

Policy/Procedure: Freedom of Information Act Request

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CITY OF SAUGATUCK

Purpose: The Michigan Freedom of Information Act (FOIA) identifies what constitutes public records subject to disclosure and requires that public bodies adopt a written Freedom of Information Act policy. The following policy is intended to comply with the FOIA.

A. Definitions

Act or FOIA: The Michigan Freedom of Information Act, Act No. 442 of the Public Acts of 1976, as amended.

Advanced Request: A FOIA request that involves voluminous amounts of separate records, or involves original and irreplaceable records or highly sensitive information, or requires the identification and separation of information that is exempt from disclosure under the FOIA.

FOIA Coordinator: The individual designated by the City Council, responsible for accepting and processing requests for public records as outlined in this Policy and the Act, and who is responsible for approving denials and processing requests, or that individual's designee as provided by law.

Person: An individual, corporation, organization, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or in any other state or in a federal correctional facility nor does it include non-legal entities.

Public Body: The City of Saugatuck and its duly constituted departments, councils, boards or committees.

Public Record: A writing which is prepared, owned, used in the possession of, or retained by a public body in the performance of an official function from the time it is created, as provided by law. Public record does not include computer software.

Regularly Published Public Record: A Public Record that is created by the City, issued by the City, or publicly disseminated by the City, on a regular basis. Examples include public notices of City meetings, agendas for open City

meetings, minutes for open City meetings, and similar documents. Documents created, issued or disseminated by third parties are not included in this definition.

Unusual Circumstances: Circumstances entailing one or a combination of the following: 1) the need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a request, or 2) the need to collect public records from numerous locations apart from the office receiving or processing the request.

Written Request: A request submitted in writing and includes a request transmitted by facsimile, electronic mail, or other electronic means by a person. A written request must describe the public record sought sufficiently to enable the FOIA Coordinator to find the requested public record.

Where not otherwise defined, the words and phrases contained in this Policy shall have the meaning given to them, if any, by the Act.

B. Right to Records

- 1) A person may submit a written request for public record(s) to the City, which request shall be transmitted to the FOIA Coordinator. The request must sufficiently describe the public record to enable the FOIA Coordinator to identify the requested public record. Oral requests for public records, or any type of request other than a written request, will not be recognized or accepted by the City or the FOIA Coordinator.
- 2) A person has the right to inspect a public record, unless exempted by law or court order, during usual business hours, subject to Section E of this Policy, which sets forth the reasonable inspection rules adopted by the City that are necessary to: 1) protect public records from loss, unauthorized alteration, mutilation or dissection, and 2) prevent unreasonable interference with the discharge of City functions.
- 3) Original public records will not be released from the City offices. A person may request that copies of a public record be provided subject to the payment of fees outlined in Section D of this policy and the Act. A person shall not receive copies of a public record(s) unless all fees due to the City are paid in full.
- 4) **Prohibition on Third-Party Requests.**
 - a) FOIA requests must be made and submitted to the City by the person actually seeking the public record(s). Requests made by one person on behalf of another person may be denied. When the FOIA Coordinator reasonably believes that a request has been submitted in violation of this provision, the FOIA Coordinator may deny the request, or may require that the requester submit any or

all of the following additional information, as applicable, before the request will be processed in accordance with this Policy:

- i) For an individual:
 - I) Written documentation that the individual exists, including, but not limited to, birth certificate, driver's license, marriage license, governmental identification card, social security card, or passport.
 - II) An original, signed affidavit from the requester, notarized in accordance with MCL 55.287, attesting that the requester is (a) seeking the requested records in his or her own behalf, (b) is not making the request on behalf of or at the request of any third party, and (c) is not submitting the request in active concert or participation with any other person who is prohibited by law or by judicial order from submitting the request to the City.
- ii) For a business entity (corporation, partnership, company, etc.):
 - I) Written documentation that the business entity exists, including, but not limited to, articles of incorporation, business registration, copies of stock certificates, operating agreement, partnership agreement, dba registration, or similar types of documents.
 - II) The names of all members of its board of directors, all of its incorporators, all of its officers and directors, all of its members, and all of its executive employees.
 - III) The name and address of the business entity's registered agent.
 - IV) The address and phone number of the business entity's principal place of business.
 - V) The business entity's state of incorporation.
 - VI) An original, signed affidavit from the chief executive officer of the business entity, notarized in accordance with MCL 55.287, attesting that the business entity is (a) seeking the requested records in its own behalf, (b) is not making the request on behalf of or at the request of any third party, and (c) is not submitting the request in active concert or participation with any

person who is prohibited by law or by judicial order from submitting the request to the City.

