

Metro Police Authority of Genesee County Freedom of Information Act Procedures & Guidelines

Principles and Intent

It is the policy of the Metro Police Authority of Genesee County (MPA) that all persons, consistent with the Michigan Freedom of Information Act (FOIA), are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people shall be informed so that they fully participate in the democratic process.

The MPA's policy with respect to FOIA requests is to comply with state law in all respects and to respond to FOIA requests in a consistent, fair, and transparent manner regardless of the source or content of such requests.

The MPA acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The MPA acknowledges that sometimes it is necessary to observe exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

The MPA will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The MPA's policy is to disclose public records consistent with and in compliance with state law in a manner that is efficient in cost and time, thereby encouraging FOIA requests.

General Policies

The Metro Police Authority of Genesee County Board acting pursuant to the authority within MCL 15.236 designates Gregory RaCosta as FOIA coordinator and Executive Secretary Janette MacAinsh as the Assistant FOIA Coordinator. The coordinators are authorized to designate other MPA staff, including counsel, to act on his or her behalf to accept and process written requests for the MPA public records and approve denials.

If a request for a public record is received by facsimile or e-mail, the request is deemed to have been received on the following business day. If a request is sent by e-mail and delivered to a spam or junk-mail folder, the request is not deemed received until one day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall maintain a record of the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator became aware of the request.

The FOIA Coordinators and the Executive Secretary to the Chief of Police shall review their respective and any general MPA email spam and/or junk-mail folders on a regular basis, which shall be no less than once a month.

The FOIA Coordinators may implement administrative rules and policies, consistent with state law and these procedures and guidelines, to administer the acceptance and processing of FOIA requests.

The MPA is not obligated to create a new public record or make a compilation or summary of information which does not already exist. Neither the FOIA Coordinators nor other MPA staff are obligated to provide answers to questions contained in requests for public records or regarding objective or subjective content of the records themselves.

The FOIA Coordinators shall keep a copy of all written requests for public records received by the MPA on file for a period of a least one year.

Requesting a Public Record

A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the MPA must do so in writing. The request must sufficiently describe a public record so as to enable MPA personnel to identify and find the requested public record.

No specific form to submit a request for a public record is required. However, the FOIA Coordinators may make available such a form for use by the public.

Written request for public records may be submitted in person or by mail to the Metro Police Authority of Genesee County, 5420 Hill 23 Drive, Flint, Michigan 48507. Requests may also be submitted electronically by facsimile and e-mail to the FOIA Coordinators. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinators for processing.

A person may request that public records be provided on non-paper physical media, electronically mailed or otherwise provided in lieu of paper copies. The MPA will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format. Data storage devices and discs shall be provided by the MPA, at the expense of the requester, unless the requester provides such media in new and sealed form or a form that is otherwise ensured to be un-manipulated or contaminated with potentially harmful software.

A person who makes a verbal, non-written request for information believed to be available on the MPA's website, where practicable and to the best ability of the employee receiving the request, shall be informed of the pertinent website address.

Note that these requirements shall not prohibit staff from providing public records upon verbal or informal request, in the normal course of business, as incidental requests of a non-verbal or electronic nature are requested outside of the FOIA statute from time to time.

Processing a Request

Unless otherwise agreed to in writing by the person making the request, within five (5) business days of receipt of a FOIA request the MPA will issue a response. The MPA will respond to the request in one 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 the request in part
- Issue a notice indicating that, due to the nature of the request, the MPA needs an additional ten (10) days to respond. Only one such extension is permitted.
- Issue a written notice indicated that the public record requested is available at no charge on the MPA's website.

If the request is granted, or granted in part, the FOIA Coordinators will require that payment be made in full for the allowable fees associated with the responding to the request before the public record is made available. The FOIA Coordinators shall provide a detailed itemization of the allowable costs incurred to process the request.

A copy of these procedures and guidelines shall be provided to the requestor with the response to a written request for public records, provided however, that if these procedures and guidelines and the written public summary are maintained on the MPA's website, then a website link to those documents may be provided in lieu of providing paper copies.

If the cost of processing a FOIA request is \$50 or less, the requester will be notified of the amount due and where the documents can be obtained.

If a good faith calculation by the MPA indicates that the cost of processing a FOIA request is expected to exceed \$50, or if the requestor has not fully paid for a previously granted request, the MPA will require a good-faith deposit before processing the request. In making the request for a good-faith deposit the FOIA Coordinators shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred by the MPA to process the request. The MPA will also provide a best efforts estimate of a time frame it will take the MPA to provide the records. The best efforts estimate shall be nonbinding on the MPA, 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 expressed by the General Polices.

