

Freedom of Information Act (FOIA) Procedures and Guidelines

As a public agency dedicated to transparency in the service to the public, the office of the Oakland County Water Resources Commissioner (WRC) has developed procedures and guidelines to assure compliance with the Freedom of Information Act (FOIA). These procedures and guidelines provide details on how to submit written requests for public documents or records and how to understand this office's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal.

This office will provide a free copy of these procedures and guidelines upon request. Pursuant to the procedures and guidelines, nonexempt public records, as defined under FOIA, are available for public inspection and/or copying. The rights and obligations under FOIA are subject to state law, specifically, MCL 15.231, *et seq.*

Who May Request

Any person, corporation, Limited Liability Company, partnership, firm, organization, association, governmental entity or other legal entity may make a FOIA request. However, a person who is serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or a federal correctional facility may not make a FOIA request. Requests for public documents or requests to inspect records should be made in writing to the FOIA Coordinator at the following address:

John Basch, Acting Freedom of Information Act (FOIA) Coordinator
Oakland County Water Resources
One Public Works Drive, Bldg. 95-West
Waterford, MI 48328-1907
Or via email at: baschj@oakgov.com

When Records May be Inspected

Inspection of records by the general public shall be limited to regular business hours. Copies of records that are not exempt from disclosure will be available on request. It should be noted that this office receives numerous requests or inquiries that are not public record requests under FOIA. This includes information readily available on our website, pamphlets, publications and other printed materials produced for public information and disclosure.

What Records are Subject to FOIA?

A public record prepared, owned, used, in the possession of or retained by this office in the performance of an official function from the time it is created is subject to disclosure under FOIA. This office is not required to create a new record, including any compilation, summary, or report of information that does not already exist.

How to Make a FOIA Request

Requests to inspect or copy public records must be made in writing to the FOIA coordinator and shall sufficiently describe the record to make compliance practicable by enabling the coordinator

to identify and locate the record. Requestors may include a contact telephone number in their request to allow staff to make contact to resolve issues, clarify the scope of a request or help identify a specific document.

Duties of FOIA Coordinator and Time Limit to Respond to a Request

The FOIA Coordinator shall first determine the scope of the public records request, which involves estimating the time required to search for, examine, separate/delete exempt information and/or copy the requested records.

The FOIA Coordinator shall then respond to a public records request within five business days. The receipt day shall be counted as day zero. If the request is received via fax or email, the request shall be treated as if it had been received on the following day.

The FOIA Coordinator's response shall do one of the following:

- 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 extending for not more than 10 business days, the period in which to respond to the request.
- Issue a written notice indicating that all or a portion of the requested information is available on the WRC website.

When May the Time Limit Be Extended?

With respect to records that are determined not to be available or when there needs to be a delay in responding to the request because of unusual circumstances, the FOIA Coordinator will document the reason in a response that will be sent to the requestor as soon as possible. The WRC may extend the time responding to a FOIA request by no more than 10 business days. The response period, including the extension, must total no more than 15 business days from the receipt date. Reasons for the extension may include, but are not limited to:

- Records are at another location.
- Need to locate and review a large number of records.
- Complexity of the request requires additional time for an adequate response.

An extension response will be issued by the FOIA Coordinator within the original five-day response period and will include the following information:

- Date the request was received by the WRC.
- Notification of the extension and the reason for it.
- Date by which a response will be issued.

If a FOIA Request is Denied

If the request is denied, this office will provide the basis for its denial in a written notice and will provide notice of an individual's rights to appeal the denial and/or to file a lawsuit against the WRC in circuit court.

If the WRC denies a public records request because the record as identified by the requestor does not exist, the WRC shall certify the nonexistence of the record. The FOIA Coordinator shall

respond to the request by issuing a certificate that attests the public record does not exist under the name given by the requestor or by another name reasonably known to the WRC.

The notice shall also include a full explanation of the requestor's right to seek an appeal of the denial to the Water Resources Commissioner or to seek judicial review of the denial in circuit court and receive attorneys' fees and damages if the court determines the WRC violated FOIA and orders disclosure of all or a portion of a public record.

If a request to inspect or copy a record is denied, the person making the request may commence a civil action in circuit court to compel the WRC's disclosure of the public records. Or, the requestor may appeal the decision by submitting the appeal to the Water Resources Commissioner. The written appeal shall state the word "appeal" and detail the reason(s) for requesting reversal of the denial. The Commissioner shall, within 10 business days after receiving the written appeal, do one of the following:

- Reverse the disclosure denial.
- Issue a written notice to the requestor upholding the disclosure denial.
- Reverse the disclosure denial in part and issue a written notice to the requestor.
- Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the Commissioner shall respond to the appeal.

Inspecting Public Documents

Records may be inspected only at the Public Works Building located at 95 Public Works Drive, Waterford, Michigan or at such other location as determined by the FOIA Coordinator, and may not be removed by the requestor during the inspection. To ensure the integrity of WRC files, a member of the WRC staff must be present throughout the inspection.