- iii) For other types of entities, associations or organizations:
 - I) Written documentation that the entity, association or organization exists, including, but not limited to its charter, bylaws or other founding documents.
 - II) The names of all members of its board of directors, all of its incorporators, all of its officers and directors, all of its members, and all of its executive employees.
 - III) The address and phone number of the principal office of the entity, association or organization
 - IV) An original, signed affidavit from the principal officer, director or principal employee of the entity, association or organization, notarized in accordance with MCL 55.287, attesting that the entity, association or organization is (a) seeking the requested records in its own behalf, (b) is not making the request on behalf of or at the request of any third party, and (c) is not submitting the request in active concert or participation with any person who is prohibited by law or by judicial order from submitting the request to the City.
- b) In instances when the FOIA Coordinator requests that any or all of the above documentation be submitted, the FOIA request shall not be deemed received by the City until such time as all of the requested documentation has been received by the City, from the requester.
- c) Upon review of the requested documentation, if the FOIA Coordinator determines, in his or her sole discretion, that a FOIA request has been submitted in violation of this provision, the FOIA request may be denied. Written notification of the denial shall be sent to the requester in accordance with this Policy.
- 5) **Exception.** The prohibition on third-party FOIA requests shall not apply to requests submitted by a licensed attorney, on behalf of the attorney's client.

C. Rights and Obligations of the Public Body

- 1) The FOIA Coordinator shall provide reasonable facilities and opportunities for a person to inspect public records, consistent with Section E of this

Policy. The FOIA Coordinator shall provide a certified copy of a public record if a person requests the same in writing.

- 2) Neither the public body nor the FOIA Coordinator is obligated to create a record, list, compilation, report, or summary of information; this includes analyzing, compiling, or summarizing existing information in a new format and converting existing information to an electronic format. Neither the public body nor the FOIA Coordinator are obligated to provide answers to oral or written questions or to perform any other function beyond that required by the Act.
- 3) The FOIA Coordinator shall provide copies of non-exempt public records consistent with the Act and shall retain a copy of all written requests on file for a period of not less than one year. The FOIA Coordinator will follow the provisions of Section D of this Policy.

D. Provisions for copying public records

- 1) The City shall adopt, by resolution, a schedule of fees regarding the provision of copies of public records. All FOIA requests submitted pursuant to the Act shall be subject to the fees and charges adopted by the City, except as otherwise provided by law. Fees and charges shall include those items provided for by the Act including, without limitation, the following:
 - a) Incremental copying costs, including labor for copying. The City will use the most reasonably economical means for making copies of public records.
 - b) Postage and handling as applicable, including the exact postage, as well as the cost for envelopes or other containers used for mailing copies of the public records requested.
 - c) Labor costs for searching, examining, reviewing, or deleting and separating exempt from non-exempt information when the failure to charge a fee results in unreasonably high costs to the City as determined by the FOIA Coordinator. In determining what is an unreasonably high cost to the City, the FOIA Coordinator shall consider, without limitation, the following factors:
 - i) Volume of public records requested;
 - ii) Complexity of searching for, examining, reviewing of a public record, and the deletion and separation of exempt from nonexempt information;

- iii) The need to search for, examine, and review public records from different departments, commissions, boards, or committees for the City;
 - iv) The anticipated amount of labor;
 - v) The available staffing for responding to the request;
 - vi) The need to obtain a legal opinion or review;
 - vii) Whether the request constitutes an Advanced Request; and,
 - viii) Similar factors as designated by the FOIA Coordinator.
- 2) Charges for labor costs shall be determined by using the hourly wages of the lowest paid full-time public employee capable of retrieving the records requested. The cost of labor includes the employee's salary, hourly wage, fringe benefits, and employment-related taxes.
- 3) The FOIA Coordinator may waive a fee or reduce a fee the FOIA Coordinator determines that a waiver or reduction is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public. A public record search shall be made and a copy shall be furnished without the charge for the first \$20.00 of the fee for a request to any person who submits an affidavit of indigency as provided by the Act.
- 4) Where total fees and charges are reasonably anticipated to exceed \$50 (see FOIA Worksheet, Attachment B), the FOIA Coordinator is authorized to require that fifty percent of the estimated fees and charges be paid at the time the request is made. In the event a deposit is required, the FOIA Coordinator will not begin compiling or copying the public records until the deposit is received, and the timeline for responding to the request shall not commence until that same time. The balance must be paid in full, prior to the release of the public record copies.
- 5) When responding to an Advanced Request, the City may, in the discretion of the FOIA Coordinator, respond to the request only to the extent possible without spending more than the good-faith deposit, and then require another good-faith deposit as to the remainder of the request, before commencing work on the remainder of the request.
- 6) The FOIA Coordinator shall not charge additional fees for certification of any copies. The City has limited in-house capabilities for copying photographs, audio or videotapes, microforms, maps or plans. If a person requests that copies be made of these or large documents which must be copied off-site, the FOIA Coordinator will determine and assess those costs. If an employee of the public body is required to deliver and/or pick

up the public records and/or copies of public records, the labor hours spent and applicable mileage (at City rates) will also be applied to the charges of the person(s) requesting the public records.

