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I – Overview, Administration

Section 1.1 – The Michigan Freedom of Information Act ("FOIA")

"It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, 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 public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process."

– Public Act 442 of 1976, MCL 15.231, *et seq.*

Section 1.2 – Statement of City Policy

Echoing FOIA, it is the policy of the City of Lake Angelus that access to public records held by the City be provided when requested. The City will comply with state law in all respects and respond to FOIA requests in a consistent, fair, and even-handed manner, regardless of who makes such requests.

The City acknowledges its legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request and the need to sometimes invoke statutory exemptions to ensure the effective operation of government and to protect the privacy of individuals.

Section 1.3 – Designation of FOIA Coordinator

[MCL 15.236]

The City council designates the City Clerk as FOIA coordinator. The Clerk may establish rules consistent with state law and these guidelines to manage the acceptance and processing of FOIA requests and may delegate the duties of a FOIA coordinator to other City employees.

II – Requests

Section 2.1 – What May Be Requested

[MCL 15.233(1)]

Members of the public may inspect, copy, or receive copies of the City's public records. Regularly created records may be subscribed to for up to six months, renewable at any time.

Inspection

[MCL 15.233(3)]

Records may be inspected and copied at the City office during usual business hours. The Clerk may impose reasonable restrictions to avoid unreasonable interference with normal City operations and to protect public records from loss, alteration, mutilation, or destruction.

Certified Copies

[MCL 15.233(6)]

Upon written request, the City will provide certified copies of public records.

Nonpaper Formats

[MCL 15.234(1)(c)]

Nonpaper copies, such as e-mailed documents or files on computer disc, are often a cost-saving alternative to paper printouts. The City Clerk will answer questions regarding which formats the City has the technological capability to provide and the expected cost of each format.

Limitations

[MCL 15.233(4,5), 15.232(e), 15.231(2), 15.244(1)]

FOIA grants access only to existing public records – writings prepared, owned, used, in the possession of, or retained by the City in the performance of an official function. The City is under no obligation to create new records, compilations, summaries, or reports; to answer questions included with FOIA requests; or to answer FOIA requests made from local, state, or federal prison. Material exempted by statute from disclosure will be removed from records before they are made available.

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Section 2.2 – Making and Receiving Requests

[MCL 15.233(1), 15.235(1)]

To begin the FOIA process, a member of the public must submit a written request to the City Clerk. This request may be submitted in person or by mail, fax, or e-mail. It must describe a public record with enough detail to allow the City to identify and locate it.

The City provides an official FOIA request form on the City website and at the City office. This form is recommended but not required.

Ambiguous Requests

[MCL 15.235(5)(b)]

If a request is too vague for the City to identify or locate the record being requested, the City will contact the requestor seeking a written clarification. The requestor's written clarification will be considered a new request when determining the time allowed by FOIA for the City to respond.

Misdirected Requests

[MCL 15.233(1)]

All City employees must be alert to the possibility of a FOIA request and should promptly forward to the City Clerk any written communication that might reasonably be interpreted as a FOIA request.

Junk Mail and Spam Filters

[MCL 15.235(1)]

The City Clerk will review City spam and junk-mail folders on a regular basis, no less than once per month. To avoid compromising the integrity of City computer systems, the Clerk will work with City information technology staff to implement a policy for safe handling of spam and junk-mail.

Informal Requests

[MCL 15.234(6,7)]

Non-written requests do not trigger formal FOIA obligations. However,

- (1) members of the public seeking information that a City employee knows is available on the City website must be given the appropriate web address, and
- (2) disabled persons unable to make a written request without assistance may ask a City employee to record their requests using the City's official request form.

When possible, City employees who suspect that a conversation may lead to a written FOIA request should help proactively narrow the inquiry to an exact set of records.

Section 2.3 – Guidance Documents

[15.234(4)]

This guidance document and a reader-friendly Public Summary are freely available to the public. They may be found on the City website and may be requested as free printouts at the City office. Every City response to a FOIA request will include links to both documents on the City website.

