigent, must include the person's, or agent's, complete name, address, valid phone number or email address.
- 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.
  - 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 at the City offices listed above and on the City's website at <http://cityofmidlandmi.gov/DocumentCenter/View/12054>.
- Written requests may be delivered to City Hall in person or by mail: City of Midland, 333 W. Ellsworth Street, Midland, Michigan 48640.
- Requests may be faxed to: (989) 837-5703. 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: [FOIA@midland-mi.org](mailto:FOIA@midland-mi.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 five (5) business days after properly receiving a FOIA request the City will issue a response. When 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 (1) 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 ten (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.
- A FOIA response date is defined as the certified response date by the FOIA Coordinator.
- 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. In the alternative, the City may waive the fee.
- 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 may require a deposit before processing the request.

## 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 may 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. The deposit must be received within forty-eight (48) days from the date the deposit notice is sent or the City will consider the request abandoned and will not be required to fulfill the request.
- 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 may 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 and control;
  - The public records were made available to the individual, subject to payment, within the best efforts 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.
  - The City, in the sole discretion of the FOIA Coordinator, may waive any and all allowable fees and/or costs.

#### **4. How does the City calculate FOIA processing fees?**

The FOIA 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 the City to make copies.
- The cost of computer discs, computer tapes or other digital or similar media when the requestor 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 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 fifteen (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 six (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 and, in the determination by the City, that the computer network system integrity and security will not be compromised in any way.

### ***Paper Copies***

- 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.

### **Mailing Costs**

- The 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.

### **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, there are minimal production costs or that a waiver or reduced fee is in the public interest because it can be considered as primarily benefitting the general public. The FOIA Coordinator 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.

### **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, PA 258 of 1974, MCL 330.1931; and
- Is accompanied by documentation of its designation by the State, if requested by the public body.

## **7. 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 Mayor by filing a written appeal of the denial with the office of the FOIA Coordinator.

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.

Within ten (10) business days of receiving the appeal the Mayor will respond in writing by:

- Reversing the disclosure denial;
- Upholding the disclosure denial;
- Reversing the disclosure denial in part and upholding the disclosure denial in part; or
- Issuing a notice detailing the reason or reasons for extending for not more than ten (10) business days the period during which the Mayor will respond to the written appeal.

Whether or not you submitted an appeal of a denial to the Mayor, you may file a civil action in the 42<sup>nd</sup> Circuit Court for the County of Midland within one hundred eighty (180) days after the City's final determination to deny your request. For more detailed information please refer to the FOIA as found at <http://www.legislature.mi.gov/>.

### **Appeal of an Excessive 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 Mayor by filing a written appeal for a fee reduction to the office of the FOIA Coordinator.

The appeal must specifically state the word “appeal” and identify how the required fee exceeds the amount permitted.

Within ten (10) business days after receiving the appeal, the Mayor 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 ten (10) business days the period during which the Mayor will respond to the written appeal.

Within forty-five (45) days after receiving notice of the Mayor's determination of the FOIA processing fee appeal, you may commence a civil action in the 42<sup>nd</sup> Circuit Court for the County of Midland for a fee reduction. For more detailed information please refer to the FOIA as found at <http://www.legislature.mi.gov/>.

**The above is a summary only. For more detailed information and to view the FOIA in its entirety please refer to Public Act 442 of 1976 as amended, as found at <http://www.legislature.mi.gov/>.**

### **To the Requestor:**

**The City of Midland Freedom of Information Act Procedures and Guidelines and the City of Midland Public Summary of the Freedom of Information Act Procedures and Guidelines are written to comply with the Freedom of Information Act, as amended. The produced documents are not intended nor designed to relieve the requestor from consulting the Freedom of Information Act and its requirements and obligations of all parties.**

### **Reference:**

<http://www.legislature.mi.gov/>

<http://cityofmidlandmi.gov/DocumentCenter/View/12108>

<http://cityofmidlandmi.gov/DocumentCenter/View/12107>