

## **City of Pontiac**

### **Public Summary of FOIA Procedures and Guidelines**

It is the public policy of the City of Pontiac 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.

The people shall be informed so that they may fully participate in the democratic process.

Consistent with the Michigan Freedom of Information Act (FOIA), Public Act 442 of 1976, the following is the Written Public Summary of the City's FOIA Procedures and Guidelines relevant to the general public.

This is only a summary of the City's FOIA Procedures and Guidelines. For more details and information, copies of the City's FOIA Procedures and Guidelines are available at no charge at the City Clerk's Office and on the City's website: [www.pontiac.mi.us](http://www.pontiac.mi.us).

#### **1. How do I submit a FOIA request to the City?**

- Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the City must be in writing. A request may be submitted on the City's FOIA Request Form or in any other form of writing (letter, fax, email, etc.).
- A request must sufficiently describe a public record so as to enable the City to find it.
- Please include the words "FOIA" or "FOIA Request" in the request to assist the City in providing a prompt response.
- No specific form to submit a written request is required. However, a FOIA Request Form and other FOIA-related forms are available for your use and convenience on the City's website at [www.pontiac.mi.us/departments/clerk/index.php](http://www.pontiac.mi.us/departments/clerk/index.php), and at the City Clerk's Office.
- Written requests may be delivered to the City Hall in person or by mail: FOIA Coordinator, 47450 Woodward Ave, Pontiac, MI 48342
- Requests may be faxed to: (248) 758-3160. To ensure a prompt response, faxed requests should contain the term "FOIA" or "FOIA Request" on the first/cover page.

- Requests may be emailed to: foia@pontiac.mi.us. To ensure a prompt response, email requests should contain the term “FOIA” or “FOIA Request” in the subject line.
- Please note that the City is not obligated to create a new public record or make a compilation or summary of information which does not already exist.

## **2. What kind of response to my FOIA request can I expect?**

- Within 5 business days after receiving a FOIA request, the City will issue a response. If a FOIA request is received by fax or email, the request is deemed to have been received on the following business day.
- The City will respond to your FOIA request in one of the following ways:
  - Grant the request; or
  - Issue a written notice denying the request; or
  - Grant the request in part and issue a written notice denying part of the request; or
  - Issue a notice indicating that, due to the nature of your request, the City needs an additional 10 business days to respond; or
  - Issue a written notice indicating that the public record requested is available at no charge on the City’s website
- If the FOIA request is granted, or granted in part, the City will ask you to pay all of the allowable fees associated with responding to the request before the public record is made available to you.
- If the cost of processing the FOIA request is expected to exceed \$50.00, or if you have not paid for a previously granted FOIA request, the City will require a deposit before processing your FOIA request.

## **3. What are the City’s deposit requirements?**

- If the City has made a good-faith calculation that the total fee for processing the FOIA request will exceed \$50.00, the City will require you to provide a deposit in the amount of 50% of the total estimated fee. When the City requests the deposit, it will provide you with a non-binding, best-efforts estimate of how long it will take to process the request after you have paid your deposit.

- If you have not fully paid the City for copies of public records that were made available to you in fulfillment of a previously granted FOIA request, the City will require you to pay a deposit of 100% of the estimated processing fee for any subsequent FOIA request before the City begins to search for a public record, if **all** of the following conditions exist:
  - The final fee for the prior FOIA request is not more than 105% of the estimated fee; and
  - The public records made available contained the information sought in the prior FOIA request and remain in the City's possession; and
  - The public records were made available to you, subject to payment, within the best-effort time frame estimated by the City to provide the records; and
  - Ninety (90) days have passed since the City notified you in writing that the public records were available for pickup or mailing; and
  - You are unable to show proof of prior payment to the City; and
  - The City has calculated an estimated detailed itemization that is the basis for the current FOIA request's increased fee deposit.
- The City will not require you to make the 100% estimated fee deposit if any of the following apply:
  - You are able to show proof of prior payment in full to the City; or
  - The City is subsequently paid in full for all applicable prior written requests; or
  - Three hundred sixty-five (365) days have passed since you made the request for which full payment was not remitted to the City.

#### **4. How does the City calculate FOIA processing fees?**

The Michigan FOIA statute permits the City to 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.

- Labor costs 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 City.
- 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 City.
- 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 City's website if you ask for the City to make copies.
- The cost of computer discs, computer tapes, or other digital or similar media when you request records on non-paper physical media. This may include the cost for copies of records already on the City's website if you ask for the City to make copies.
- The actual cost to mail or send a public record to you.

