



FOIA PROCEDURES AND GUIDELINES

Preamble: Statement of Principles

Consistent with the Michigan Freedom of Information Act (FOIA), MCL 15.231, et seq, it is the policy of the Bay County Department of Water and Sewer (DWS) that all persons, except those who are incarcerated, 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. The people shall be informed so that they may fully participate in the democratic process.

The DWS'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 even-handed manner regardless of who makes such a request.

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

The DWS will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The DWS's policy is to disclose public records consistent with and in compliance with state law.

The DWS has established the following written procedures and guidelines to implement the FOIA and will create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests to the public body and explaining how to understand a public body's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal. The written public summary will be written in a manner so as to be easily understood by the general public.

Section 1: General Policies

The DWS, acting pursuant to the authority at MCL 15.236, designates the DWS Director as the FOIA Coordinator.

The FOIA Coordinator is responsible for accepting and processing requests for the DWS's public records and for approving denials of requests for public records. The FOIA Coordinator is authorized to designate other DWS staff to act on their behalf in accepting and processing requests for public records and in approving denials of requests for public records.

The FOIA Coordinator may, at their discretion, implement administrative rules, consistent with state law and the Procedures and Guidelines to administer the acceptance and processing of FOIA requests.

The DWS 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 Coordinator nor other DWS staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

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 DWS 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 note both the date and time the request was delivered to the spam or junk-mail folder and the date and time the FOIA Coordinator became aware of the request.

The FOIA Coordinator shall review DWS spam and junk-mail folders on a regular basis, which shall be no less than once a month. The FOIA Coordinator shall work with DWS Information Technology staff to develop administrative rules for handling spam and junk-mail so as to protect DWS systems from computer attacks which may be imbedded in an electronic FOIA request.

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

The DWS will make this FOIA Procedures and Guidelines document and the Written Public Summary of FOIA Procedures and Guidelines publicly available without charge.

This FOIA Procedures and Guidelines document and the Written Public Summary of FOIA Procedures and Guidelines will be posted and maintained on the DWS's website at www.baycountydwsmi.gov/freedom-of-information-act-policies-foia/.

The DWS will provide free copies of the FOIA Procedures and Guidelines document and the Written Public Summary of FOIA Procedures and Guidelines upon request by visitors at the DWS Admin office.

Section 2: Requesting a Public Record

A person requesting to inspect, copy, or obtain copies of a public record prepared, owned, used, possessed, or retained by the DWS must do so in writing. The request must sufficiently describe a public record so as to enable DWS 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 Coordinator may make a FOIA Request Form available for use by the public.

Written requests for public records may be submitted in person or by mail to the FOIA Coordinator at the DWS office. Requests may also be submitted electronically by facsimile or e-mail. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for processing.

A person may request that public records be provided on non-paper physical media, electronically mailed, or otherwise provided to them in digital form in lieu of paper copies. The DWS will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.

A person may subscribe to future issues of public records that are created, issued, or disseminated by the DWS on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

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

A person serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinator will deny all such requests.

Section 3: Processing a Request

Unless otherwise agreed to in writing by the person making the request, the DWS will issue a response within 5 business days of receipt of a FOIA request. If a request is received by facsimile, e-mail, or other electronic transmission, the request is deemed to have been received on the following business day.

The DWS will respond to a 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 part of the request.
- Issue a notice extending for not more than an additional 10 business days the period during which the DWS shall respond to the request. Only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on the DWS's website.

The FOIA Coordinator, or such other individuals as they may designate, shall have the exclusive authority to deny any FOIA request, either entirely or in part.

When a request is granted or granted in part:

If the request is granted, or granted in part, the FOIA Coordinator will require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available.

The FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request.

A copy of these FOIA Procedures and Guidelines and the Written Public Summary of FOIA Procedures and Guidelines will be provided to the requestor free of charge with the response to a written request for public records, provided however, that because the FOIA Procedures and Guidelines and the Written Public Summary of FOIA Procedures and Guidelines are on the DWS's website at www.baycountydwsmi.gov, a website link to the documents will be provided in lieu of providing paper copies.

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

If the cost of processing a FOIA request is expected to exceed \$50 based on a good-faith calculation, or if the requestor has not paid in full for a previously granted request, the DWS will require a good-faith deposit pursuant to Section 4 of these Procedures and Guidelines before processing the request.

In making the request for a good-faith deposit, the FOIA Coordinator shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred by the DWS to process the request, as well as a best-efforts estimate of the time frame it will take the DWS to provide the records to the requestor. The best-efforts estimate shall be nonbinding on the DWS 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 Section 1 of the FOIA.