- If a request is denied or denied in part, the FOIA Coordinators will issue a written denial which shall provide the following, as applicable:
 - An explanation as to why a requested public record is exempt from disclosure; or
 - A certificate that the requested records does not exist under the name or description provided by the requestor, or another name reasonably known by the MPA; or

- An explanation or description of the public record or information with a public record that is separated or deleted from the public record; and
- An explanation of the person's right to submit an appeal of the denial to either the Metro Police Authority Board or seek judicial review in circuit court; and
- An explanation of the right to receive attorneys' fees, costs, and disbursements as well as actual or compensatory damages, and punitive damages of \$1,000, should they prevail in circuit court.
- The notice shall be signed by a FOIA Coordinator.

If a request does not sufficiently describe a public record, the FOIA Coordinators may, in lieu of issuing a Notice of Denial indicating that the request is deficient, seek clarification or amendment of the request by the person making the request. Any clarification or amendment will be considered a new request subject to the timelines described in this section.

The MPA shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinators are authorized to promulgate rules regulating the manner in which records may be viewed so as to protect MPA's records from loss, alternation, mutilation, or destruction and to prevent excessive interference with normal MPA operations.

The FOIA Coordinators shall, upon written request, furnish a certified copy of a public records at no additional cost to the person requesting the public record.

Fee Deposits

If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation by the MPA, the requestor will be asked to provide a deposit not exceeding one-half of the total estimated fee.

If a request for a public record is from a person who has not fully paid the MPA for copies of public records made in fulfillment of a previously granted written request, the FOIA Coordinators 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:

- 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 MPA's possessions;
- The public records were made available to the individual, subject to payment, within the time frame estimated by the MPA to provide the records;
- 90 days have passed since the FOIA Coordinator 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 MPA; and

- The FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

The FOIA Coordinators will not require an increased 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 MPA;
- The MPA is subsequently paid in full for the applicable prior written request;
- 365 days have passed since the person made the request for which full payment was not remitted to the MPA.

Calculation of Fees

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 MPA because of the nature of the request in the particular instance, and the MPA specifically identifies the nature of the unreasonably high costs.

The following factors shall be used to determine an unreasonably high cost to the MPA:

- The particular request incurs costs greater than incurred from the typical or usual request received by the MPA. See *Bloch v Davison Community Schools*, 2011 Mich App Lexis 771, 2011 WL 1564645
- Volume of the public record requested
- Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
- Whether public records from more than one MPA department or various MPA offices is necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinators in responding to the particular request.

The MPA may charge for the following costs associated with processing a FOIA request:

- Labor costs directly associated with searching for, locating, and examining a requested public record.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed.
- The actual cost of media discs, tapes, physical memory, or similar digital media.
- The cost of duplication of publication, not including labor, of paper copies of public records.

- 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.
- The actual cost of mailing or sending a public record.

Labor costs will be calculated based on the following requirements:

- Estimated and charged labor costs will be allotted 15 minute increments with all partial time increments rounded down.
- Labor costs will be charged at the hourly wage of the lowest-paid MPA employee capable of doing the work in the specific fee category, regardless of who actually performs the work. (If using contract or outside labor to separate and delete exempt material from non-exempt material, the public body must clearly note the name of the person or firm who does the work and the total cost may not exceed an amount six (6) times the state minimum hourly wage).
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. The MPA 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 until agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.

The cost to provide records on non-paper physical media when so requested will be based on the following requirements:

- Media/computer discs, taps, physical memory, or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will only be assessed if the MPA has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- In order to ensure the integrity and security of the MPA's technological infrastructure, the MPA will procure any requested non-paper media. The MPA may accept new, sealed media provided by the requestor.

The cost to provide paper copies of records will be based on the following requirements:

- Paper copies of public records made on standard letter (8.5 x 11) or legal (8.5 x 14) sized paper will not exceed \$0.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
- The MPA may provide records using double-sided printing, if cost-saving and available.

The cost to mail records to a requestor will be based on the following requirements:

- The actual cost to mail public records using a reasonably economical and justified means.

- The MPA may charge for the least expensive form of postal delivery confirmation.
- No cost or provision will be made for expedited shipping or insurance unless requested.

If the FOIA Coordinators do not respond to a written request in a timely manner, the following shall be required:

- Reduce the labor costs by 5% for each day the MPA exceeds the time permitted under FOIA up to a 50% maximum reduction, if any of the following applies:
 - The late response was willful and intentional.
 - 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”, “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.
- Fully note the charge reduction in the Detailed Itemization of Costs Form.