Labor Costs will be calculated as follows:

- 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 City employee capable of doing the work in the specific fee category, regardless of who actually does the work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. The City may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but the City will not charge more than the actual cost of fringe benefits.
- Overtime wages will not be included in the calculation of labor costs unless agreed to by you. Overtime costs will not be used to calculate the fringe benefit cost.
- Contracted labor costs will be charged at an hourly rate not to exceed \$53.40 per hour (i.e., 6 times the state minimum hourly wage, which is currently \$8.90 per hour).

## **Copying and Duplication**

### ***Paper Copies***

- 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 will paper will reflect the actual cost of reproduction.
- The City will provide records using double-sided printing, if it is cost-saving and available.

### ***Non-paper Copies on Physical Media***

- The cost for records provided on non-paper physical media, such as 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 be charged only if the City 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 City's technological infrastructure, the City will procure any requested non-paper media and will not accept non-paper media from you.

## **Mailing Costs**

The City may charge you for the costs of mailing a public record to you. These costs will be based on the following:

- The actual cost of mailing the record(s), using a reasonably economical and justified means; and
- The least expensive form of postal delivery confirmation.

The City will not charge you more for expedited shipping or insurance, unless you specifically request expedited shipping or insurance.

## **Waiver of Fees**

The costs of searching for and copying 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. The City Council may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

## **5. How do I qualify for an indigence discount on the fee?**

The City will waive the first \$20.00 of the processing fees for a request if you submit an affidavit stating that you are:

- Indigent and receiving specific public assistance; or
- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

You are **not** eligible to receive the \$20.00 discount if you:

- Have previously received discounted copies of public records from the City twice during the calendar year; or
- Are requesting information on behalf of other persons who are offering or providing payment to you to make the request.

An affidavit is sworn statement made under penalty of perjury.

## **6. Can a nonprofit organization receive a discount on the fee?**

The City will waive 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 106-402, and the Protection and Advocacy for Individuals with Mental Illness Act, Public Law 99-319, if the request meets all of the following requirements:

- It is made directly on behalf of the organization or its clients; and
- 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.

## **7. Can I challenge the denial of my request for a public record?**

If you believe that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, you may appeal to the Mayor by filing a written appeal of the denial with the Office of the Mayor.

The appeal must be in writing, specifically state the word “appeal,” and identify the reason or reasons you are seeking a reversal of the denial. You may use the City FOIA Appeal Form (To Appeal a Denial of Records), which is available on the City’s website: [www.pontiac.mi.us/departments/clerk/index.php](http://www.pontiac.mi.us/departments/clerk/index.php)

Within 10 business days of receiving the appeal, the Mayor 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 Mayor may issue a notice extending the period during which the Mayor will respond to the written appeal by not more than 10 business days.

Regardless of whether or not you submit an appeal of a denial to the Mayor, you may file a civil action in the Oakland County Circuit Court within 180 days after the City's final determination to deny your request. If you prevail in the civil action, the court will award you reasonable attorneys' fees, costs, and disbursements. If the court determines that the City acted arbitrarily and capriciously in refusing to disclose or provide a public record, the court will award you punitive damages in the amount of \$1,000.00.

## **8. Can I challenge an excessive FOIA processing fee?**

If you believe that the fee or good-faith deposit charged by the City to process your FOIA request exceeds the amount permitted by state law or under the City's FOIA Procedures and Guidelines, you must submit a written appeal for a fee reduction to the Office of the Mayor.

The appeal must specifically state the word "appeal" and identify how the required fee exceeds the amount permitted by state law or under the City's FOIA Procedures and Guidelines. You may use the City FOIA Appeal Form (To Appeal an Excess Fee), which is available at the City Clerk's Office and on the City's website: [www.pontiac.mi.us/departments/clerk/index.php](http://www.pontiac.mi.us/departments/clerk/index.php).

Within 10 business days after receiving the appeal, the Mayor 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 Mayor will respond to the written appeal by not more than 10 business days.

After receiving the Mayor's written determination of the appeal, you may commence a civil action for a fee reduction in the Oakland County Circuit Court. The action must be filed within 45 days after receiving the Mayor's written determination. If you prevail in the civil action by receiving a reduction of 50% or more of the total fee, the court may award you all of or an appropriate amount of your reasonable attorneys' fees, costs, and disbursements. If the court determines that the City arbitrarily and capriciously charged an excessive fee, court may also award you punitive damages in the amount of \$500.00.

If you have further questions regarding the City's FOIA policies, you are encouraged to review the City's FOIA Procedures and Guidelines, which are available at the City Clerk's Office and on the City's website: [www.pontiac.mi.us/departments/clerk/index.php](http://www.pontiac.mi.us/departments/clerk/index.php).