- 7) The City may hire individuals to process or assist in the processing of a request and the associated costs and fees shall be charged to the requester.
- 8) Copy fees and mailing charges for subscriptions to future issuances of regularly published public records will be arranged through the FOIA Coordinator. A person can request that a regularly published public record be sent to them or they may be called for pick up of the public record for a period of time, not to exceed six months, unless extended, in writing, by the requester. The initial subscription and each renewal thereof shall be valid for not more than six months. An escrow deposit of \$25.00 may be charged to the applicant to cover the costs of this service, as determined by the FOIA Coordinator.

E. Provisions for inspection of public records

- 1) The FOIA Coordinator shall furnish the requesting person with a reasonable opportunity for inspection and examination of public records and furnish reasonable facilities for making memoranda or abstracts from public records available during usual business hours. The following rules shall apply to all requests for inspection of records:
 - a) Any person examining public records shall bring to the examination only an erasable pencil with which to make notes or lists, etc. No pens or indelible writing instruments are allowed. No notes or writing of any kind shall be made on the documents themselves.
 - b) A City staff member must be present at all times during the inspection of City records if any original records are involved, to protect the records from loss, unauthorized alteration, mutilation, or destruction. In order to defray the City's cost of this monitoring service, a fee shall be paid to the City for personnel time, as provided in Section D of this Policy.
 - c) Original documents may be removed from and replaced in City files only by authorized City staff.
 - d) A requester may not remove records or files from the area provided for inspection unless those documents are copied specifically for the requester by authorized City staff.
 - e) The FOIA Coordinator or City Manager will determine, on a case-by-case basis, whether a requester may inspect an original public record, or only a copy of the record. A fee may be charged for

copies made to enable public inspection of records, in accordance with Section D of this Policy. Situations where original records are likely to require copying prior to inspection include the following:

- i) The records include exempt information that must be redacted.
 - ii) The records are old or delicate, or contain information that could not easily be replicated.
 - iii) The records are in digital format or are part of a database not available for public inspection.
 - iv) Providing copies would be less disruptive to the performance of City functions than providing the necessary staff oversight required for inspection of original records.
- 2) A person requesting to inspect City records must make an appointment with the City Clerk. Appointments will occur during the Clerk's regular business hours. The date and time of appointments for inspection will be determined by the Clerk. Appointments for Advanced Requests will typically occur 10 or more business days after the appointment request is received, to allow City staff to make appropriate arrangements to:
- a) Find and gather the requested information, if available;
 - b) Determine whether any of the requested information is exempt from disclosure under the FOIA;
 - c) If applicable, separate the exempt information from the non-exempt information, and prepare a written statement identifying the exempt information and citing the particular provision or provisions of the FOIA under which the information is exempt;
 - d) Provide reasonable, secure facilities for inspection and examination;
 - e) Provide adequate protection of original public records; and
 - f) Coordinate regular department/unit functions while the inspection occurs.
- 3) The Clerk will make reasonable efforts to allow a requester to inspect records for up to four hours per appointment; provided, however, that inspections will be cut short, postponed or rescheduled when necessary to avoid unreasonable interference with the City staff's performance of their primary functions.

F. Procedures of the Public Body to Process the FOIA Request

- 1) The City shall respond to a request for public records in a manner consistent with the Act. A written request made by facsimile, electronic mail, or other electronic transmission is not deemed to have been received by the City until one business day after the facsimile, electronic mail, or other electronic transmission is made. The FOIA Coordinator shall respond to a request for a public record by doing any of the following:
 - a) Granting the request. The following shall apply to granted requests:
 - i) If the request indicates that the person desires to inspect the public records, the FOIA Coordinator will contact the person to arrange for inspection at a reasonable time and during the usual business hours, in accordance with Section E of this Policy.
 - ii) If the request is for copies of a public record, and the anticipated fees and charges exceed \$50.00, the FOIA Coordinator may first mail a FOIA Worksheet to the person and request a 50% payment of the anticipated charges and fees.
 - iii) Upon receiving the person's executed FOIA Worksheet, where required, along with any payment due, the FOIA Coordinator will respond by providing copies of the non-exempt portion of the requested public records. The City only sends copies by U.S. first-class mail.
 - b) Issuing a written notice denying the request. The notice of denial shall include:
 - i) An explanation as to why the requested public record is legally exempt from disclosure, or notice that the requested public record does not exist under the name given by the person or another name reasonably known to the City.
 - ii) An explanation or general description of information which had to be separated or deleted from the public record pursuant to this policy, as applicable.
 - iii) An explanation of the person's right to appeal the denial to the City Council and seek judicial review in accordance with the Act.
 - iv) An explanation of the person's right to reasonable attorney fees, costs, and disbursements as well as actual or compensatory, and punitive damages of \$500.00 if, after

judicial review, the circuit court determines that the City has not complied with the Act and orders disclosure.