When a request is denied or denied in part:

If the request is denied or denied in part, the FOIA Coordinator will issue a Notice of Denial which shall provide in the applicable circumstance:

- An explanation as to why a requested public record, or a portion of that public record, is exempt from disclosure; or
- A certificate that the public record does not exist under the name or description provided by the requestor, or another name reasonably known by the DWS; or
- An explanation or description of the public record or information within a public record that is separated or redacted from the public record; and
- An explanation of the requesting person's right to submit a written appeal of the denial to the DWS or seek judicial review in the Bay County Circuit Court; and
- An explanation of the right to receive reasonable attorneys' fees, costs, and disbursements, as well as actual or compensatory damages, and punitive damages of \$1,000.00, should they prevail in Circuit Court.

The Notice of Denial shall be signed by the FOIA Coordinator or his or her designee.

If a request does not sufficiently describe a public record, the FOIA Coordinator 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.

Requests to inspect public records:

If there is a request to inspect public records, the DWS shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinator is authorized to promulgate rules regulating the manner in which records may be viewed so as to protect DWS records from loss, alteration, mutilation, or destruction and to prevent excessive interference with normal DWS operations.

Requests for certified copies:

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

Section 4: Fee Deposits

If the estimated fee is expected to exceed \$50 based on a good-faith calculation, the requestor will be asked to provide a deposit not exceeding one-half of the total estimated fee.

If a written request for public records is from a person who has not fully paid the DWS for copies of public records that were made in fulfillment of the person's previously granted written request, the FOIA Coordinator will require a deposit of 100% of the estimated 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 DWS's possession;
- The public records were made available to the individual, subject to payment, within the time frame estimated by the DWS to provide the records;
- Ninety (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 DWS; 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 Coordinator 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 DWS;
- The DWS is subsequently paid in full for the applicable prior written request; or
- Three hundred sixty-five (365) days have passed since the person made the request for which full payment was not remitted to the DWS.

Section 5: Calculation of Fees

Consistent with the authority granted by the FOIA, it is the intent of the DWS to charge a fee for a public record search, for the necessary copying of a public record for inspection, and for providing a copy of a public record, so that its budget is not unduly burdened by the costs associated with processing FOIA requests.

A fee will not be charged for the labor 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 DWS because of the nature of the request in the particular instance, and the DWS specifically identifies the nature of the unreasonably high costs.

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

- Whether the costs for search, examination, review, and deletion and separation of exempt from non-exempt information are excessive and beyond the normal or usual amount for those services compared to the costs of the DWS's usual FOIA requests;
- Volume or size 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 the public records are from more than one DWS division or whether various DWS offices are necessary to respond to the request;
- The available staffing to respond to the request; and

- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

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

- Labor costs associated with copying or duplication, which include making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the internet when asked for by the requestor.
- Labor costs directly associated with searching for, locating, and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the DWS.
- Labor costs associated with a review of a record to separate and delete information that is exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the DWS.
- The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the DWS's website if the requestor asks the DWS to make copies.
- The actual cost of computer discs, computer tapes, or other digital or similar media when the requestor asks for records in non-paper physical media. This may include the cost for copies of records already on the DWS's website if the requestor asks the DWS to make copies.
- The actual cost to mail or send a public record to a requestor, including the least expensive form of a postal delivery confirmation, as well as the cost of expedited shipping or insurance when such is asked for by the requestor.

Labor costs will be calculated based on the following requirements:

- All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down.
- Labor costs will be charged at the hourly wage of the lowest-paid DWS employee capable of performing the work in the specific fee category, regardless of who actually performs the work.
- If necessary, the DWS may use contracted labor to separate and delete exempt information from nonexempt information. The DWS may treat necessary contracted labor cost used for the separating and deleting of exempt information from nonexempt information in the same manner as employee labor costs if it notes the name of the contracted person or firm on its Detailed Fee Itemization Form. The hourly rate charged by the contracted person or firm may not exceed 6 times the state minimum hourly wage rate.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. The DWS may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but the DWS will not charge more than the actual cost of fringe benefits.
- Overtime wages will not be included in the calculation of labor costs unless specifically 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:

- Computer discs, computer tapes, or other digital 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 DWS 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 DWS's technological infrastructure, the DWS will procure any requested non-paper media and will not accept media from 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 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
- The DWS will provide records using double-sided printing, if it is cost-saving and available.

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

- The actual cost of mailing the public records using a reasonably economical and justifiable means.
- The DWS may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless specified by the requestor.