III – City Response to Requests

Section 3.1 – Recording and Retaining Requests

[MCL 15.233(2), 15.234(1)(b)]

The City Clerk will keep a copy of all written requests for public records for at least one year, filed chronologically by date received, with a copy of the City's response to each request.

The Clerk should make special note of any redacted records in the file, as the City may not charge a new redaction fee for documents it has previously redacted and retains on file.

Date Received

[MCL 15.235(1)]

Requests arriving by fax or e-mail are deemed to have been received on the following business day.

However, e-mail redirected to a spam or junk-mail folder is not deemed received until one business day

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after the City discovers it there. The City Clerk must record both the date the redirected request was discovered and the date the request was originally delivered to the spam or junk-mail folder.

Section 3.2 – Answering Requests

[MCL 15.235(2)]

The City must issue a written response within 5 business days of receiving a FOIA request, unless the requestor agrees otherwise in writing. This response must do one of the following:

- (1) grant the request,
- (2) deny the request,
- (3) grant in part and deny in part, or
- (4) extend the City's time to respond by up to 10 business days.

Initial Review

On receiving a FOIA request, the City Clerk will make a time and cost estimate. This may involve seeking opinions from other City employees or reviewing records on the City website.

Large Requests

[MCL 15.234(8)]

If the initial estimate predicts that significant staff time will be required to fulfill the request, the Clerk may communicate with the requestor to assist in narrowing the scope of the request. The Clerk may also propose special arrangements, such as waiving the FOIA response deadline or breaking the request into smaller installments to be requested individually over an extended period. The City remains bound by the initial request unless the requestor agrees to these changes in writing.

If the estimated total fee remains \$50.00 or more, the Clerk will provide the requestor with a detailed fee itemization and a written notice that the City requires a good-faith deposit before continuing to process the request. The City's FOIA time allotment for responding to the request does not count down between the date a deposit notice is sent and the date on which the deposit is paid in full.

Grant or Partial Grant

[MCL 15.234(4), 15.240a]

Notice of a granted or partially granted request will be accompanied by a standard form containing

- (1) a detailed itemization of applicable fees,
- (2) instructions for making payment and receiving the records, and
- (3) the following statement explaining the right to appeal and seek judicial review:

If you believe that you have been charged a fee in excess of that permitted by FOIA or the City's FOIA Procedures and Guidelines, you must submit to the City council, within 45 days of the date of this invoice, a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the fee charged exceeds the amount permitted. Within 45 days of the City's final response to your appeal, you may commence a civil action in the Oakland County Circuit Court.

The City may withhold its records until the fee invoice is paid in full.

Denial or Partial Denial

[MCL 15.235(5,6), 15.244(2), 15.240]

Notice of a full or partial denial must be signed by the City Clerk.

It will state the reason for denial, by either

- (1) certifying that the record does not exist under the name provided or any other name reasonably known to the City, or
- (2) identifying the exemption, under FOIA or another statute, that prevents the City from disclosing the record in whole or in part, and describing the information that was separated or deleted.

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And it will include the following statement explaining the right to appeal and seek judicial review:

If the City's final determination denies all or part of your request for a public record, you may submit to the City council, within 180 days of the date of that determination, a written appeal that specifically states the word "appeal" and identifies why the denial should be reversed.

If the City council upholds all or part of the denial or fails to respond to your appeal within the time allowed by FOIA, or if you choose not to appeal to the City council, you may, within 180 days of the date of the City's final determination or determination on appeal, commence a civil action in the Oakland County Circuit Court to compel disclosure. If the court finds that the City has not complied with FOIA and orders disclosure of all or part of a public record, you may be awarded reasonable attorneys' fees and damages, as specified by FOIA.

Time Extension

[MCL 15.234(2,7)]

Notice of time extension must be in writing, state the reason for the extension, and name the new date by which the City will complete its response. The new deadline may be no more than 15 business days from the date the City received the request. The City may issue only one extension per request.

