

CITY OF EAST LANSING

POLICY RESOLUTION NO. 2015 – 07

RESOLUTION ESTABLISHING FREEDOM OF INFORMATION ACT (FOIA) POLICIES, PROCEDURES AND GUIDELINES FOR THE CITY OF EAST LANSING

WHEREAS, from time to time, various departments of the City of East Lansing will receive Freedom of Information Act (“FOIA”) requests; and

WHEREAS, these FOIA requests must be responded to in adherence with the Freedom of Information Act, being MCL 15.231, *et seq* (the “Act”); and

WHEREAS, due to the necessity of having a policy to ensure that FOIA requests are addressed in an efficient and consistent manner and pursuant to established published procedures and guidelines to implement charges for responding to FOIA requests, Council adopted Policy Resolution 2010-1; and

WHEREAS, there were significant changes in the FOIA procedures and requirements adopted pursuant to 2014 PA 563, to be effective July 1, 2015.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of East Lansing hereby adopts the following Freedom of Information Act Policies, Procedures, and Guidelines:

1. The City Clerk is hereby designated the FOIA Coordinator for the City of East Lansing and is responsible for accepting and processing all FOIA requests in accordance with these Policies, Procedures, and Guidelines, with the exception of those submitted to the Police and Fire Departments.
2. The Chief of Police or his or her designee, upon the designation of the City Clerk, is responsible for accepting and processing all FOIA requests submitted to the Police Department and all requests concerning Police Department documents in accordance with these Policies, Procedures, and Guidelines.
3. The Fire Chief, or his or her designee, upon the designation of the City Clerk, is responsible for accepting and processing all FOIA requests submitted to the Fire Department and all requests concerning Fire Department records in accordance with these Policies, Procedures, and Guidelines.
4. Each department other than the Police and Fire departments receiving a FOIA request shall promptly forward the request to the FOIA Coordinator.

Each department shall provide the requested information unless a determination is made that it is exempt from disclosure. If the record contains both exempt and nonexempt material, the nonexempt material shall, if possible, be separated and made available. The FOIA Coordinator shall sign and provide the final response to the requestor.

5. Unless otherwise agreed to in writing by the person making the request, the FOIA Coordinator shall respond to the request not more than five (5) business days after the request has been received, unless a 10 business day extension has been issued, in which case the FOIA Coordinator shall respond within 15 business days after the request has been received.
6. The response shall either grant the request, deny the request, or grant the request in part and deny the request in part.
7. If the request is granted in whole or in part, the response shall:
 - (1) State the fees, if any, for the public record search, for the necessary copying of a public record for inspection, or for providing a copy of the public record. The fees shall be charged in accordance with the Act and only those set forth in Attachment A, which is incorporated herein. The fees charged shall be itemized on a form in accordance with Attachment B. If the FOIA Coordinator has failed to respond within the time frames set forth in Paragraph 6 and either the delay was willful and intentional or the request was properly identified as a FOIA request pursuant to Section 4(9)(a)(ii) of the Act, the charges for labor costs set forth in this resolution and the attachments shall be reduced by 5% for each day the City exceeded the time for a response, with a maximum of a 50% reduction.
 - (2) State the amount of any deposit required pursuant to the terms of this resolution and the Act.
 - (3) Contain a best efforts estimate setting forth the time frame it will take the FOIA Coordinator to comply with the request.
 - (4) Explain which, if any, of the requested documents or information is available on the City's website, including the City's web page address and location on the website where the information can be located. The FOIA Coordinator shall identify separately in Attachment B the charges to receive copies of those documents that are available on the City's website.
 - (5) Fully explain the right to file a "fee appeal" to the City Manager or commence an action in circuit court if fees are charged in excess of the amount permitted by the Act or these policies and procedures,

including the possibility of being awarded all or a portion of the requesting person's attorney fees if the court reduces the fees by 50% or more of the total fee.

- (6) Include a website link to these policies, procedures and guidelines on the City's website.
 - (7) Include a signature of the FOIA coordinator.
8. If the request is denied in whole or in part, the response shall:
- (1) Explain the statutory basis for the determination that the public record, or a part thereof, is exempt, if that is the reason for denying all or part of the request.
 - (2) Certify that the public record does not exist under the name given by the requestor or any other name reasonably known to the City, if that is the reason for denying all or part of the request.
 - (3) Describe any material that has been separated or deleted as required by the Act.
 - (4) Fully explain the requesting person's right to appeal to the City Manager or seek judicial review of the denial in circuit court, including the right to receive attorney fees if the court determines that the City has not complied with the Act and orders disclosure of all or a portion of the public record.
 - (5) Include a website link to these policies, procedures and guidelines on the City's website.
 - (6) Include a signature of the FOIA coordinator.
9. 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 FOIA Coordinator 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. In addition, a public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request by either of the following:
- (a) An individual who is entitled to information under this Act and who submits an affidavit stating that the individual is indigent and receiving specific public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency. If the

