

Public Summary of FOIA Request Procedures

Submitting Requests

In order to inspect, copy, or receive copies of a public record of the City, you must provide the City with a written request that describes a public record sufficiently to enable the City to find it.

For Fire Department records: FOIA Coordinator, Sterling Heights Fire Department, 41625 Ryan Road, Sterling Heights, MI 48314.

For Police Department records: FOIA Coordinator, Sterling Heights Police Department, 40333 Dodge Park Road, Sterling Heights, MI 48313.

For all other requests: FOIA Coordinator, 40555 Utica Road, P.O. Box 8009, Sterling Heights, MI 48311-8009.

All FOIA requests must be in writing and may be delivered in person, by mail, by electronic mail, or by facsimile. Please use the form provided by the City Clerk, Police Department, or Fire Department (you can also obtain one in person at each of those locations). If you are disabled, a City employee will assist you in preparing a written request. If you do not use the standard form, please include the following in your request:

- **Contact information:** Please include your name (the City will not respond to nameless requests or requests made by non-existent entities), mailing address (where you would like us to send the response to your request), and telephone number (so we can reach you with any questions concerning your request).
- **Complete description of the records you are requesting:** Please include enough information to enable City staff to identify and locate the public record(s) you are requesting. In order to use the FOIA properly, you must clearly identify information that is in a public record or identify an actual public record, which is defined as a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function from the time it was created. The FOIA does not require public bodies to create new records or compilations of information in order to respond to a request.
- **Format:** You will receive double-sided paper copies if it saves on costs and it is possible to do so, unless you specify otherwise in your request.

Limits on FOIA Requests

The FOIA does not grant an absolute right to examine government documents; instead, it simply establishes the right to request records and to receive one of four types of responses to the request – your request will either be granted, denied in part, or denied in full. Or, if the City needs more time to process your request, you will receive a letter extending the City’s deadline for sending you one of the other three responses.

The FOIA allows denial of requests for information and records that fall within the exemptions that are set forth in the FOIA. Your request may also be denied if it seeks information that does not relate to the operations of government or if it seeks to obtain something that is not a public record. The FOIA does not create a right to obtain personal information about other people. Its purpose is to foster the public’s understanding of government functions. In addition, the FOIA does not require the creation of a new public record, a compilation of information from various records, or the disclosure of tangible objects or property.

If a record or certain information cannot be released, you will be told the reason for the denial, including any exemption in the FOIA that applies to your request. If you disagree or believe an error has been made, you have the right to appeal the denial to the City Manager and/or the Macomb County Circuit Court, as explained more fully below in the “Appeals” section of this Public Summary.

If you are serving a sentence of imprisonment in a local, state, or federal correctional facility you are not entitled to submit a request for a public record.

Also, please note that the FOIA does not require the City to answer questions. You should contact City officials or employees directly by phone or in person if you have questions that you wish to discuss.

Limited verbal requests may be accommodated without the need for a written request if the request can be filled with minimal disruption of staff time and no redaction is required.

In summary, please be specific about the public record(s) or information you wish to obtain. Vague, ambiguous, and overly broad requests may be denied if the City cannot identify a public record responsive to your request.

FOIA Processing Fees

Fees are assessed in accordance with the FOIA. The total fee will be itemized in 6 components:

Labor time for searching, locating, and examining in order to fulfill your written request (calculated in 15 minute increments (rounded down) and based on the lowest hourly wage of an employee capable of performing those tasks)^{1 3}

Labor time for redacting exempt information from the records (calculated in 15 minute increments (rounded down) and based on the lowest hourly wage of an employee capable of performing the redaction, except if no employee can do it, the labor may be contracted out for 6 times the state minimum wage)^{1 2 3}

Actual and most reasonably economical cost of nonpaper physical media⁴

Actual total incremental cost of necessary paper copies provided to you (not to exceed 10 cents per page for letter and legal size copies; any other size will be at actual cost); copies will be double-sided if it saves on costs and if it is possible to do so unless you stipulate otherwise

Labor time for making copies, including transferring information to nonpaper media or through e-mail (calculated in 6 minute increments (rounded down) and based on the lowest hourly wage of an employee capable of performing those tasks)^{1 3}

Cost of mailing (including the least expensive form of postal delivery confirmation)

¹ A fringe benefit multiplier up to 50% of the hourly rate, determined annually by the Finance Director, will be added to labor charge

² No charge for redacting will be assessed if the City knows or has reason to know that it already has the redacted version in its possession

³ Overtime rates will not be charged unless your request will require overtime and you agree to the completion of the request using overtime to do so.