Waiver of Fees

The cost of search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinators a waiver or reduced fee is in the public interest because such can be considered as primarily benefitting the general public. Such a record could consist of a record created for the primary purpose of informing the public on a matter of health, safety, or welfare (e.g. a media outlet request for a siren testing schedule or water quality report).

The FOIA Coordinators will waive the first \$20.00 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are:

- Indigent and receiving specific public assistance; or
- 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:

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

The FOIA Coordinators may make a Fee Waiver Affidavit Form available for use by the public.

A nonprofit organization designated by the state to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Protection and

Advocacy for Individuals with Mental Illness Act, or their successors, if the request meets all of the following requirements:

- 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, MCL 330.1931;
- Is accompanied by documentation of its designation by the state.

Appeal of a Denial of a Public Record

When a requestor believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may file an appeal of the denial with the Metro Police Authority Board. The appeal must be in writing, specifically state the word “appeal” and identify the reason or reasons the requestor is seeking a reversal of the denial. An appeal shall not be considered to have been received until the first regularly scheduled meeting of the Authority Board following the written submission of a denial or fee amount appeal.

Within ten (10) business days of receiving the appeal, the Authority Board Chairperson or designee, acting on behalf of and in accordance with a resolution of the Board, will respond in writing by:

- Reversing the disclosure denial;
- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part.
- Under unusual circumstances, such as the need to examine or review a voluminous amount of separate and distinct public records or the need to collect the requested records from numerous facilities located apart from the office receiving or processing the request, the Board Chairperson may issue not more than one (1) notice of extension for not more than ten (10) business days to respond to the appeal.

Whether or not a requestor submitted an appeal of denial to the Authority Board, he or she may file a civil action in circuit court within 180 days after the MPA’s final determination to deny the request.

If the court determines that the public record is not exempt from disclosure, the court will award the appellant reasonable attorneys’ fees, cost and disbursements. If the court determines that the appellant prevails only in part, the court in its discretion may award all or an appropriate portion of reasonable attorneys’ fees, costs, and disbursements.

If the court determines that the MPA arbitrarily and capriciously violated the FOIA by refusing or delaying the disclosure of copies of a public record, it shall award the appellant punitive damages in the amount of \$1,000. The court may also order that the public body pay a civil fine of \$1,000 to the state treasury.

Appeal of an Excessive FOIA Processing Fee

If a requestor believes that the fee charged by the MPA 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 Authority Board. The appeal must be in writing, specifically state the word “appeal” and identify how the required fee exceeds the amount permitted.

Within ten (10) business days of receiving the appeal, the Authority Board Chairperson or designee, acting on behalf of and in accordance with a resolution of the Authority Board, will respond in writing by:

- Waive the fee;
- Reduce the fee and issue a written determination indicating the specific basis that supports the remaining fee, accompanied by a certification by the Authority Board Chairperson or designee that the statements in the determination are accurate and the reduced fee amount complies with these procedures and guidelines and the Section 4 of the FOIA;
- Uphold the fee and issue a written determination indicating the specific basis under Section 4 of the FOIA that supports the required fee, accompanied by a certification by the Chairperson 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
- Issue a notice detailing the reason or reasons for extending for not more than ten (10) business days the period during which the Chairperson will respond to the written appeal.

Within forty-five (45) days after receiving notice of the Authority Board Chairperson’s determination of a fee appeal, a requestor may commence a civil action in circuit court for a fee reduction. If a civil action is filed appealing the fee, the MPA is not obligated to process the request for the public record until the court resolves the fee dispute.

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

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 Metro Police Authority Board or administration, these procedures and guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinators subsequent to the adoption of this resolution is found to be in conflict with any

previous policy promulgated by the MPA Board or administration, the administrative rule promulgated by the FOIA Coordinators is controlling.

To the extent that any provision of these procedures and guidelines or any administrative rule promulgated by the FOIA Coordinators pertaining to the release of public records is found to be in conflict with any state statute, the applicable statute shall control. The FOIA Coordinators are authorized to modify this policy and all previous policies adopted by the MPA, 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 Coordinators shall inform the Authority Board of any change to these policies and guidelines.

These FOIA Policies and Guidelines become effective June 1, 2016.

Appendix of the Metro Police Authority of Genesee County FOIA Form(s)

- Detailed Itemization of Fees Form

Adopted December 9, 2015 by the Metro Police Authority of Genesee County Board.