requestor is eligible for a requested discount, the public body shall fully note the discount on the detailed itemization described under subsection (4). If a requestor is ineligible for the discount, the FOIA Coordinator shall inform the requestor specifically of the reason for ineligibility in the 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 under this subsection 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. The FOIA Coordinator 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.
- (b) 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, 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:
- (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, being MCL 330.1931.
 - (iii) Is accompanied by documentation of its designation by the State, if requested by the public body.
10. Fees for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information shall not be charged 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 these unreasonably high costs. The costs to the City shall be deemed unreasonably high if, because of the nature of the request in the particular instance, the amount of time needed to complete the search, examination, and review, or the deletion and separation of exempt from nonexempt information, will exceed 30 minutes.
11. If a City employee receives a verbal request for information that the employee believes is available on the City's website, the employee shall, where

practicable, to the best of the employee's knowledge, inform the requestor about the City's website address. The City employee shall otherwise inform the requestor of the ability to file a written FOIA request with the City.

12. The FOIA Coordinator shall require a good-faith deposit from the requestor of $\frac{1}{2}$ of the total estimated fee before providing public records if the entire fee estimate or charge, as detailed on the form attached hereto as Attachment B, exceeds \$50.00. The FOIA Coordinator shall require a deposit of 100% of the estimated fee if the requestor is more than 90 days and less than 365 days delinquent in paying the fees for and receiving records from a prior request and if all of the following apply:
 - (1) The final fee for the prior written request was not more than 105% of the estimated fee.
 - (2) The public records made available contained the information being sought in the prior request and are still in the City's possession.
 - (3) The public records were made available to the individual, subject to payment, within the time frame estimate provided to the individual.
 - (4) Ninety days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing.
 - (5) The individual is unable to show proof of payment.
 - (6) The fees for the current request are itemized pursuant to Attachment B.
 - (7) The individual does not subsequently pay in full the applicable fees for the prior request.

13. The City Manager, being the chief administrative officer of the City pursuant to City Charter, is designated the head of the City for purposes of all appeals made pursuant to the Act. The following appeals, together or independently, may be made to the City Manager.
 - (a) Fee appeals. A person may appeal the fee by submitting to the City Manager a written appeal for a fee reduction by specifically stating the word "appeal" and identifying how the required fee exceeds the amount permitted under these policies and procedures or the Act.
 - (b) Denial appeals. A person may appeal the denial of FOIA request, whether said denial was in whole or in part, by submitting to the City

Manager a written appeal that specifically states the word “appeal” and identifies the reason or reasons for reversal of the disclosure denial.

14. The City Clerk shall create a written public summary, in a manner so as to be easily understood by the general public, of the policies, procedures, and guidelines contained herein that are relevant to the general public regarding how to submit written requests to the City and explaining how to understand the City’s responses, deposit requirements, fee calculations, and avenues for challenge and appeal.
15. These policies, procedures, and guidelines, along with the written summary described above, shall be posted on the City’s website and be provided free of charge to any person who visits the City Clerk’s office and requests a copy.
16. The FOIA Coordinators designated herein, the City Manager and all City employees shall, at all times, comply with the Act. To the extent there is a conflict between the Act and the policies, procedures, and guidelines specified herein, the Act controls and shall be followed. To the extent there is an omission of any requirement of the Act and the policies, procedures, and guidelines specified herein, the requirements of the Act control and must be complied with. The City Attorney’s office is available for assistance as to compliance with the Act and these policies, procedures and guidelines, the legality of any denial, or other questions relative to FOIA requests.

BE IT FURTHER RESOLVED, that the City Council of the City of East Lansing hereby authorizes the adoption of this Freedom of Information Act Policies, Procedures, and Guidelines to be effective July 1, 2015.

BE IT FURTHER RESOLVED, that this Policy Resolution replaces Policy Resolution 2010-1 on its effective date.

BE IT FURTHER RESOLVED, that the City Clerk shall forward a copy of this Resolution to all offices and departments of the City of East Lansing.

Nathan Triplett, Mayor
City of East Lansing

Moved by Councilmember: Woods

Supported by Councilmember: Goddeeris

YEAS: 5

NAYS: 0

ABSENT: 0

CLERK'S CERTIFICATION: I hereby certify the foregoing is a true and complete copy of a Resolution adopted by the City of East Lansing City Council at its regular meeting held on May 6, 2015, the original of which is a part of the Council minutes.

Marie E. Wicks, City Clerk
City of East Lansing

Approved as to form:

Thomas M. Yeadon
East Lansing City Attorney