- v) The signature of the FOIA Coordinator.
 - c) Granting the request in part, and issuing a written notice denying the request in part. In the latter instance, the public records will be treated consistent with Section F.1.b of this Policy.
 - d) Issuing a written notice extending the time in which to respond to the request by ten business days, specifying the reasons for the extension.
- 2) If a person does not sufficiently describe a public record so as to enable the FOIA Coordinator to locate the same, the FOIA Coordinator shall notify the person that the request is deficient. The notice shall serve as a denial under this policy and the Act. The notice shall include the relevant language from the Act. A subsequent written request is considered a new request and subject to the timelines described in this Policy.

G. Procedures for Separation of Records

If a request is made for an existing public record that includes information which is exempt from disclosure and information which is not exempt, the FOIA Coordinator will separate the material and make the non-exempt material available for examination and/or copying. All personal and private information shall be redacted from the materials being furnished prior to their release, along with all other material exempt under the Act. Additionally, the FOIA Coordinator shall generally describe the material which was separated, unless doing so would reveal the contents of the exempt information. The labor cost(s) associated with such procedures shall be treated in accordance with Section D of this Policy.

H. Designation of FOIA Coordinator

The City Clerk is designated to be the City's FOIA Coordinator. In addition, the following officers are authorized to act as the FOIA Coordinator in the Clerk's absence or unavailability, or as the Clerk otherwise designates: the City Manager or the City Treasurer. The FOIA Coordinator and designees shall be responsible to accept and process requests for public records and approve denials in accordance with the Act.

I. Appeals

If a person's request for a public record is denied, in whole or in part, the person may file a written appeal of the decision in accordance with the following process:

- 1) The appeal must be submitted in writing to the City Council, c/o the City Clerk.

- 2) The written appeal must specifically state the word “appeal” and identify the reason or reasons for the reversal of the denial.
- 3) Where a written appeal is received by the City Clerk consistent with this Policy and the Act, the City Council shall either: (a) place the appeal on the agenda for the next regularly scheduled meeting, to be decided within ten days thereafter; or (b) schedule a special meeting to consider the appeal be held no later than ten days following the next regularly scheduled meeting.
- 4) The City Council may deliberate and shall take one of the following actions in response to the filing of an appeal:
 - a) Reverse the denial.
 - b) Issue a written notice to requesting person affirming the denial.
 - c) Reverse the denial in part and issue a written notice to the requesting person affirming the denial in part.
 - d) Under unusual circumstances, issue a notice extending not more than ten business days the period during which the City Council shall respond to the written appeal. Only one written notice extending the response time is allowed.

J. Amendment

The City Council may, from time to time, amend or supplement these rules and guidelines, in the Council’s sole discretion.

ATTACHMENT B
FREEDOM OF INFORMATION ACT WORKSHEET

The fees and costs outlined are provided in response to your written request for a copy of a public record as outlined in the City of Saugatuck Freedom of Information Act Policy.

DATE THE FOIA REQUEST WAS RECEIVED:

PUBLIC RECORD(S) REQUESTED:

Unreasonably high costs to City because of

1. TOTAL COPYING COSTS AS ITEMIZED BELOW: \$ _____

_____ City-owned copier _____ Commercial Copier

Vendor or Facility Used: _____

Cost per copy ___ x No. of copies _____ = \$ _____

Cost per computer disc ___ x No. of disks _____ = \$ _____

Cost per name ___ x No. of labels _____ = \$ _____

Cost per blue print x No. of _____ = \$ _____

Additional items:

<u>Item</u>	<u>Quantity</u>	<u>Cost</u>
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2. **TOTAL MAILING COSTS AS ITEMIZED BELOW: \$** _____

Cost of envelopes or other mailing device: \$ _____

Postage costs: \$ _____

3. **ESTIMATED LABOR COSTS AS ITEMIZED BELOW: \$** _____

Due to the nature of this request, a labor fee is being charged for the research, examination, review and (if applicable) the deletion and separation of exempt from nonexempt information as provided in the City of Saugatuck FOIA Policy. This fee is being charged due to:

Estimated Labor Hours _____ x \$ _____ = \$ _____

4. **TOTAL COSTS OF ITEMS 1 THROUGH 3 ABOVE \$** _____
(Where Estimated Total Costs Exceed \$50.00)

I, _____, am requesting copies under FOIA. Based on the City of Saugatuck's approved FOIA Policy, I am submitting 50% of the estimated TOTAL COSTS as required, and confirm that the balance of the fees incurred will be paid before the public records are released to me.

SIGNATURE: _____ DATE: _____