IV – Fees

Section 4.1 – Types of Fees

[MCL 15.234(1,4)]

The City may charge labor, materials, and postage fees when processing a FOIA request. All fees will be listed and explained on a standard detailed itemization form included with the City's invoice.

This itemization must use the six categories identified by FOIA:

- (1) labor for searching, locating, and examining the requested record,
- (2) labor for separating and deleting exempt information, also called redaction,
- (3) labor for copying or transferring, such as by e-mail,
- (4) materials cost for paper copies,
- (5) materials cost for nonpaper media, and
- (6) postage.

Section 4.2 – Labor Rates

[MCL 15.234(1)]

Labor costs will be estimated and charged in 15-minute increments, rounded down, at the hourly wage of the lowest-paid City employee capable of completing the task in the specific fee category, regardless of who actually performs the work.

The City may apply a fringe benefits multiplier of up to 50% to cover or partially cover the cost of fringe benefits actually paid. Overtime wages will not be included unless agreed to in writing by the requestor and will not be used in fringe benefits calculations.

If a FOIA response requires a task beyond the capabilities of any City employee, the City may engage contracted labor. The requestor may be charged the actual cost of the contracted labor, up to a maximum rate of six times the state minimum hourly wage, currently \$48.90.

Previously Redacted Records

[MCL 15.234(1)(b)]

The City will not charge a separation and deletion fee for records it has previously redacted and still maintains on file. Records redacted for FOIA requests made within the preceding year may be found in the City Clerk's one-year chronological file of FOIA requests and City responses.

Unreasonably High Labor Cost

[MCL 15.234(3)]

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The City will not charge a separation and deletion fee or a search, location, and examination fee unless the cost to the City is unreasonable high. If either of these tasks takes more than 15 minutes to complete, it will be considered an unreasonably high cost justifying a fee.

On the fee itemization form, the City Clerk will document the specific factors that resulted in the unreasonably high cost, such as the number of distinct records requested, the number of different locations that components of the request were stored, the availability of staffing able to respond to the request, the difficulty of redaction, or other similar factors.

Under Michigan law, costs in this context are "unreasonably high" when they are excessive and beyond the normal or usual amount for those services when compared to the costs of the City's usual FOIA requests. (Refer to Attorney General Opinion 7083 of 2001, and to *Bloch v. Davison Community Schools*, Michigan Court of Appeals, Unpublished, April 26, 2011.)

Records Available on the City Website [MCL 15.234(5)]

The City will separate out any portion of the requested records that the City Clerk knows or has reason to know may be found on the City website. The City will fulfill this portion of the request free of charge by providing web addresses for these records.

If the requestor makes a written request specifically requiring copies of these records, the City will charge all of the usual fees for processing the request, as if the records were not available online, and may use a fringe benefits multiplier greater than 50%, but not in excess of benefits actually paid.

The City's detailed fee itemization will distinguish records available on the City website.

Section 4.3 – Paper Copies [MCL 15.234(1)(d)]

Paper copies are provided at actual cost – meaning the total incremental cost of duplication, excluding labor, using the most economic means available, such as double-sided printing. For standard letter and legal sizes (8-1/2 x11 and 8-1/2 x14), the fee is capped at \$0.10 per sheet, regardless of actual cost.

The City's fee itemization will identify the number of sheets provided, type of sheet, and cost per sheet.

Section 4.4 – Nonpaper Media [MCL 15.234(1)(c)]

The City will provide nonpaper copies only in formats that the City has the technological capability to provide. Digital media will be purchased and provided by the City at the actual and most reasonably economical cost. For security reasons, the City will not accept blank media or use reproduction equipment provided by the requestor. There is no materials fee for e-mailed records.

Section 4.5 – Postage [MCL 15.234(1)(f)]

There is no postage fee for records picked up at the City office or sent to the requestor by e-mail.

When sending copies of records to the requestor by mail, the City will charge actual postage costs, using a reasonably economical and justified form of delivery, with the least expensive form of delivery confirmation and no insurance or expedited shipping.

