

## **FREEDOM OF INFORMATION ACT (FOIA) POLICY**

- A. **PURPOSE:** The purpose of this policy is to assure compliance with the Freedom of Information Act (Act) by the City of Saginaw (City).
- B. **DESIGNATION OF FOIA COORDINATOR:** The City Manager shall serve as the FOIA Coordinator and shall be responsible for administering this policy. In addition, the following officers shall be authorized to act as the FOIA Coordinator's designees: Executive Assistant to the City Manager, City Clerk, Deputy City Clerk, Fire Chief, Fire Department Clerical II, Police Chief, Police Department Support Services Administrator, and Police Department Office Assistant II. Where used herein, FOIA Coordinator shall mean FOIA Coordinator or designee.
- C. **DEFINITIONS:** The words and phrases contained in this policy shall have the meaning given to them, if any, by the Act.
- D. **ATTACHMENTS:** The attachment(s) to this policy may be revised, in a manner consistent with this policy, by the City Manager as needed due to changes in the law.
- E. **RECEIVING AND RESPONDING TO FOIA REQUESTS:**
  - a. The FOIA Coordinator shall be responsible for accepting and processing requests for public records covered under the Act and shall be responsible for approving a denial in accordance with the Act.
  - b. All FOIA requests must be submitted in writing (Attachment A). This includes requests received by facsimile, electronic mail or through other electronic means. Requests received by facsimile, electronic mail, or other electronic transmission are not considered received until 1 business day after the electronic transmission is made.
    - i. An electronic mail request that is transmitted to a spam or junk mail folder is not considered received until 1 business day after the FOIA Coordinator becomes aware of the request.
    - ii. The FOIA Coordinator shall check the spam or junk mail folder for FOIA requests on a weekly basis and shall keep a log of when such requests are first delivered and received.
  - c. A request from a person, other than an individual who qualifies as indigent as set forth below, must include the requesting person's complete name, address, and contact information, and, if the request is made by a person other than an individual, the complete name, address, and contact information of the person's agent who is an individual. An address must be written in compliance with United States Postal Service addressing standards. Contact information must include a valid telephone number or electronic mail address.
  - d. A request must describe the public record sufficiently to enable the City to find the public record.
  - e. Within 5 business days after receiving a request for public records the FOIA Coordinator will:
    - i. Grant the request (Attachment B);
    - ii. Grant the request in part and deny the request in part (Attachment C);
    - iii. Deny the request (Attachment D);
    - iv. Request an extension of 10 business days for additional response time (Attachment E);  
or
    - v. Request a deposit in accordance with Section F, below (Attachment F).
  - f. Failure to respond to a request constitutes a denial if:
    - i. The failure to respond was willful and intentional; or

- ii. The request included language that would allow it to be identified as a request for public records or a request made pursuant to the FOIA.
- g. If any of the requested documents are on the City's website, the requestor shall be informed and no fee shall apply to the request unless the requestor subsequently requests copies of those public records.
- h. Notice to deny a request in whole or in part shall contain an explanation for the grounds under FOIA (or other law) for the determination that the public record or portion of the public record is exempt from disclosure.
- i. If an exemption is used to deny a request, the specific statutory citation for and verbiage of the exemption will be included in the denial. All denials must be signed by the FOIA Coordinator. All denials will also include a description of the denied record, an explanation of the requestor's right to appeal, and/or a certificate verifying that the requested record does not exist under the name given by the requestor or by another name reasonably known to the City.
- j. The FOIA Coordinator will keep on file a time stamped copy of all requests and responses for a period of 1 year following their receipt or issuance.

F. FEES:

- a. In accordance with the Act, the City will charge fees for:
  - i. The actual labor costs for searching for, locating, and examining records;
    - 1. This is the cost of labor directly associated with the necessary searching for, locating, and examining a public record in conjunction with receiving and fulfilling a granted written request;
  - ii. The actual labor costs for redacting records;
    - 1. The City will not charge for labor directly associated with redaction if it knows or has reason to know that it previously redacted the record in question and still has the redacted version in its possession;
  - iii. Non-paper physical media;
  - iv. Paper copies;
    - 1. Copying costs may be charged if a copy of a public record is requested or for the necessary copying of a record for inspection (for example, to allow for blacking out exempt information, to protect old or delicate original records, or because the original record is a digital file or database not available for public inspection);
  - v. The actual labor costs for duplication or publication of records;
    - 1. This is the cost of labor directly associated with duplication or publication, including making paper or digital copies or transferring digital records on non-paper physical media, through the Internet, or other electronic means as stipulated by the requestor;
  - vi. Mailing;
    - 1. The City will charge the actual cost of mailing, if any, for sending records in a reasonably economical and justifiable manner;
    - 2. The City cannot charge more for expedited shipping, insurance, or other special delivery accommodations unless specifically requested by the requestor.

The attached Cost Worksheet shall be utilized to determine the fee charged by the City (Attachment G).

- b. Actual labor costs will be charged in 15-minute increments, rounded down. In calculating the cost of labor incurred in searching for, locating, and examining records, redacting records, and duplication or publication, the City may not charge more than the hourly wage of the lowest paid employee capable of retrieving the information necessary to comply with the request. The

City may also add up to 50% to the multiplier used to account for benefits. Subject to the 50% limitation, the City shall not charge more than the actual cost of fringe benefits.