The WRC will provide access to facilities during normal business hours for requestors wishing to examine and take notes from public records. If the records are available on the WRC's website, the WRC may refer the requestor to the website location in its response to the request.

Providing Copies of Public Records

If the requestor stipulates that the public records must be provided as a paper document or in a specific form of electronic media, the WRC shall provide the records as requested and charge the appropriate fee, which shall include a 100 percent fringe benefit multiplier that shall not exceed the actual costs of providing the information in the specified manner.

Any public records available on the WRC's website are exempt from any fees associated with separating and deleting of exempt information from nonexempt information. On the detailed fee itemization, the WRC shall separate the requested public records that are available on its website from those that are not available on the website and shall inform the requestor of the additional charge to receive copies of what is available on the WRC's website.

The WRC may provide requested information available in public records without receipt of a written request. If a verbal request is received for information available on the WRC's website, WRC employees shall, where practicable and to the best of their knowledge, inform the requestor about the WRC's pertinent website address.

Subscribing to Public Records

A person has a right to subscribe to future issuances of public records that are created, issued or disseminated on a regular basis. Requests for a subscription to documents or records regularly produced by the WRC must be accompanied by appropriate payment of estimated fees for the period of the subscription or by a credit card record to be used to charge fees on an ongoing basis. Subscriptions may run for up to six months and are renewable.

When to Seek Judicial Review

If the Commissioner fails to respond to the appeal, or if he upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requestor may seek judicial review of the nondisclosure by commencing a civil action in circuit court. The requesting party also has the right to receive attorneys' fees and damages as provided by law if, after judicial review, the circuit court determines that the WRC has not complied with FOIA and orders disclosure of all or portions of the public record.

FOIA Fees

The WRC may charge a fee for a public records search, for the necessary copying of a public record for inspection or for providing a copy of a public record under the WRC's procedures and guidelines. The fee shall be limited to actual mailing costs and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information.

In response to a public records request, the WRC shall require a good faith deposit from a requestor before processing a public records request if the entire fee estimate or charge exceeds \$50, based on a good faith calculation of the total fee. The deposit shall not exceed one-half of the total estimated fee as identified in a detailed fee itemization that shall accompany the request for the deposit.

If applicable, the FOIA Coordinator shall inform the person making the request of the estimated cost for processing the request. If the estimated cost exceeds \$50, the Coordinator shall require a good faith deposit of one-half of the estimated fee before processing the request. If a fee in response to a public records request is going to be assessed, the FOIA Coordinator shall issue a detailed fee itemization to the requestor and require that payment be made in full for the allowable fees associated with granting the request before the requested information is delivered. Copies of the procedures, guidelines and public summary shall be included with every written response to a public records request. This requirement may be satisfied by providing the requestor with the website link to the documents in lieu of providing paper copies in the response. The documents are available on our website at www.oakgov.com/water.

Labor costs associated with the necessary searching for, locating and examining of public records will be charged at an hourly rate equal to the lowest-paid staff member capable of searching, retrieving and examining the information being sought by the requestor.

Labor costs directly associated with duplication or publication, including making paper or digital copies, or transferring digital public records to the requestor through electronic means, will be

charged at an hourly rate equal to the lowest-paid staff member capable of necessary duplication or publication in the particular instance. Labor costs for this task shall be estimated and charged in increments of 15 minutes, with all partial time increments rounded down.

The portion of the labor costs associated with separating and deleting of exempt information from nonexempt information will be charged at an hourly rate equal to the lowest-paid staff member capable of separating and deleting exempt from nonexempt information. However, if the WRC does not employ a person capable of separating and deleting exempt from nonexempt information in a particular instance as determined by the FOIA Coordinator, it may treat necessary contracted labor costs used to perform the task in the same manner as employee labor costs when calculating the charges. The name of the contracted person or firm must be clearly noted in the fee itemization, and the total contracted labor costs shall not exceed an amount equal to six times the state minimum hourly wage rate.

The WRC shall not charge for labor directly associated with redaction if it knows or has reason to know that it previously redacted the public record in question and the redacted version is still in the WRC's possession.

This office shall not charge for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information unless the failure to charge a fee would result in unreasonably high cost to the WRC because of the nature of the request in the particular instance. Under such circumstances, the WRC shall specifically identify the nature of the unreasonably high costs.

Costs for the search, examination review, and the deletion and separation of exempt from nonexempt information are "unreasonably high" when they are excessive and beyond the normal or usual amount for those services compared to the costs of the WRC's traditional FOIA requests. Some factors related to unreasonably high costs, but not limited to, include:

- Amount of labor/time needed to locate and search for requested records.
- The volume of files that have to be reviewed in order to locate the requested records.
- Amount of labor time needed to examine records to separate/redact exempt from nonexempt material.
- The available staffing to respond to the request.
- Amount of paper records that need to be copied.
- Amount of internal costs not budgeted for FOIA-related issues.