Upon written request, the City may use other delivery options, but actual costs will apply.

V – Waiver, Discounts, Deposits

Section 5.1 – Public Interest Waiver [MCL 15.234(2)]

If a FOIA request names records that are already generally distributed by the City, such as meeting agendas, registration forms, etc., these materials may receive a full or partial fee waiver.

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City staff should be careful to treat written requests for such materials as formal FOIA requests, even though these materials are already freely available.

The City may also grant a full or partial waiver on a case-by-case basis, if locating or publishing the record named in a FOIA request would primarily benefit the general public.

Section 5.2 – Discount for Indigence [MCL 15.234(2)(a)]

The City will discount the first \$20.00 of fees if the requestor presents an affidavit of indigence – one either stating that the requestor is indigent and receiving specific public assistance or else providing facts that demonstrate an inability to pay because of indigency.

A requestor may receive this discount only twice per calendar year and it may not be applied toward a request made in connection with other persons able to pay.

If granted, this discount will be identified in the City's detailed fee itemization. If it is requested but denied, the City's written response must provide the specific reason for denying it.

Section 5.3 – Discount for Mental Health Nonprofits [MCL 15.234(2)(b)]

The City will discount the first \$20.00 of fees if the request is made on behalf of a qualifying mental health nonprofit organization and meets all of the following requirements:

- (1) it is made directly on behalf of the organization or its clients;
- (2) it 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, MCL 330.1931; and
- (3) it is accompanied by documentation of state-designated status, if requested by the City.

A qualifying mental health nonprofit organization is one 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.

Section 5.4 – Labor Discount for Late City Response [MCL 15.234(9)]

The City must reduce all labor fees by 5% for each day the City exceeds the response time permitted under FOIA, up to a 50% maximum reduction.

This labor fee reduction is mandatory if any of the following is true:

- (1) the first 250 words of the body of the written request conveyed a request for information,
- (2) the e-mail subject line, facsimile cover page, or envelope face contained any recognizable reference – abbreviated, misspelled, or otherwise – to "freedom of information," "information," "FOIA," "copy," MCL 15.231, *et seq.*, or 1976 Public Act 442, or
- (3) the City's late response was willful and intentional.

When applied, this discount must be identified in the City's detailed fee itemization.

Section 5.5 – Good-Faith Deposit for Large Requests [MCL 15.234(8)]

If it reasonably expects the total processing fee to exceed \$50.00, the City may halt its response and require a deposit of up to 50% of the estimated total fee. It must send a written notice that includes:

- (1) a standard detailed itemization form supporting the City's fee estimate,
- (2) a good faith estimate of how long the request will take to process,
- (3) a reminder that the time and cost named are only estimates,
- (4) a reminder that the City will not process the request until the deposit is paid,

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(5) a reminder that the City will not release the records until the final balance is paid, and

(6) a reminder that the requestor may avoid the deposit by narrowing the scope of the request.

The City's good faith time estimate is only a courtesy and does not delay the onset of the mandatory lateness discount. However, the City's FOIA time allotment for responding to the request does not count down between the date the deposit notice is sent and the date on which the deposit is paid in full.

Section 5.6 – Bad-Faith Deposit for Previous Failure to Pay [MCL 15.234(11,12)]

If the requestor has previously failed to pay in full for a FOIA request fulfilled by the City, the City may halt its response to the present request and require a deposit of up to 100% of the estimated total fee, provided the City produces a detailed fee itemization to support its cost estimate and all of the following are true of the prior request:

- (1) the final fee for the prior request was not more than 105% of the estimated new fee,
- (2) the records the City provided in fulfillment of the prior request contained the information sought, and the City still has possession of those records,
- (3) the City made the records available, subject to payment, within the estimated timeframe,
- (4) 90 days have passed since the City notified the requestor in writing that the request was fulfilled and the requested records were available for pickup or mailing, and
- (5) the requestor is unable to show proof of payment for the prior request.

