

Policy/Procedure: Freedom of Information Act Request

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Resolution Number (if applicable): N/A

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.

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.

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

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.

A person has the right to inspect a public record, unless exempted by law or court order during usual business hours and subject to reasonable inspection rules necessary to: 1) protect public records from loss, unauthorized alteration, mutilation or dissection, or 2) prevent unreasonable interference with the discharge of City functions.

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 unless all fees due to the City are paid in full.

C. Rights and Obligations of the Public Body

The FOIA Coordinator shall provide reasonable facilities and opportunities for a person to inspect public records. The FOIA Coordinator shall provide a certified copy of a public record if a person requests the same in writing.

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.

The FOIA Coordinator shall provide copies of 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

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 must include those items provided for by the Act including, without limitation, the following:

- 1) Incremental copying costs, including labor for copying. The City will use the most reasonably economical means for making copies of public records.
- 2) 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.
- 3) 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:

- 1) Volume of public records requested;
- 2) Complexity of searching for, examining, reviewing of a public record, and the deletion and separation of exempt from non-exempt information;
- 3) The need to search for, examine, and review public records from different departments, commissions, boards, or committees for the City;
- 4) The anticipated amount of labor;
- 5) The available staffing for responding to the request;
- 6) The need to obtain a legal opinion or review; and
- 7) Similar factors as designated by the FOIA Coordinator.

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.

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.

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. The balance must be paid prior to the release of the public record copies.

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.

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 requestor.

Copy fees and mailing charges for future issuances of regularly published public records will be arranged through the FOIA Coordinator. A person can request that a public record, which is regularly published, 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. 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

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.

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. In the event the inspection is of original City records, the City shall provide a monitor to ensure protection of the public records. In order to defray the cost to the City of having the records review monitored by City personnel, a fee shall be paid to the City for personnel time as provided in Section D of this Policy.

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

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:

- 1) Granting the request.

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.

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.

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.

- 2) Issuing a written notice denying the request. The notice of denial shall include:

- a) 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.
- b) An explanation or general description of information which had to be separated or deleted from the public record pursuant to this policy, as applicable.
 - c) An explanation of the person's right to appeal the denial to the City Council and seek judicial review in accordance with the Act.
 - d) 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.
 - e) The signature of the FOIA Coordinator.

3) 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 Subsection F.2) above.

4) Issuing a written notice extending the time in which to respond to the request by ten business days, specifying the reasons for the extension.

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 is directed to generally describe the material which had to be 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.

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: City Manager and 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 person shall be advised by the FOIA Coordinator of the right to file a written appeal to the City Council within a prescribed time period.
- 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: (i) place the appeal on the agenda for the next regularly scheduled meeting, to be decided within ten days thereafter; or (ii) 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 head of the public body shall respond to the written appeal. Only one written notice extending the response time is allowed.

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: _____

09805 (001) 337027.02