For public records provided to a requestor on nonpaper physical media, the WRC may charge the actual and most reasonably economical cost of the computer discs, USB flash drives, or other digital or similar media.

For paper copies of public records provided to a requestor, the WRC may charge the actual total incremental cost of necessary duplication or publication, not including labor. The cost of paper copies shall be calculated as a total cost per sheet of paper and shall be itemized and noted in a manner that expresses both the cost per sheet and the number of sheets provided. The fee shall not exceed 10 cents per sheet of paper for copies of public records made on 8½" x 11" paper. The WRC shall utilize the most economical means available for making copies of public records,

including using double-sided printing, if cost savings are applicable. Copies for nonstandard sized sheets of paper will reflect the actual cost of the reproduction.

The WRC will charge the actual cost of mailing and postal delivery confirmation for sending the public records in a reasonably economical and justifiable manner. This office shall not charge more for expedited shipping or insurance unless specifically stipulated by the requestor.

The WRC will add up to 50 percent to the applicable labor charge amount to cover or partially cover the cost of fringe benefits. The WRC will note the percentage multiplier used to account for benefits in the detailed fee itemization.

If a requestor stipulates that public records located on the WRC's website must be provided in a paper format or in a specific form of electronic media, the WRC shall provide the records in the requested format and charge the appropriate fee, which shall include a 100 percent fringe benefit multiplier that shall not exceed the actual costs of providing the information in the specified format.

When calculating the labor costs, the WRC shall itemize fee components in a manner that expresses both the hourly wage and the number of hours charged.

When Are Fees Waived?

If the WRC has determined that furnishing public records to the news media is in the public interest and may be exempt from the first \$20 of fees incurred. The FOIA Coordinator may waive or reduce the labor and duplication costs associated with other public records requests if he or she determines that the request is in the public interest.

No charge for the first \$20 of a fee shall be made to an individual who submits an affidavit proving indigency or receipt of public assistance or, if not receiving public assistance, states facts showing inability to pay the cost because of indigency. If the requestor is eligible for the waiver, the WRC shall note the discount on the detailed fee itemization. If the requestor is ineligible for the waiver, the WRC shall inform him or her specifically of the reason for the ineligibility in the WRC's response to the public records request. A requestor shall be declared ineligible for the \$20 waiver if any of the following apply:

- The individual has previously received discounted copies of public records from the WRC twice during the current calendar year.
- The individual requests information in conjunction with outside parties who are offering or providing other remuneration to the individual to make the request. The WRC may require a statement from the requestor in the indigency affidavit that the request is not being made in conjunction with outside parties for payment or other remuneration.
- The public records were made available to the individual, subject to payment, within the WRC's good faith time frame estimate.
- Ninety days have passed since the WRC notified the individual in writing that the public records were available for pickup or mailing.
- The individual is unable to show proof or prior payment to the WRC.
- The WRC has calculated a detailed fee itemization that is the basis for the current increased estimated fee deposit.

If Fee Exceeds Amount Permitted

If the WRC requires a fee that exceeds the amount permitted under these procedures and guidelines or FOIA, the person making the request may commence a civil action in circuit court to pursue a fee reduction. Or, the requestor may appeal the fee amount by submitting the appeal to the Water Resources Commissioner. The written appeal shall state the word “appeal” and detail the reason(s) for requesting the fee reduction and how the required fee exceeds the amounts permitted under the WRC’s procedures and guidelines.

The Commissioner shall, within 10 business days after receiving the written appeal, do one of the following:

- Waive the fee.
- Reduce the fee and issue a written determination to the requesting person indicating the specific basis under FOIA that supports the required fee. The determination shall include a certification that the statements in the determination are accurate and that the reduced fee amount complies with the WRC’s guidelines, procedures and FOIA.
- Uphold the fee and issue a written determination to the requesting person indicating the specific basis under FOIA that supports the required fee. The determination shall include a certification that the statements in the determination are accurate and that the fee amount complies with the WRC’s guidelines, procedures and FOIA.
- Issue a notice extending for not more than 10 business days the period during which the Commissioner shall respond to the appeal. The notice shall include a detailed reason or reasons why the extension is necessary.

Failure to Respond to an Appeal

If the Commissioner fails to respond to an appeal, or if he upholds all or a portion of the fee that is the subject of the written appeal, the requestor may seek judicial review of the Commissioner’s determination by commencing a civil action in circuit court.

Amending FOIA Guidelines

The WRC reserves the right to amend, revise or repeal all or any part of these guidelines and procedures at any time.

Link to the Freedom of Information Act being Act 442 of the Public Acts of 1976

[http://www.legislature.mi.gov/\(S\(k4xk5xzw4c05xttfbh1himvs\)\)/mileg.aspx?page=getObject&objectName=mcl-Act-442-of-1976](http://www.legislature.mi.gov/(S(k4xk5xzw4c05xttfbh1himvs))/mileg.aspx?page=getObject&objectName=mcl-Act-442-of-1976)