⁴ The City will procure the requested nonpaper physical media. For security reasons, the City will not accept or utilize any nonpaper physical media not procured through official City procurement methods.

You will not be charged search and redaction costs for a FOIA request unless failure to charge would result in unreasonably high costs to the City due to the nature of your request. The City has determined that the cost is unreasonably high when it disrupts an employee's work day by 15 minutes or more. Anything less is a reasonable amount of time away from normal job responsibilities in order to serve the public; anything more becomes a disruption of the employee's ability to perform normal job responsibilities in a timely and efficient fashion.

If all or a portion of the records you are requesting are available online, you will be notified of the website address and advised that a higher fringe benefit multiplier may be charged if you still wish to obtain copies through your FOIA request.

If you are indigent, you may submit up to 2 requests per calendar year for which the first \$20.00 of the total fee will be waived. You must submit an affidavit regarding your indigency and you must attest that you are not making the request for anyone else in exchange for payment or other remuneration.

Your request will be filled for free if you are a nonprofit organization formally designated by the State to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Protection and Advocacy for individuals with Mental Illness Act, or their successors, if your request is made directly on behalf of the organization or its clients, the request is made for a reason consistent with the mission and provisions of those laws under Section 931 of the Mental Health Code, and the request is accompanied by documentation of its designation by the State.

A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public. For example, your request may be filled for free if you are a governmental entity, the request is related to inter-governmental cooperation, and the request is not overly burdensome or voluminous.

If your fee is expected to exceed \$50, you will be notified and asked for a good-faith deposit of ½ of the total estimated fee. The notice will also indicate the estimated time that it will take to completely fill the request after receipt of the deposit.

If you previously failed to pay for copies that were made available pursuant to a previous request during the preceding 12 months, and more than 90 days have passed since you were notified that the requested records were available, you will be required to deposit 100% of the estimated fee before the *new* request will be processed unless (1) the final fee for the previous request was more than 105% of the estimated fee; (2) the City no longer has the records; (3) the records were not made available to you in a timely fashion; (4) you are able to show proof of payment in full for the previous request; or (5) you pay in full before making the new request.

Response Times

In general, the FOIA requires a written response to your request within 5 business days from its receipt. Requests on paper are considered received on the day they are hand-delivered or opened in the mail; electronic requests are considered received on the next business day after transmission. If

an e-mail request ends up in a spam or junk folder, or in the folder of a former employee or deactivated e-mail address, it will not be considered received until it is actually found.

Within the first 5 business days, your request will be granted, denied, or denied in part, or you will receive a written notice extending the time for responding by an additional 10 business days. If your request is ambiguous, voluminous, or already available online, you may be contacted to inquire whether you would consider revising the request. A revised request will be considered a new request subject to the timelines set forth in the FOIA.

Your patience in awaiting fulfillment of a request is appreciated. The City is a very large governmental entity, with many different departments, personnel, units, and facilities. Your request may require coordination of efforts between a number of different departments. This process takes considerable time when added to all of the other everyday duties of City employees. In addition, there will be times when employees are on vacation, or in training, or otherwise unavailable to immediately process your request. These reasons, and others, may require up to an additional 10 business days in order to properly process your request.

By law, if the City's response to your request is not timely, labor costs will be reduced by 5% for each day after the deadline for responding, up to a 50% maximum reduction, so long as your request included language that conveyed a request for information within the first 250 words of the body of your letter, fax, e-mail, or e-mail attachment, or specifically included the words, characters, or abbreviations for "freedom of information," "information," "FOIA," "copy," or a recognizable misspelling of those words, or an appropriate legal code reference for the FOIA, on the front of an envelope, or in the subject line of an e-mail, letter, or fax cover page.

Options

INSPECTIONS. If you are granted the right to inspect requested records, rather than simply obtaining copies, the City will give you a reasonable opportunity for inspection and examination of the record(s) along with reasonable facilities for doing so during usual business hours. A City employee will supervise the inspection or take such other measures as will protect the City's public records and prevent excessive and unreasonable interference with the day-to-day discharge of City functions.