If the FOIA Coordinator does not respond to a written request in a timely manner, the DWS must do the following:

1. Reduce the labor costs by 5% for each day the DWS exceeds the time permitted under the FOIA up to a 50% maximum reduction, if *any* of the following apply:
 - a. The late response was willful and intentional; or
 - b. The written request conveyed a request for information within the first 250 words of the body of a letter, facsimile, e-mail, or e-mail attachment; or
 - c. 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.
2. Fully note the charge reduction on the Detailed Fee Itemization Form.

Section 6: Waiver of Fees

Absent a waiver by the FOIA Coordinator in whole or in part, all charges associated with processing a FOIA request shall be paid in full before the release of any public records.

The costs of the search for and copying of a public record may be waived or reduced 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 benefitting the general public.

Section 7: Discounted Fees

Indigence

The FOIA Coordinator 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 indigence.

An individual is not eligible to receive the waiver if:

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

The affidavit shall be a sworn statement made under penalty of perjury.

Nonprofit organization advocating for developmentally disabled or mentally ill individuals

The FOIA Coordinator will discount the first \$20.00 of the processing fee for a request from a nonprofit organization formally designated by the state to carry out activities under subtitle C of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-042, 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:

- It is made directly on behalf of the organization or its clients;
- 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
- It is accompanied by documentation of the designation by the state.

Section 8. 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, they may appeal to the DWS by filing an appeal of the denial with the office of the DWS.

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. The DWS FOIA Appeal Form (To Appeal a Denial of Records) may be used.

Within 10 business days of receiving the appeal, the DWS will respond in writing by:

- Reversing the disclosure denial; or
- Upholding the disclosure denial; or
- Reversing the disclosure denial in part and upholding the disclosure denial in part; or
- Under unusual circumstances, such as the need to examine or review a voluminous amount of separate and distinct public records, the DWS may issue a notice extending the period during which the DWS will respond to the written appeal by not more than 10 business

days. The DWS shall not issue more than 1 notice of extension for a particular written appeal.

If the DWS fails to respond to a written appeal, or if the DWS upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action in Circuit Court.

Regardless of whether a requestor submits an appeal of a denial to the DWS, they may file a civil action in the Bay County Circuit Court within 180 days after the DWS's final determination to deny the request.

If the requestor is the prevailing party in the civil action, then they shall be awarded reasonable attorneys' fees, costs, and disbursements. If the person or the DWS prevails in part, the court may, at its discretion, award all or an appropriate portion of the reasonable attorneys' fees, costs, and disbursements to the party prevailing in part.

If the court determines that the DWS has arbitrarily and capriciously violated the FOIA by refusing or delaying in disclosing or providing copies of a public record, the court shall award the requestor punitive damages in the amount of \$1,000.00. In addition, the court shall order the DWS to pay a civil fine of not less than \$1,000.00 to the general fund of the state treasury.

Section 9. Appeal of an Excessive FOIA Processing Fee

If a requestor believes that the fee charged by the DWS to process a FOIA request exceeds the amount permitted by state law or under the Procedures and Guidelines, they must first appeal to the DWS by submitting a written appeal for a fee reduction to the DWS office.

The appeal must be in writing, specifically state the word "appeal," and identify how the required fee exceeds the amount permitted by state law or under these Procedures and Guidelines. A DWS FOIA Appeal Form (To Appeal an Excess Fee) may be used.

Within 10 business days after receiving the appeal, the DWS will respond in writing by:

- Waiving the fee; or
- Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee; or
- Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or
- Issuing a notice detailing the reason or reasons for extending the period during which the DWS will respond to the written appeal by not more than 10 business days. The DWS shall not issue more than 1 notice of extension for a particular written appeal.

Where the DWS reduces or upholds the fee, the determination must include a certification from the DWS that the statements in the determination are accurate and that the fee amount complies with its publicly available Procedures and Guidelines and Section 4 of the FOIA.

Within 45 days after receiving notice of the DWS's determination of an appeal, the requesting person may commence a civil action in Bay County Circuit Court for a fee reduction.

If a civil action is commenced against the DWS for an excessive fee, the DWS is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.

An action shall not be filed in Circuit Court unless *one* of the following applies:

- The DWS failed to respond to a written appeal as required, or
- The DWS issued a determination to a written appeal.

If a court determines that the DWS required a fee that exceeds the amount permitted under its publicly available Procedures and Guidelines or Section 4 of the FOIA, the court shall reduce the fee to a permissible amount.

If the requestor prevails in the civil action by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.

If the court determines that the DWS has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order the DWS to pay a civil fine of \$500.00 to the general fund of the state treasury. The court may also award the requestor punitive damages in the amount of \$500.00.

Section 10: 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 DWS, these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the DWS, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any state statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the DWS, and to adopt such administrative rules as they 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.