But the City may not require this deposit if any of the following is true:

- (1) the requestor produces proof of payment in full for the prior request,
- (2) the requestor pays in full the amount due for the prior request, or
- (3) 365 days have passed since the requestor first made the prior request.

The City's FOIA time allotment for responding to the request does not count down between the date the deposit notice is sent and the date on which the deposit is paid in full.

Section 5.7 – City Usage of Deposit Money

Deposits collected for FOIA requests will enter the City's general fund and may be used for any purpose. The requestor will receive a credit for the full deposit value upon paying the remainder of the final fee.

VI – Appeals

Section 6.1 – Making an Appeal [MCL 15.235(8), 15.240(1), 15.240a(1,8)]

If the City makes a final determination to deny all or part of the request or requires a fee that is not permitted under FOIA or this guidance document, the requestor may appeal to the City council.

The term "fee" in this context includes partial fees and deposits.

Final Determination [MCL 15.235(3,5)]

A written notice from the City denying all or part of the request is a final determination.

Failure to respond within the time allowed by FOIA also constitutes a final determination to deny the request, if any of the following is true:

- (1) the first 250 words of the body of the written request conveyed a request for information,
- (2) the e-mail subject line, facsimile cover page, or envelope face contained any recognizable

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reference – abbreviated, misspelled, or otherwise – to "freedom of information," "information," "FOIA," "copy," MCL 15.231, *et seq.*, or 1976 Public Act 442, or

(3) the City's late response was willful and intentional.

Time to Appeal

FOIA imposes no specific deadline for appealing to the City council. The City adopts the following.

Appeal of a denied record must be made within 180 days of the final determination to deny.

Appeal of a fee must be made within 45 days of receiving the invoice.

Format for Appeal

[MCL 15.235(5)(d)(i), 15.240(1)(a), 15.240a(1)(a)]

To be valid, an appeal must be in writing, addressed to the City council, specifically state the word "appeal," and identify the reason why the denial should be reversed or why the fee was invalid.

The City provides an official FOIA appeals form on the City website and at the City office. This form is recommended but not required.

Section 6.2 – Responding to an Appeal

[MCL 15.240(2,3), 15.240a(1,2,3)]

The City council must issue a written response within 10 business days of receiving the appeal.

An appeal is deemed received on the first regularly scheduled City council meeting after it is submitted.

Failure to respond within the time allowed by FOIA is a final response allowing judicial review.

Time Extension

[MCL 15.240(2)(d), 15.240a(2)(d), 15.232(g)]

The City council may issue a written notice extending the time for responding by up to 10 business days. It may issue such an extension only once per appeal and only to the extent necessary to properly process the appeal – a distinction that warrants contacting the City attorney. If the appeal is of a denial, the extension is allowed only under "unusual circumstances," where the request involves a large number of distinct records or requires records from many different locations. If the appeal is of a fee, the notice of time extension must include a detailed explanation of why the extension is necessary.

Answering an Appeal of Denial

[MCL 15.240(2)]

The City council's response to an appeal of denial will do one of the following:

- (1) reverse the denial,
- (2) uphold the denial, or
- (3) reverse in part and uphold in part.

Answering a Fee Appeal

[MCL 15.240a(2)]

The City council's response to a fee appeal will do one of the following:

- (1) waive the fee,
- (2) reduce the fee, or
- (3) uphold the fee.

If the fee is upheld or reduced, the response must cite section 4 of FOIA to identify a specific basis for the fee and include a certification by the City council that its statements are accurate and the fee complies with section 4 of FOIA and with the procedures and guidelines in this guidance document.

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VII – Fee Disputes

If a requestor commences a civil action against the City challenging a FOIA fee, the City may suspend processing that request until the court resolves the fee dispute.

VIII – Integration

This policy overrides any previous City policy on matters governed by FOIA. Rules promulgated by the City Clerk subsequent to the date of this policy are controlling.

EFFECTIVE DATE: _____

IX – Appendix

List of Forms

Fees Chart