- c. A fee shall not be charged for the cost of searching for, examining, reviewing, and deleting and separating exempt from non-exempt information unless such labor requires more than 15 minutes to complete. If such labor requires more than 15 minutes to complete, such a fee will be charged because failure to do so would result in unreasonably high costs to the City that are excessive and beyond the normal or usual amount for those services compared to the City's usual FOIA requests.
- d. If no City employee is capable of redacting the records, the City may forward such records to legal counsel for redaction. Charges for such contracted labor may not exceed 6 times the State minimum wage and must be itemized on the Cost Worksheet.
- e. Up to the first \$20.00 of the fee shall be waived for each request of an individual who is entitled to information under the Act and who submits an "Affidavit of Indigency" stating they are indigent and receiving public assistance or, if not receiving public assistance, stating facts showing their inability to pay the full fee. (Attachment H.)
  - i. An indigent individual may only receive 2 such fee waivers per calendar year.
- f. Up to the first \$20.00 of the fee shall be waived for each request of a nonprofit organization that is 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.
- g. If the City fails to timely respond to a request, it must reduce its labor costs by 5% per day a response is late up to a maximum 50% reduction if:
  - i. The late response was willful and intentional; or
  - ii. The request included language that would allow it to be identified as a request for public records or a request made pursuant to the FOIA.
- h. The City Manager shall provide for the calculation of a fee for reproducing documents. This calculation will include paper, copy machine, and supplies cost. The City Manager shall also determine the fee to be charged for envelopes. These fees shall be reviewed periodically and shall be reflective of the City's actual costs.
- i. 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 the City 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 benefiting the general public.

This section does not apply to public records prepared by City departments or offices under a separate law authorizing the sale of those public records to the public.

**G. DEPOSITS:** The City may charge a deposit if:

- a. The anticipated cost of granting the request is expected to exceed \$50.00.
  - i. In such cases, a notice to provide a good faith deposit of 50% of the cost prior to granting the request will be sent.
  - ii. The request for a good faith deposit must also include a "best efforts estimate" as to the amount of time it will take the City to fulfill the request upon receipt of the deposit.
- b. The City may require a 100% deposit from an individual who has not paid a previous FOIA fee in full. Such a deposit may only be required if:
  - i. The final fee for the prior written request was not more than 105% of the estimated fee.
  - ii. The public records made available contained the information being sought in the prior written request and are still in the City's possession.
  - iii. The public records were made available to the individual, subject to payment, within the time frame provided by law.

- iv. No fewer than 90 days but no more than 365 days have passed since the City notified the individual in writing the records were available for pick up or mailing.
    - v. The individual is unable to show proof of prior payment to the City
    - vi. The City calculates a detailed itemization that is the basis for the current written request's increased estimated fee deposit.
  - c. The City can no longer require an increased estimated fee deposit (i.e. 100% deposit) from an individual if any of the following apply:
    - i. The individual is able to show proof of prior payment in full to the City;
    - ii. The City is subsequently paid in full for the applicable prior written request; or
    - iii. 365 days have passed since the individual made the written request for which full payment was not remitted to the City.
  - d. If a deposit that is required is not received by the City within 45 days from receipt by the requesting person of the notice that a deposit is required, and if the requesting person has not filed an appeal of the deposit amount, the request shall be considered abandoned by the requesting person and the City is no longer required to fulfill the request. Notice of a deposit requirement is considered received 3 days after it is sent, regardless of the means of transmission. Notice of a deposit requirement will include notice of the date by which the deposit must be received, which date is 48 days after the date the notice is sent.
- H. APPEAL: In accordance with the Act, where a person's request for a public record is denied, in whole or in part, or the person believes the fee charged in responding to the request is excessive, the person shall be entitled to file a written appeal. The FOIA Coordinator shall forward any copy of an appeal of a full or partial denial of a FOIA request, or fee associated with preparing the response to same, to legal counsel for review. The City Council shall respond to such appeals within ten (10) business days from their receipt of same. The City Council is not considered to have received an appeal until the first regularly scheduled City Council meeting following submission of the appeal.

The City Council may deliberate and take one of the following actions in response to the filing of an appeal:

- a. Reverse the disclosure denial.
- b. Affirm the disclosure denial or fee charged.
- c. Reverse the disclosure denial in part and affirm the disclosure denial in part.
- d. Modify the fee charged.
- e. Under unusual circumstances, issue a notice extending for not more than 10 business days the period for issuing a response. The Council can only issue one 10-day extension.

If City Council fails to respond to a written appeal or upholds all or a portion of the disclosure denial/fee charged that is the subject of the appeal, the requestor may seek judicial review of the decision by commencing an action in the Saginaw County Circuit Court.

- I. PUBLIC SUMMARY: The City Manager shall create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit a FOIA request to the City and explaining how to understand its responses, deposit requirements, fee calculations, and avenues for challenge and appeal. (Attachment I.)
- J. PUBLICATION: The City shall post and maintain this policy, as well as the public summary, on its website, as well as provide free copies of same upon request by visitors at the City Manager's or City

Clerk's office. Either a copy of both this policy and the public summary or the website link to such documents shall be provided with any response to a FOIA request.

- K. ATTACHMENTS: The attachment(s) to this policy may be revised, in a manner consistent with this policy, by the City Manager as needed due to changes in the law.
- L. EFFECTIVE DATE: This policy shall become effective on April 15, 2019, and shall supersede any prior policies relating to the same subject.