State law prohibits the use of pen and ink in making copies or notes of records and files and it does not authorize photography. Therefore, only a pencil will be permitted during your inspection (no pens, markers, or other writing instruments) and, unless precluded by state or federal law or security protocols, photographing of records will be permitted for records that would otherwise be released without redaction (or as already redacted), but no other photography will be permitted. You will not be allowed to write on any City records. In some cases, you will not be permitted to review original records, and instead photocopies will be provided to you. For example: (1) records that need to first be redacted; (2) old or delicate records; (3) digital records in a nonpublic database; and (4) when it is less disruptive to provide copies than to provide staff oversight.

The FOIA Coordinator will assign you an appointment date and time during regular business hours for your inspection, typically 10 or more business days after receiving your request, so that City staff may make appropriate arrangements to ensure compliance with all of the rules applicable to inspections of public records. Each appointment will be limited to 3 hours unless a longer appointment is arranged in advance or if the appointment needs to be shortened to avoid unreasonable interference with other City functions.

At the time you arrive for your inspection, you will be asked to confirm your identity and contact information. A credit or debit card may be required to ensure that all fees will be paid. You will be provided with an itemized estimate of the anticipated fees. If it reasonably appears that the inspection request will involve fees greater than \$50.00, a deposit of ½ the estimated total fee should be required prior to allowing the inspection and examination. At the conclusion of the inspection, the itemization of fees will be updated and presented to you for immediate payment.

SERVICES. In some cases, you may prefer that your request be filled as a City service, rather than using the Freedom of Information Act. For example, you may have a simple verbal (in-person) request that can be immediately filled, or you may have a more complex request that requires City personnel to go beyond simply locating records for you. In such instances, you will be asked if you prefer to pay a pre-determined fee to obtain the items you need as a City service rather than through a FOIA request. You are not required to select this option, but if it is offered to you it will likely mean an expedited response, a lower fee, and/or a more comprehensive package of materials (beyond simply finding specific public records).

Denials

The reason(s) for denying your request or for redacting information from certain public records will be provided in the City's response. Any records that are withheld will be described in the response. In addition, if it is not obvious and will not defeat the purpose of the redaction, a short summary of any redacted information will also be included. Your appeal rights will also be explained on the response form.

Appeals

If your request is denied or denied in part, you may submit a written appeal to the City Manager which specifically states the word "appeal" and identifies the reasons for reversing the denial determination, or you may file a civil action in the Macomb County Circuit Court within 180 days after the denial.

If you appeal a denial or partial denial to the City Manager, you will receive a response within 10 business days. The written response will reverse the denial, uphold the denial, reverse the denial in part and uphold the denial in part, or extend the time for responding for up to 10 business days due to unusual circumstances involving voluminous amounts of public records and/or the need to collect the requested records from numerous locations.

If you disagree with the City Manager's appeal determination, you may seek judicial review by filing an action with the Macomb County Circuit Court. If you prevail, the court will award you reasonable attorneys' fees, costs, and disbursements, and possibly damages if the City violated the FOIA in an arbitrary and capricious manner. If you prevail in part rather than in full, the court has discretion to award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.

If you are only appealing the fee that is charged, you must submit a written appeal to the City Manager for a fee reduction specifically using the word "appeal" and identify how the required fee exceeds the amount permitted under the City's policies or the FOIA. You do not have a right to file a civil action in the Macomb County Circuit Court until after the City Manager has decided your fee appeal or has failed to respond within 10 business days. The City Manager's determination may waive the fee, reduce the fee and issue a written determination indicating how the FOIA supports the remaining fee, uphold the fee and issue a written determination indicating how the FOIA supports the fee, or issue a notice extending the time for a response by up to an additional 10 business days with an explanation of the reasons why the extension is necessary.

If you disagree with the City Manager's determination, you may seek judicial review by filing a civil action with the Macomb County Circuit Court within 45 days after receiving the determination by the City Manager regarding your fee appeal (or within 45 days after the time for the City Manager to respond has expired). If you prevail by receiving a fee reduction of 50% or more of the total fee, the court may award you any appropriate attorney's fees, costs, and disbursements, as well as damages if the City arbitrarily and capriciously violated the FOIA.

Summary

This document is only a summary of the City's FOIA policies and was developed for ease of use by the public. Because it is a more concise version of the City's complete FOIA policies, it may not contain every detail regarding the FOIA process. For more detailed information, a copy of the City's Administrative Policy and Procedure Order is available at no charge at the City Clerk's Office and on the City's website, www.sterlingheights.gov.